

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 280/2004

This the 23rd day of December, 2004

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)

Jagmal Singh
S/o Sh. Deep Chand Singh
R/o RZ-69, Baba Hari Das Nagar,
Behind New Grain Market,
Najafgarh, New Delhi-110043.

(By Advocate: Sh. N. Shah)

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Commissioner of Delhi Police
P.H.Q., I.P.Estate,
New Delhi.
3. The Joint Commissioner of Police (PTC),
Delhi Police Training College,
Jharoda Kalan, New Delhi.

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant filed this OA for restoration of the training allowance @ 15% of the basic pay w.e.f. September, 2000 along with interest accrued on the arrears and the refund of the amount deducted since the month of August 2001 till date @ Rs.500/- p.m. along with interest thereon beside the compensation.

2. Shortly stated, the facts are that the applicant was appointed as an Assistant Librarian in the Library of the Police Training College, Jharoda Kalan, New Delhi in September, 1998. Right from the beginning he was granted 15% training allowance over the basic pay in addition to his salary in terms of the office memorandum No.11012/3/97-DG dated 18.3.1998 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training of the Government of India. He continued to get this allowance for 2 years but this allowance was abruptly stopped. His representation for its restoration did not bear

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fruit. Instead the respondents had started deducting a sum of Rs.500/- p.m. from the salary of the applicant from the month of August, 2001. Hence this petition.

3. The respondents are contesting the application. It was pleaded that all the non-permanent faculty members and civilian staff posted in Police Training College including the applicant Shri Jagmal Singh were granted training allowance @ 15% of their basic pay in pursuance to the Government of India's OM dated 18.3.1998 with the condition that they would have to refund the training allowance, if any authority objected to this grant, and a written consent of all those employees was also obtained. Applicant also submitted his written consent on 7.10.1998 which is Annexure R-1 to the counter. In September 2000 the audit party of AGCR audited the accounts of the Police Training College, Jharoda Kalan for the period from 1.4.1998 to 31.3.2000. The audit party pointed out that the permanent faculty members including Group 'D' staff were not entitled to the grant of training allowance in view of the instructions issued by the Government of India in 1988 and ordered the recovery of unauthorized overpayment of the training allowance amounting to Rs.16 lakhs from them. Accordingly, training allowance was discontinued by order dated 25.10.2001 (Annexure R-2). Later on the Joint Commissioner of Police (Training) ordered for making the recovery of overpayment granted to the civilian employees and all the permanent faculty members by order dated 19.7.2001 (Annexure R-3). The training allowance was admissible only to the faculty members other than permanent faculty members whose work was to impart training and teaching and not to others. The decision of the Police Headquarter in the memo dated 9.10.2001 (Annexure R-4) in this regard was also conveyed to all concerned. The representation made by the applicant for restoration of the allowance to him has since been rejected. As such it is submitted that the applicant was not entitled to the grant of training allowance in accordance with the memo so the OA has no merit.

4. In the rejoinder applicant reiterated his own case and denied the allegations of the respondents made in the counter.

5. I have heard the learned counsel for the parties and have gone through the record.

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6. It is not disputed that the applicant was appointed as Assistant Librarian in the Library of the Police Training School, (now Police Training College). There is also no dispute that right from the beginning he was granted 15% of his basic pay as training allowance. The training allowance has since been stopped and recovery of the paid amount is being made from the salary of the applicant in the instalment of Rs.500/- each since August, 2003.

7. The short controversy is whether the applicant is entitled to the grant of 15% training allowance in accordance with the office memorandum dated 18.3.1998 which is Annexure A-2. It is extracted below:-

“Subject: Improvement in service conditions of faculty members/ training institutions-Revision of rate of Training Allowance – Recommendation of the Fifth Central Pay Commission.

The undersigned is directed to say that in terms of this Department Office Memorandum No.12017/2/86-TRG., dated the 9th July, 1992, the training allowance at the rate of 15% of the basic pay is granted to employee of the Government who joins training institutions meant for training Government officials, as faculty members, other than, as permanent faculty members. Consequent upon the decision taken by the Government on the recommendation contained in para 106.21 of the Fifth Central Pay Commission, the President is pleased to decide that training allowances, wherever it is admissible, shall be allowed at the rate of 15% of the basic pay in the revised scales of pay. This allowance shall not be granted to the permanent faculty members of the training institutions. The trainer who are granted training allowance shall not be entitled to special pay/deputation (duty) allowance or CDTA.

