

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 18.12.92

OA 2015/91

R.S. ARYA & ANR. ...

... APPLICANTS.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicants

... SHRI N.S. VERMA.

For the Respondents

... SHRI J.C. MADAN,
proxy counsel for
SHRI P.H. RAMCHANDANI.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporters or not?

J_U_D_G_E_M_E_N_T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

This joint application under Section 19 of the Administrative Tribunals Act, 1985, in which the applicants have the grievance for non-payment of Special Pay of Rs.35/- (now Rs.70/-) and for treating the same as a part of their existing emoluments for the purpose of fixation of pay w.e.f. 1.1.86 in accordance with the OM dated 8.5.89 (Annexure A-5) read with OM dated 5.5.79 (Annexure A-1) and the CGDA's letter dated 5.5.84 (Annexure RA-1 to the Rejoinder). The applicants have also assailed the letter dated

4.9.90, where the Accountant A.O., RC-II, Delhi Development Authority, was informed that Shri R.S. Arya be intimated that his request for grant of Special Pay of Rs.35/- was rejected by the letter dated 24.7.90 after examination by CGDA (Annexure A-8). The applicants have prayed for the following reliefs; direction to the respondents for grant of Special Pay of Rs.35/- (Rs.70/- w.e.f. 1.1.86) to the applicants and they should be refixed in the revised pay scale under Rule 7(i)(B) of the CCS (RP) Rules, 1986 after taking into account the Special Pay of Rs.70/- as a part of the pay and also treating it as existing emoluments and to give arrears of pay and allowances as a consequence of the above grants and fixation with interest thereon @18% p.a.

2. Applicant No.1, R.S. Arya, has been promoted as S.O.(A) on 19.12.86 in the Defence Accounts Department and is on deputation to CAU Rohini (DEDA), New Delhi. Applicant No.2, N.S. Verma, is Ex- Senior Auditor and he has sought voluntary retirement w.e.f. 31.7.91. The present application has been filed on 3.9.91.

3. The scheme to grant Special Pay of Rs.35/- to Auditors attending to work of a complex and important nature in DAD was issued in terms of Ministry of Finance OM No.F 7(52)E.III/78 dated 5.5.79 and it was implemented w.e.f. 1.5.84 subject to the following conditions; (i) Number of authorised posts carrying such Special Pay shall not be more ^{than} 10% of the posts in the

cedure of Auditors including the post in the selection grade;

(ii) The criteria of 12% was applied to each office and sub office separately.

4. The said OM has been filed as Annexure A-1 to the application.

The clarificatory instructions were issued vide OM dated 29.11.82 (Annexure A-2).

Office of the CGDA issued the confidential letter dated 11.1.83 (Annexure A-3), by which the CDA Training Meerut

was requested to sent the information in form of statement showing the authorised and posted strength of Clerks/Auditors/SG Auditors in the main office and each of the sub Office with an authorised strength of 10 or more Auditors/Clerks and a nominal roll (in

duplicate) in the enclosed proforma of SGAs serving in the organisation as on 1.1.83 arranged strictly according to their seniority.

The office of the Controller of the Defence Accounts, Central Command, Meerut, by the order No.500 dated 15.5.85, issued

the list. Another OM was issued by the Ministry of Finance, Department of Expenditure, on 8.5.89 (Annexure A-5) on the subject

of grant to Auditors/Accountants in the Organised Accounts Cadres,

Special Pay of Rs.35/- and inclusion thereof in the existing

emoluments under Rule 7(i)(B) of the CCS (RP) Rules, 1986. This

is also based on the judgement of the Tribunal in which it was

directed that Special Pay of Rs.35/- be treated as part of existing

emoluments under Rule 7(i)(B) of the CCS (Revised Pension) Rules, 1986.

The applicant R.S. Arya, therefore, made a representation on 27.12.89 that he was promoted as Selection Grade Auditor w.e.f. 1.7.79 by

the CDA, CC Meerut. As per existing orders 10% of authorised strength were to be given Rs.35/- Special Pay w.e.f. May, 1984. By virtue of seniority he was eligible to get the Special Pay of Rs.35/- w.e.f. May, 1984 according to the authorised strength but CDA Central Command, under whom the applicant No.1 was working, did not sanction Rs.35/- as a Special Pay. The applicant No.1 again sent a reminder dated 17.8.90. The applicant No.1 was informed by the impugned letter that he has been already informed by the letter dated 24.7.90 that the grant of Special Pay of Rs.35/- was examined in his case by CGDA but not agreed to. It is aggrieved by this that the applicant No.1 has assailed the said order. Applicant No.2, Shri N.S. Verma, has not filed any representation.

5. The applicants have also moved an application for condonation of delay through MP 3322/91 stating that the bonafide believed that period of limitation begins to run from the date i.e. 4.9.90 of final reply and as such there is delay in filing the representation be condoned.

6. The respondents contested the application and have taken the stand that a number of authorised posts carrying Special Pay shall not exceed 10% of the posts in the cadre of Auditors including the post in the selection grade. The applicant No.1, R.S. Arya, was posted in May, 1984 as Selection Grade Auditor in LAO Ranikhet under the organisation of CDA (CC) Meerut. Though he figured in the consideration zone of Auditors eligible to the grant of Special Pay

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but no Special Pay post was available there at the time as ~~above~~ ^{transfer} policy laid down by CGDA that he should not be transferred out before completing his tenure. After completion of his tenure on 31.7.85 he was transferred to LAO, Roorkee, where also no Special post was available to Shri Arya. However, Shri Arya was asked for his willingness for transfer to Jabalpur/Saugor to a Special Pay post by CDA (CC), Meerut by the letter dated 26.5.86. Shri Arya refused to go on transfer to Jabalpur/Saugor and given undertaking dated 12.6.86 and thus declined to avail to posting to Special Pay post.

