

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2284/1992. DATE OF DECISION: 31-3-1993.

Shri Rajanna Applicant.

v/s.

Union of India Respondent.

COURT: Hon'ble Mr. J.P. Sharma, Member (J).
Hon'ble Mr. S.R. Adige, Member (A).

Shri K.R. Nagraja, counsel for the applicant.
Shri M.L. Verma, counsel for the respondent.

(JUDGMENT OF THE BENCH DELIVERED BY
HON'BLE MR. J.P. SHARMA, MEMBER (J).)

JUDGMENT

The applicant is a Security Assistant, Special Protection Group, Cabinet Secretariat, and has assailed the order dated 23.7.92, rejecting his claim for grant of ex-gratia payment of Rs.50,000/- for the bodily disability suffered by him while on way to join duty on 20th June, 1986.

2. The applicant has prayed for quashing the impugned order with the direction to the respondents to pay ex-gratia payment of Rs.50,000/- as per Clause (iii) of the Circular No.A-50011/18/86-E.A. II, dated 13.6.86. In the alternative, a prayer has also been made that the respondents be directed to restore the 50% special duty allowance with effect from the date it was reduced to 25% i.e., 25.2.87.

3. The applicant joined the Karnataka Police on 12.3.1979. He was selected on deputation basis for joining the Special Protection Group, which is attached to the Cabinet Secretariat, and he joined there with effect from 17.9.85. On 20.6.1986, the applicant was detailed to be on duty from 9.00 a.m. to 5.30 p.m. at South Block, New Delhi, in the security of VIP, being attached to the Prime Minister's Office. The applicant was picked up from his house and while travelling in

the SPG's vehicle, the vehicle met with an accident at around 8.20 a.m. at Jorbagh Road with a DTC Bus. The applicant, in this accident, sustained injuries and got himself treated in the All India Institute of Medical Sciences, New Delhi and was declared fit to join the duty with effect from 28th December, 1986. He was posted from the Prime Minister's Office to Communications. As a result of this posting, the special allowance which he was drawing was reduced from 50% to 25%.

4. The applicant made a representation for grant of some compensation from the Relief Fund, pointing out the sufferings he had undergone both physically as well as financially (Annexure 'J'). The applicant made another representation (Annexure 'L') for payment of ex-gratia payment for injuries sustained by him while performing duty. The applicant was medically examined and the report of the Central Institute of Orthopaedics, Safdarjung Hospital, New Delhi dated 31.8.91 is as follows: -

" Certified that Mr. Rajanna, 36 years, Male sustained fracture bone leg (left) in 1986, on Examination he has mild swelling around ankle and shortening of 1 cms. Dorsflexion limbs by 10 degrees and Plantariflexion limbs by 20 deg.

" He is fit to perform all duties except which involves terminal movements of the ankle. This certificate is in reference to letter No.26/SPG-Med./91 (1).

Sd/- Dr. Raj Bahadur
Associate Professor. "

5. In view of the above facts, since the applicant has not been granted ex-gratia payment of Rs.50,000/- and his request has been rejected as his case was not found to be covered for grant of ex-gratia payment under the rules, hence the present application has been filed for the reliefs aforesaid.

6. The respondents have contested the application and have stated that the applicant has suffered permanent partial disablement due to the injuries sustained by him

while he was coming by SPG vehicle which met with an accident with a DTC bus and as the case of the applicant is not covered by the provisions of the Cabinet Sectt. Order dated 13.6.1986, ex-gratia payment could not be granted to him. It is further stated that since the applicant was assigned low risk duties in the organisation by transferring him from operational unit which involved high risk, he could not be granted 50% special allowance as those who are performing low risk duties or technical or supervisory duties are granted only 25% special allowance. Thus, according to the respondents, the applicant has no case.

7. The applicant has filed a rejoinder, reiterating the same facts. However, it is admitted that the applicant has received compensation under the Motor Vehicle Act on account of the accident by DTC bus. A perusal of the Government of India, Cabinet Secretariat O.M. dated 13th June, 1986, referred to above, shows that Rs.50,000/- is allowed as ex-gratia payment to the SPG personnel who suffer permanent partial disablement as a result of injuries received while performing actual VIP security duty. The Cabinet Secretariat (Special Protection Group), on the subject of grant of ex-gratia payment to SPG personnel, have further revised and modified the payment of ex-gratia amount by the O.M. dated 24.1.1990 (Annexure 'N'). However, the case of the applicant is to be covered by the O.M. dated 13.6.1986 as he received injuries in the accident on 20.6.1986. The O.M. of 13.6.86 clearly lays down that the amount is payable to ~~to~~ the SPG personnel who suffer permanent partial disablement as a result of injuries received while performing "actual VIP security duty". The words "actual VIP security duty" have their own significance in the present circumstances of the case. It is not disputed that the duty of the applicant was to commence

