

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1951/91 with OAs 3090/91, 2047/92 & 387/92

New Delhi, this 28th day of April, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
HOn'ble Shri S.P. Biswas, Member(A)

1. Inspector Satpal Kalia, DI/47
C/27/5, Police Colony,
Mayur Vihar, New Delhi

2. Inspector Mahabir Singh
D764, IP Estate, New Delhi

3. Inspector Bal Kishan
D1351, IP Estate, New Delhi

4. Inspector Tula Ram
D1969, IP Estate, New Delhi ..

Applicants in
OA 1951/91

Shri Prem Singh and 347 others, all
working in Delhi Police, as per
details given in the Memo of parties
attached to OA ..

Applicants in
OA 3090/91

Shri Subhvir Singh and 289 others, all
working in Delhi Police, as per
details given in the Memo of Parties
attached to OA ..

Applicants in
OA 2047/92

Shri Satpal Kalia and 65 others, all
working in Delhi Police, as per
details given in the Memo of Parties .. Applicants in
OA 387/92

(By Advocates Shri R.L. Sethi with Shri Ashish Kalia)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
New Delhi

2. Commissioner of Police
Police Hqrs., IP Estate
New Delhi ..

Respondents

(By Advocate Shri Anoop Bagai, through
proxy counsel Shri B.S. Oberoi)

Hon'ble Shri S.P. Biswas ORDER

The facts, legal issues involved and reliefs sought for, in these **four** original applications are common. Hence they are being disposed of by a common order. For the purpose of better appreciation of the issues raised herein, details available in OAs No. 1951/91 and 2047/92 have been referred to while deciding the cases.

2. The applicants herein are ministerial staff from the executive wing of Delhi Police in the ranks of Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. They are aggrieved by two orders of the respondents dated 28.7.88 and 17.8.88. By the former, issued at the level of Under Secretary to the Government of India, Ministry of Home Affairs, it has been decided not to allow special pay to Delhi Police Personnel of the rank of Inspectors and below. It has further been decided to effect recovery of overpayment already made to them from 1.1.86 onwards from their salary. And by latter, issued by the Deputy Commissioner of Police, orders of the Government of India as aforesaid have been implemented with instructions to all the relevant field units of Delhi Police to stop payment of special pay to Delhi Police Personnel ~~for~~ the above mentioned **categories**.

3. The impugned orders have been challenged by the applicants on the basis of the following:

- (i) It is arbitrary since the considerations on the basis of which it was being paid earlier still hold good;

(ii) It is discriminatory because the two groups continue to do the same jobs (basis for grant of special pay) even now;

(iii) Order for recovery is bad in the eyes of law as it has not been preceded by any notice or affording of opportunity to present their side of the cases against the recovery; and

(iv) Such administrative orders cannot have retrospective effect, this being an accepted principle in service jurisprudence.

4. Consequently, they have prayed for quashing of the order No.140/11/70-864-Et dated 28.7.88 conveyed through Respondent No.2 by letter dated 1.8.91 alongwith resolution dated 13.3.87 and allow payment of special pay from 1.8.88, the date from which it was stopped arbitrarily.

5. Considering that the order of recovery was not backed by any pre-decisional hearing as per provisions in law, this Tribunal in OA 1951/91 gave the following interim direction on 27.8.91:

"Not to effect recovery of special allowance available to the applicants from 1.1.1986"

6. The learned counsel for the applicants argued the cases strenuously to claim that having received the special pay ever since 1947, which has been continued uninterruptedly by the government and even sanctioned subsequently after the recommendations of the 4th Central Pay Commission from 1.1.86, the applicants have acquired a legal right and it cannot be divested without affording reasonable opportunity of being heard.

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7. With the implementation of the impugned orders, the respondents have created two distinct groups of officers in the Delhi Police Organisation - one of officials belonging to Group A and B categories and other of those like Inspectors and below - for the purpose of grant of special pay. This cannot be held to be valid in the eyes of law, particularly when there has been parity in this regard ever since 1947. By the impugned orders, respondents have not only created two segments of Delhi Police Personnel but have also imposed an artificial barrier against the declared policy enunciated in Articles 14 and 16 of the Constitution of India. The counsel argued that the 4th Pay Commission in its recommendation at para 27.26, suggested granting special pay at doubled the rate wherever it is being granted. Accordingly, a proposal was sent to the Ministry of Home Affairs recommending doubling of special pay in respect of certain categories of non-gazetted Delhi Police Personnel.

