

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1953/1992

New Delhi, this <sup>9<sup>th</sup></sup> day of ~~April~~ <sup>May</sup> 1997

vide order in  
MA 1434/97 dtd  
5-6-97

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

Sub-Inspector Husan Singh, No.D/394  
s/o Shri B.S. Verma  
301, Police Colony, Ashok Vihar  
Delhi-52

.. Applicant

(Applicant in person assisted by Shri Ashish Kalia,  
Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Home Affairs  
North Block, New Delhi
2. Commissioner of Police  
Police Hqrs., MSO Building  
IP Estate, New Delhi

.. Respondents

(By Advocate Shri B.S. Oberoi)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Sub-Inspector of Delhi Police, is aggrieved by Annexure-A(dated 1.8.91), Annexure-B (dated 13.3.87), Annexure-C (dated 31.3.87) and Annexure-S (dated 17.8.88) orders. By these orders, respondents have decided to stop payment of special pay to clerical/ministerial staff of Delhi Police, which he claims to be entitled under Rule 12.3-D of Punjab Police Rules/1934 and which was recommended by the 4th Pay Commission and accepted by the Government of India. He entered into service with Delhi Police as a Constable with effect from 16.4.64, appeared for direct clerical test for Head Constable on terms and conditions that special pay under rule 12.3-D of Punjab Police Rules/1934 (Annexure E) was admissible to him. He continued to get the benefit of special pay ever since he changed his cadre from executive to clerical.



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2. The applicant, appearing in person, has challenged the aforesaid impugned orders 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 his side of the case against the recovery; and
- (iv) Such administrative orders cannot have retrospective effect, this being an accepted principle in service jurisprudence.

3. An interim order was passed on 29.7.92 staying the recovery of overpayment of special pay already paid to him from 1.1.86 to January, 1992, since the order of recovery was not backed by pre-decisional hearing as per provisions under law.

4. All the points raised in this application have been discussed while deciding similar OA 1951/91 alongwith OAs 3090/91, 2047/92 and 387/92 by a common order by this Tribunal on 28th April, 1997. Incidentally the counsel appearing in the instant case as well as in the cases referred to above are the same.

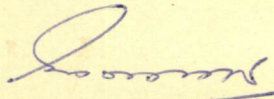
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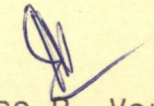


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5. In view of the position, this OA is partly allowed and disposed of with the following orders:

- a) The appeal of the applicant to allow him 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.
- c) If the respondents are of the opinion that the amounts of overpayment have to be recovered, they have to issue show cause notice to the applicant, hear him, consider his 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. Biswas)  
Member(A)

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

/gtv/