2. These orders shall take effect from the 1st August, 1997.

3. In so far as the application of these orders to the Indian Audit and Accounts Department is concerned, these orders issue in consultation with the Comptroller and Auditor General of India.”

8. It is clear that this would apply to the employees of the Government who joined the training institutions like Police Training School/College, meant for training of Government officials as non-permanent faculty members. The faculty members (teacher or trainers), who are not permanent faculty members, were entitled to receive 15% of their basic pay as training allowance in Police Training School/College of the respondents. If the applicant is a faculty member, but not a permanent faculty member of the respondents Training School/College, he will undoubtedly be eligible to receive 15% of his basic pay as training allowance.

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Whether he falls in this category of employees is a moot question which arise for determination in this case.

9. Dictionary meaning of the word ' faculty' inter alia, is 'a department of learning at a University or the professors and lecturers constituting it'. The Police Training College of the respondent, in which the applicant is employed imparts training to police recruits and other personnel. In case on the facts and material it is possible to hold that the applicant is a teacher or trainer in the institution he will be a rightful claimant to the allowance.

10. The applicant has filed three documents with the OA to prove that the duties assigned to him as Assistant Librarian (Civil) were that of a teacher and trainer so he was a faculty member, not permanent faculty member, and he was entitled to receive the training allowance. None of these documents were good enough to prove his claim. He had filed the copy of his appointment letter as Annexure A-1 which simply showed that the applicant was appointed as temporary Assistant Librarian (Civil) in Delhi Police in the pay scale of Rs.5000-8000. He also filed the copy of the OM dated 18.3.1998 as Annexure A-2 beside the copies of his pay slip and various representations which he made against the stoppage of the allowance or deduction of overpayment from his salary.

11. The respondents, on the other hand, had placed a certificate signed by the respondent which stated that the applicant had his posting in Police Training College, New Delhi and that in case an objection was raised against the payment of 15% training allowance to him, the same could be deducted from his salary and that he would not raise any objection to such deductions. This writing is signed by the applicant on 7.10.1998, i.e. soon after his appointment as Assistant Librarian. The respondents also filed the copy of the order of the Joint Commissioner of Police, Training, New Delhi dated 25.1.2001 whereby the payment of training allowance @ 15% of the basic pay was discontinued to Clause IV employees, Personal Orderlies and civilian excluding Law Department with immediate effect till the clarification was received from PHQ/Government of India, in view of the objection raised by the Audit party of the AGCR. Respondents also filed Annexure R-3 which is an order of the Assistant Commissioner of Police

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Headquarter directing recovery of overpayment of training allowance from Class IV and civilian employees list of whom was enclosed, as Annexure R-8. A copy of the office order of the Commissioner of Police dated 9.10.2001 (Annexure R-4) has also been filed which was addressed to the Principal, Police Training College. The letter shows that the question of training allowance was minutely examined in the Police Headquarters and it was clarified that the training allowance was admissible to faculty members whose work was to impart teaching and training and not to others. It was further directed that the payment of training allowance to:

- (i) All class IV employees and civilian staff,
- (ii) all orderlies,
- (iii) all other faculty members and
- (iv) any other unauthorized person was not in accordance with the Government of India's instructions and the payment of such training allowance to the said staff should be stopped forthwith and the recovery of the allowance which had already been made immediately be made.

Last document filed along with the counter is the letter of Principal, Police Training College dated 21.10.2003 by which the representation of the applicant for restoration of 15% training allowance was rejected.

12. Applicant, as such, had not placed any document or material on record to justify his claim that he was a non-permanent faculty member (teacher or trainer) and covered by the OM dated 18.3.1998. Faced with the situation, the learned counsel for the applicant sought time to produce some documents in support of the applicant's claim. Certain documents have now been filed with a list of document dated 28.9.2004. The learned counsel for applicant drew attention first to document which is at page no.33 of the list (running page 85 of the file). It related to the duties assigned to Library Staff. Concerning the applicant, Shri Jagmal Singh, Assistant Librarian it read as under:-

“Accessing of Books & Audio-Visual Materials,
Issue – Return of books,
To record the Bill of News Papers & Magazines,
To distribute the Work – Books (Free of Cost)
Among Trainees & Staff.
In charge of Audio – Visual library,

Accessing of Books

To show & Details the trainees about the training films,
To assist the librarian in all other related activities of library.”