The Ministry of Home Affairs, instead of agreeing to the proposal of Delhi Police, conveyed their decision by the impugned order indicating that special pay should be scrapped altogether in respect of officers upto the rank of Inspector and recoveries be made with effect from 1.1.86. Since the recommendations of the 4th Pay Commission were accepted by the Government of India vide Resolution No.14(1)/1C/86 dated 13.8.86, the question of discontinuing the special pay with effect from 1.1.86 was against the orders of the Government and cannot be sustained. That apart, the Presidential order conveyed through letter dated 29.9.86 could not be altered by executive directions.

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8. The learned counsel for the respondents opposed the grant of special pay to the applicants on the ground that 4th Pay Commission had sufficiently taken into account the emoluments of special pay in fixing the pay to the police personnel upto the rank of Inspector and that pay scales enforced with effect from 1.1.86 is at par with corresponding police personnel in IB/CBI. It has also been submitted that in the case of State of U.P. Vs. J.P.Charasia AIR 1989 SC Page 19, the HOn'ble Supreme Court has observed that expert bodies like Pay Commission would be the best judge to evaluate the nature of the duties and responsibilities of the posts. If there is any such determination by the Commission/Committee, the Court/Tribunal are to accept it normally. It can only interfere when such scales have been based on extraneous consideration. The case of police personnel below the rank of Inspector have been examined separately by the 4th Pay Commission and they have given incentives both in terms of minimum scale as well as in promotional avenues/ cadres. In the present case, averments made do not bring out solid reasons for continuation of special pay particularly in the background of provision of better replacement scale of pay for these personnel as agreed to by the respondents. Thus, it cannot be said to be case of discrimination. Merely because the police personnel have to shoulder certain arduous responsibilities would not make them entitled to payment of special pay. The scale of IB/CBI personnel have been made as a criterion for revision of pay scales of various ranks in Delhi Police upto Inspector's grade.

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9. We shall now proceed to discuss each one of the grounds adduced by the applicants in favour of their aforementioned claims.

10. As regards the grant of special pay, we reproduce below the stand of Ministry of Home Affairs:

"It is felt that as the revised scales to police peronnels have been granted upward than recommended by the 4th Pay Commission and no special pay is admissible in CBI, IB etc. after revision of pay scales, there is no justification for grant of special pay to Delhi Police Personnel. Similarly, the Metropolitan (Police) Allowance has not been recommended by the Pay Commission for Inspectors after due consideration. As such, this cannot be given to Inspectors as it will amount to improvement to the Pay Commission's recommendations, which had been given after due consideration".

11. The above stand of the respondents is based on the position that revised pay scales of Inspectors and below are almost four times more than their existing scale and this includes elements of special pay.

12. It is necessary to mention that the issues raised here are no more Res Integra. Some of the officials, similarly placed like the applicants herein, had raised the issue in OA 179/88 decided by the Tribunal on 30.11.93. Again, the matter was taken up by a separate group of simillarly placed officials through yet another OA 1091/89 decided by this Tribunal on 21.4.94. The former OA was dismissed on merits, whereas the latter one was disposed of with the following directions:

"5. In the light of the above observation as made in Annexure B, we direct the respondents to reconsider the case of the applicants

whether the IV Pay Commission recommendation as accepted by the Government included the special pay, while refixing the new pay scales, which was existing and was being drawn by the persons like the applicants, with the introduction of new pay scales with effect from 1.1.1986. If not, the respondents are directed to act in accordance with the recommendation of the IV Pay Commission as accepted by the Government. This aspect may be examined within a period of three months from the date of receipt of this order by the respondents."

13. Admittedly, the decision in the former OA had become final having not been challenged. When directions as aforesaid were given in OA 1091/89, the stand of the respondents, as mentioned in their submissions (para 5) dated 18.12.92, was apparently not brought to the notice of the Tribunal. Even the Presidential order, conveyed by the Office Memorandum dated 29.8.88, clarified that the President had decided to grant special pay at double the existing rate only to the cases where special pay has not been taken into account in the new pay scales introduced from 1.1.1986. The communication dated 21.12.88 from Ministry of Home Affairs to Delhi Administration, issued at the level of Director(SP), recorded reasons for denial of the reliefs prayed for. In the background of the details above, the impugned orders cannot be held to be arbitrary as alleged.