on 20.6.1986 from 9.00 a.m. He was picked up by SPG vehicle from his residence at about 8.00 a.m. or so in the morning and met with an accident near Jorbagh at about 8.20 a.m. At that time, the applicant was not on actual duty. Learned counsel for the applicant has argued that the word "actual" is redundant in this context and that the applicant who was reaching the point of duty in an official vehicle, was to be treated on the actual duty, whereas the learned counsel for the respondents stressed that the applicant in the circumstances could not be said to be on the actual duty. In this connection, the case of THE REGIONAL DIRECTOR, E.S.I. CORPORATION & ANR. Vs. FRANCIS DE COSTA & ANR. reported in JUDGEMENTS TODAY 1992(3) S.C. 332 was cited. In this case, Hon'ble Mr. Justice Ramaswamy held that where an injury is caused to an employee by an accident on a public road, while on his way to join the duty just 15 minutes before reporting to duty at a distance of 1 k.m. from the factory premises, arises out of and in the course of his employment and the employee is entitled to the amount as compensation under the Act. However, Hon'ble Justice B.P. Jeevan Reddy took a dissenting view. Basically, there is a significance of the word "actual" performance of duty. The employment of the applicant is not disputed, but what is disputed is that the applicant was going to join his duty which was to commence at 9.00 a.m. on that day. The analogy drawn by the learned counsel for the applicant that even while reaching the point of duty, the applicant should be presumed to be on actual performance of duty cannot be accepted. The dictionary meaning of the word "actual" means that there should be a definite and categorical employment in the performance of duty and at the duty point in the duty hours. Thus the contention of the learned counsel that the applicant was actually performing his duty cannot

be accepted. There is no challenge to the circular of 1986 which mentions the words "while performing actual VIP security duty" or that the word has been used arbitrarily or is violative of equity. It is also not alleged that the use of the word "actual" would amount to discrimination. In fact, a person who receives injuries even while ~~while~~ on way to perform the duty and suffers a disability, permanent or partial, is handicapped in his future career, both physically and financially, but this aspect of the matter is not before us. The only point to be seen is whether the applicant was on 'actual' duty while he was in transit to join his duty and was near the duty point. In the circumstances the plea of the learned counsel for the applicant cannot be accepted that the applicant was on 'actual' duty.

9 The Order of the Cabinet Secretariat of 13th June, 1986 sanctions payment of ex-gratia to the SPG personnel who suffer permanent partial disablement as a result of injuries received while performing actual VIP security duty. Thus, the impugned order dated 23rd July, 1992 cannot be said to be in any way arbitrary or illegal.

8. The other relief claimed by the applicant in this case is that his duty allowance has been reduced from 50% to 25% because he has been transferred to Communications from the security duty. In fact, in view of injury sustained by the applicant, he has been given a light work. The duty allowance, though may be a part of the pay, it is admissible only to the incumbents who are made to work at a particular place. 50 Per cent duty allowance is allowed only to those who are detailed to perform High Risk Duties. Since the applicant has not been posted at such a duty, so he cannot claim it as a matter of right that he should be given 50 per cent duty allowance. Those who are detailed to work on low risk duty are paid 25% duty allowance.

If the applicant who has been put on low risk duty is granted 50% duty allowance, it would give rise to further litigation as those employees who are discharging similar duties would also claim the duty allowance accordingly. Thus, the contention of the learned counsel for the grant of higher duty allowance cannot be accepted. Along with the rejoinder, the applicant has filed a Duty Roster to show that some persons doing the same duty as is being done by the applicant are getting 50% special duty allowance and that the applicant has also been having interchangeable duties with some of those staff members who are being paid 50% special duty allowance. Since this particular aspect has been taken only in the rejoinder, learned counsel for the respondents could not meet this argument from the facts and figures. The applicant has not stated this fact in the Original Application. In any case, if the applicant is made to work on a High Risk Duty Point, then the respondents are expected to pay him 50% special duty allowance as is being paid to similarly situated staff members discharging the same High Risk Duty.

9. In view of the above, the present application is dismissed as devoid of any merit, leaving the parties to bear their own costs. However, it is observed that if the respondents take work from the applicant at a duty point which may be called as High Risk Duty, then he should also be equally compensated by paying 50% special duty allowance as is paid to other similarly posted staff discharging High Risk Duty. *Case easy.*

Anjali
(S.R. ADIGE)
MEMBER (A)

S. Sharma
(J.P. SHARMA) 31.3.93
MEMBER (J)