13. The argument of the counsel for applicant is that in addition to the other duties, applicant is discharging the duty of Incharge of Audio and Visual library and he is supposed to show and details the trainees about the training films. He has argued this assignment is part of training imparted to the trainees. But this document related to the distribution of duties to the Staff of the Library and not to faculty members. Applicant could not produce time table of the classes which he was taking and details of the nature of the training which he was actually imparting in those periods. Instead the learned counsel for applicant has referred to the time table of Women Recruit Constables of the Batch 71 which are at page 30 to 32 of the list of document (running pages 82 to 84) which simply indicated that the training classes were held in the library room. These documents do not prove that the applicant, Assistant Librarian, was the trainer and was taking classes to teach the student trainees or demonstrate anything as part of the training course to trainees.

14. The document No.1 of the list dated 28.9.2004, which is at running page 53, reveals that 1,2,4,5 periods have been allocated to the department of Library and Publication. The list of the staff of the department of Library and Publication is document No.27 which is at running page No.79 of the file. The Note Sheet which is document No.1 at page 53 does not show that the Department of Library and Publication is a faculty. Weekly time table which has been heavily relied upon does not ~~show~~ ^{the} indicate the applicant is a trainer or a teacher and was supposed to take classes. No order of the Head of the Department of Library has been produced by which any period for teaching or training the trainees was allocated to the applicant, Assistant Librarian. In view of the above facts there does not appear any substance in the claim of the applicant that he was a faculty member, a teacher or a trainer in the College who are eligible for 15% of the basic pay training allowance. Screening of training films in the library would by itself will not make the applicant a teacher or a trainer. The distribution of work to the library staff as contained in document 33 at page 85 does not indicate that the applicant was teaching or training the trainees by showing or detailing the training films. If he

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was operating the Projector or any other machine, device or equipment like VCR or VCD etc. etc. which is for showing the films it would not cloak the applicant as a teacher, a trainer and a member of faculty. He could have easily obtained a certificate, if not from Principal of the College, from the Head of the department of Library and Publication that he was member of faculty and part of his job was imparting training to the trainees.

15. The learned counsel for the applicant has also pointed out to page 27 of the list and running page 79 which according to him is the faculty of the library and publication. In fact this is the list of the personnel working in the department of Library and Publication and does not show that there is a faculty of Library and it is a list of faculty members; permanent or non-permanent members of the faculty of library. Applicant has not produced list of the faculty members of the College issued by the College authorities. Applicant was appointed, (see Annexure P-1) as an Assistant Librarian Civil which is a ministerial/administrative cadre post. The claim of the applicant to the contrary cannot be upheld and has to be rejected.

16. Next limb of the arguments of the learned counsel for applicant is that some subordinates, Class IV/Group 'D' employees and even the medical officer are being paid training allowance @ 15% of their basic pay and if the applicant, being not a member of the faculty, was disentitled to receive this allowance, others could not have been continued to be paid or sanctioned allowance since it would be highly arbitrary and discriminatory and applicant should not be discriminated against. Learned counsel argued that applicant is entitled to be granted equal pay for equal work on the principles of law laid down by the Hon'ble Supreme Court in State Bank of India and another vs. M.R.Ganesh Babu & Others JT 2002 (4) SC 129. He also relied upon the judgments of the Hon'ble Supreme Court in State of Bihar and others vs. Kameshwar Prasad Singh 2000 (9) SCC 94 and State of Haryana and others vs. Ram Kumar Mann JT 1997 (3) SC 450 in support of his arguments. He contended that the petitioner was discriminated and denied equality as some similarly placed persons had been given the benefit of the OM dated 18.3.1998.