7. With regard to applicant No.2, Shri N.S. Verma, he was serving in May, 1984 at Meerut under the organisation of CDA (ORS) North in the main office. He also figured in the consideration zone of Auditors for grant of Special Pay but as more senior Auditor was present for the post at Meerut, he could not be offered one. Shri Verma was, therefore, asked to give his willingness for transfer, to Gaya/Ramgarh/Shillong/Subethu/Sri Nagar, where Special Pay posts were available. Shri Verma also showed his unwillingness vide his declaration dated 20.6.84 and 23.4.85 (Annexure R-II and R-III to the counter). Hence, he also could ^{not} be granted the Special Pay. Shri Verma proceeded on voluntary retirement w.e.f. 31.7.91 and Shri R.S. Arya was promoted as S.O.(A) w.e.f. 19.12.86. Thus, the respondents have taken a clear stand that it was on account of the applicants unwillingness to join at a post where a post was available for the grant of Special Pay, so they could not be granted Special

Pay in spite of the opportunity afforded to them and now they have no case.

8. The respondents have also taken the plea of limitation inasmuch as Shri R.S. Arya was informed of the decision on 8.8.86 (Annexure A-I to the counter) of headquarters office vide CDA (CC), Meerut letter dated 19.8.86 (Annexure R-IA). Likewise, applicant No.2 also refused transfer and Special Pay of Rs.35/- in 1985 (Annexure R-II).

9. ⁹ We have heard the learned counsel for both the parties at length. There is no dispute that deployment on the post carrying Special Pay to Senior Auditors then Selection Grade Auditors of DAD for working on task of more complex nature was to be made strictly on the guidelines which have been circulated from time to time. Para 2.10 of the Circular dated 5.5.84 of CGDA, New Delhi (Annexure R-V), person serving at tenure station and who are eligible, will be accommodated, to the extent possible at the same station. No transfer from tenure station was to be effected for this purpose. Applicant No.1, Shri R.S. Arya, was serving at Ranikhet, which was a tenure station and he was not granted Special Pay of Rs.35/- as he did not complete his tenure at the station and there was no Special Pay post was available. For the period from August, 1985 to December, 1986, he was at Roorkee, there was no Special Pay post identified at Roorkee because the staff posted there was less than 10. The applicant, therefore, was asked to join at Saugar/Jabalpur but he did not join there and gave undertaking dated 12.6.86

(Annexure R-VI). A perusal of the same shows that Shri R.S. Arya has given his unwillingness and, therefore, has given up his claim for a post carrying Special Pay. Shri R.S. Arya, of course, made a request for his transfer to Meerut but his request cannot be accepted as there was no vacancy available in the post at Meerut. Similarly, regarding Shri N.S. Verma, he was asked to join at a number of Special Pay post stations, referred to above, but he declined.

10. It is also not disputed that the payment of the above Special Pay ceased to be admissible w.e.f. 1.1.86 on implementation of the recommendations of the 4th Central Pay Commission.

11. The respondents have clearly stated that no junior to Shri N.S. Verma was allowed Special Pay under the organisation of CDA (ORS) North, where he was working at the relevant time. It may be possible that some juniors in All India Roster must have been considered in other Controller Office falling in station zone, as decided by the CGDA. But it is not made clear by the applicant that his juniors were drawing Special Pay at Ranikhet and Roorkee under the organisation of CDA (CC), where the applicant was posted. Thus, it is clear that the posts were not available where he was posted and it was also not permissible to revert the person who was validly posted on a post at Meerut merely to award applicant No.1 i.e. Shri R.S. Arya, the Special Pay post.

12. The applicant has not challenged the confidential instructions issued by the office CGDA dated 11.1.83, which was based on the

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Ministry of Finance OM dated 5.5.79 and subsequent clarification made by OM dated 29.11.82. In view of this fact, the policy adopted by CGDA in awarding Special Pay only to the incumbent posted in the zone of consideration in each office or Sub Office separately cannot be adjudicated upon in the present OA. The contention of the respondents that in May, 1984 though the applicant figured in the consideration zone but he was posted in tenure post and could not be transferred before he completed his tenure posting. This averment on behalf of the respondents has not been challenged by the applicants in the present application nor the applicant had made any representation at the relevant time that he is prepared to opt for a station even of tenure posting where he could get the Special Pay post. Thus, the applicant No.1 himself has to be blamed for not coming at the proper time.

13. Though, the present application is barred by limitation as the applicant was told as early as in 1986 as is evident by the Annexure R-I that he cannot be granted Special Pay at Meerut and he has not challenged that order of 1986. Though the applicant has moved separate MP for condonation of delay but the ground taken in that MP only is restricted to the fact that he had bonafide taken the period of limitation running against him from 4.9.90 and the final reply given to him. But that cannot be taken to be a sufficient and reasonable ground because the repeated representation do not add to the period of limitation

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as held in the case of Dr. S. S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10). In spite of this fact, the claim of the applicant has been considered on merit also and there is no ground to interfere in the impugned orders.

14. The present application is, therefore, totally devoid of merit and is dismissed as such leaving the parties to bear their own costs.

J. P. SHARMA 18/11/92
MEMBER (J)