14. We are also unable to accept the contention of the applicants that the impugned orders are discriminatory. The question of discrimination comes only when there is legal right in favour of the applicants. Unless the charge of discrimination is established in terms of violation of such rights, the applicants cannot seek any relief by merely saying that the relief should have been

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continued to them just because those seniors to them continue to get the facility as they have been getting earlier. In a decision of the Tribunal in case of P.K. Krishnan Kutty Nair Vs. Chief Controller of Accounts & Ors. (1991 (17) ATC 434), the respondents were directed to identify percentage of posts that were earmarked for grant of special pay. One cannot claim special pay as a matter of right. In other words, only because an employee is discharging duties of arduous nature will not automatically entitle him/her to special pay. In the instant case, persons senior to the applicants have been identified, based on valid reasons, as holders of special pay, and hence it cannot be declared as a case of unreasonable classification. That apart, what pay structure will be suitable for a particular category/categories of staff is for the base level executives or expert bodies to decide. The Tribunal/Court cannot embark on an adjudication and enter into findings. If any authority is required for this, it is available in J.P. Charasia's case (supra): While re-emphasising the same views and cautioning the Tribunal to handle such matters with utmost care, the Apex court held in the case of Union of India & Ors. Vs. P.V. Hariharan & Ors. (JT 1997(3) SC 569) decided on 12.3.97 held that:

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".....fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect....The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue...Unless a clear

case of hostile discrimination is made out, there would no justification for interfering with the fixation of pay scales." (3)

Although the present case is one of special pay, the ^{governing} principle would, however, be the same as applicable in the determination/examination of pay scales.

15. The nature of work and responsibility of posts are matters to be evaluated by the management and not for the court to determine by relying upon the averments in the affidavits of interested parties.... (Please see 1995(1)ATJ Vo.18, p.22 - OA 769/93 P. John Andrews & Ors. Vs. UOI & Ors., decided on 21.9.94 by the Ernakulam Bench).

16. It is well settled in matter of service jurisprudence that administrative orders cannot have retrospective effects. This is what has been laid down by the apex court in the case of Govind Prasad V. R.G. Prasad (1994) 1 SCC 437 : 1994 SCC (L&S) 579: (1994) 26 ATC 612: (1994) 1 LLJ 943: (1994) 1 SLR 30.


17. Based on the details above, withdrawal of special pay as ordered on 28.7.88 (A-1) for the applicants and rejection of their representation on this issue cannot be faulted.

18. We find that the impugned order (28.7.88) also intends to effect recoveries of overpayment already made to the applicants from 1.1.86 onwards. Applicants have been made to suffer civil consequences but have not been

granted any opportunity to show cause against the proposed recovery. They were not even put on notice before the recovery orders were issued and the same seem to have been made behind the back of the applicants without following procedures known to law. It is a flagrant violation of principles of natural justice and the applicants have been made to suffer without being heard. The apex court has highlighted the above requirement in a long line of decisions i.e. State of Orissa Vs. Dr. Ms. Binapani Dei AIR 1967 SC 1269 and Bhagvan Shukla Vs. UOI SLJ 1995(2) SC 30.

19. In the light of the discussions in the above mentioned paras, directions pertaining to recovery contained in the same A-1 order deserve to be set aside being violative principles of natural justice.

20. In the result, the OAs are partly allowed and disposed of with the following orders;

- a) The appeal of the applicants to allow them special pay from 1.1.88, the date from which it was stopped fails being devoid of merits;
 - b) The decision of the respondents to effect recovery of overpayment from 1.1.86 onwards is set aside.
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- c) If the respondents are of the opinion that the amounts of overpayment have to be recovered, they have to issue show cause notices to the applicants, hear them, consider their defence and take an objective decision recording reasons thereof.
- d) In the facts and circumstances of the case, there shall be no order as to costs.

(S.P. Bhowas).
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/gtv/

A. Hestaw
KSC
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30/4/97