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17. Learned counsel has produced the copy of the order of Police Training College by which the training allowance @ 15% of the basic pay has been sanctioned amongst others, i.e., Dr. Amit Kumar Tyagi, MO/PTC beside some Sub Inspectors, Inspector, Head Constable and Constable. Counsel for the respondent was not in a position to explain this document since it was produced during the course of hearing at the fag end. But on instructions of the representative of the department he submitted that no Dr. Amit Kumar Tyagi was posted in the College and if at all he was there he might have been granted allowance for his services used in the teaching of the trainees. He further argued that the plea of equal pay for equal work has to be examined with reference to Article 14 of the Constitution of India and the burden was upon the applicant to establish his right to equal pay on the plea of discrimination as laid down in the case of State Bank of India and others (Supra). He also referred to State of Bihar and others (supra) where the Hon'ble Supreme Court held that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. It was further observed that when an authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. It is thus argued that if the respondent authority ^{is} still paying the training allowance to certain category of employees, who are not otherwise eligible to receive such allowance for being not covered by office memorandum dated 18.3.1998, it would not confer civil right on the applicant to be treated at par with them and be paid that training allowance irregularly.

18. I have carefully considered the case law cited on behalf of the applicant and do not find it advances his claim. In State Bank of India and others (supra) the Specialist officers were claiming parity in the pay with generalist officers. Specialist officers advised and undertook the work of the bank in their respective field of specialization. While generalist officers generally looked after the banking business. Both were in junior managerial grade. Initially they were there in the

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same scale of pay and were given same advance increment to start with. Later the Bank authorities determined certain terms and conditions of the appointment and service of the officers in the bank. The new entrant to generalist cadre were placed at the stage of Rs.860/- in scale-1 of junior management grade. Specialist officers were not entitled to the benefit of higher starting pay. The one category of Specialist officers filed writ petition claiming parity with generalist officer invoking the principle of equal pay for equal work. The Supreme Court observed:

"It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court".

19. The principles of law enunciated above do not apply to the facts of the case in hand. It is not a case of disparity in pay of two or more set of employees performing similar nature of duties and shouldering same responsibilities. The applicant wants equality in grant of an allowance on the premises that other section of employees, who are equally not eligible to receive it, are receiving such allowance. A wrong decision cannot be allowed to be perpetuated in the garb of applying principles of equal pay for equal work. The applicant should have legally enforceable right to be paid the allowance which he does not have in view of unambiguous and clear terms of OM dated 18.3.1998.

20. The law laid down by the Hon'ble Supreme Court in the State of Bihar (supra) was on distinguishable facts and would not advance the case of the applicant. Rather it negates his claim. In para 30 and 31 of the judgment it was observed:

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“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh vs. New Delhi Municipal Committee held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

“Neither Article 14 of the Constitution conceives within the equality clause with concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petition that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

Again in Secretary, Jaipur Development Authority vs. Daulat Mal Jain this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

“Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

31. In State of Haryana vs. Ram Kumar Mann this court observed:

“The doctrine of discrimination is found upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetuate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously ‘No’. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by

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the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

21. The judgment in State of Haryana and others (supra) has already been taken into consideration by the Hon'ble Supreme Court in the case of State of Bihar (supra).

22. Thus none of the judgment cited on behalf of the applicant justify his claim. It cannot be held that the applicant had a right to receive the allowances as being claimed just and legal.

23. It will be pertinent to note here that it is not a case where the applicant has no role to play in the excess payment made by the College authority. The applicant was paid the training allowance only after he gave in writing to the College that in case an objection was raised to the payment of allowance to him he would not raise any objection to its stoppage or recovery of overpayment already made. Therefore, the case of the applicant will not be covered by the principles of law laid down by Hon'ble Supreme Court in Yogenath D.Bagde vs. State of Maharashtra and others 1989 SCC (L&S) 385 and the respondents cannot be restrained from recovering the amount of excess payment of allowance made by erroneously giving benefit of OM dated 18.3.1998.

24. The result of the above discussion is that the applicant cannot be held to be a non-permanent faculty member of the Police Training College. He is not covered by office memorandum dated 18.3.1998 (Annexure A-2). The College authorities were already in doubt about the entitlement of the applicant to this amount and had obtained in writing from the applicant soon after the appointment was made before the allowance was paid that the applicant would not have any objection if the allowance was stopped or recovered if some objection was raised by any quarter (Annexure R-1 to the counter). In this case an audit objection has been raised by the audit party of the AGCR against indiscriminated payment of the allowance to some ineligible officials. The department had no option but to direct stoppage of this allowance and also make recovery of the over paid allowance, after due deliberation on this question. It appears from the perusal of Annexure R-2 to R-5 of the counter. They cannot be blamed and can also not be faulted for doing it.

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25. The result of the above discussion is that there is no merit in the application. Original Application is dismissed.

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(M.A. KHAN)
Vice Chairman (J)

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