

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2514/1993

New Delhi, this 22nd day of May, 1995

Shri P.T.Thiruvengadam, Hon'ble Member(A)

1. Shri K.C. Gajwani, s/o Shri Ram Chand
2. Shri Ram Chandra, s/o late Shri Munni Lal
c/o Shri M.R. Bhardwaj
D-7, Hauz Khas, N.Delhi-16 .. Applicants

By Shri M.R. Bhardwaj - Not present

versus

Union of India, through

1. Secretary
M/Science & Technology
New Mehrauli Road, New Delhi-16
2. Surveyor General of India
Dehra Dun (U.P.) .. Respondents

By Shri P.H.Ramchandani, Senior Counsel

ORDER (oral)

This OA has been filed for a direction that the special pay which the applicants were receiving in the lower post of Surveyor be taken into account for fixation of pay on promotion as Officer Surveyor, which is the higher post.

2. The OA had earlier been dismissed in default but was restored on an application made by the applicants. When the OA came up for hearing today, no one has appeared on behalf of the applicants, even on second call.

3. This being an old case, I am disposing of the same with the assistance of the learned counsel for the respondents and after taking into account the pleadings that are available on record.

4. The main ground advanced by the applicants is that the provisions of Government of India Order No.13 under FR 22C are in their favour. A copy of the relevant order has been placed at Annexure A-13 to the OA. The relevant portion is reproduced as under:

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"(13) Treatment of special pay for purpose of fixation of pay on promotion. (a) When the special pay is in lieu of a separate higher scale - In cases where a Government servant is in receipt of a special pay in a post, his pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post subject to the conditions mentioned below:-

(i) The special pay in the lower post should have been granted in lieu of a separate higher scale (e.g., special pay granted to steno-typist, clerk-in-charge, etc.);

(ii) If the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post will be fixed, under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time-scale of the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay); where this results in drop in emoluments the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;

(iii) In both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post.

(b) When the special pay is not in lieu of a separate higher scale - In cases where the special pay drawn by a Government servant in the lower post is not in lieu of a separate higher scale, the provisions of Order No.(2) FR 9(23) will continue to apply. The following types of special pay will not be taken into account for fixation of pay in the higher post:-

(i) Special pay drawn in a tenure post;

(ii) Special pay granted for service in particular localities on account of remoteness, unhealthiness, severity of climate, etc., like Andamans Special Pay, Inner line Special pay, etc.

(iii) Deputation (duty) allowance or special pay drawn in lieu thereof."

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5. The issue boils down to whether the special pay granted to the applicants in the lower post of Surveyor should be treated as having been granted in lieu of the separate higher scale or otherwise. If such a grant of special pay is in lieu of a separate higher pay, the applicants having served for more than 3 years in the lower scale and enjoyed the special pay would be eligible for the special pay ~~and the~~ ^{being} reckoned for the purpose of fixation on promotion. On the other hand, if the special pay is not in lieu of a separate higher higher scale, such a benefit will not be permissible.

6. The learned counsel for the respondents referred to the counter reply filed wherein it has been repeatedly stated that the grant of special pay was not in lieu of a separate higher scale. The background to the grant of special pay has been traced in the reply. It is mentioned that short term vacancies in the higher post of Officer Surveyor occur locally and such vacancies are filled by suitable persons working in the lower grade who are assigned the duties and responsibilities of Section Officer supervising a section. Since the ^{duties} of such Section Officer/Camp Officer are mostly done by the Officer Surveyor, the demand for higher pay was finally placed before the Board of Arbitration. In pursuance to the award given by the Board, special pay of Rs.50/- per month with effect from 27.1.81 and Rs.100/- per month with effect from 1.1.86 have been allowed to the Surveyors, who are given the additional duties of Supervisor working in a section. It is argued that this special pay is in the nature of compensation for doing the duties of Supervisor. In further support of this argument, it is also mentioned that such local arrangements are made ignoring the normal method of filling up the higher post by taking seniority into account. Sometimes very junior staff have been given

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assignment as Camp Officer/Section Officer because they happened to be senior at the local level at a particular station at a given point of time. Continuous assignment has also taken place to such local level staff. Specific reference was made to the Ministry's letter dated 14.12.1982 wherein it was clarified that counting of such special pay for the purpose of fixation on promotion to the post of Officer Surveyor will not be admissible (Annexure I to the reply). The letter of the Ministry had been issued after consulting Finance Department.

7. The applicants have relied upon certain orders passed in the case of UDCs (Annexure A-14), wherein the relevant special pay for UDCs is directed to be taken into account for fixation in the higher post. This reference does not advance the case of the applicants since the special pay to the UDCs is assigned to certain posts which are filled on seniority subject to rejection of unfit. The Department had decided that the benefit of Order 13 under FR 22C are applicable in the case of those UDCs assigned special pay.

8. In this case, the stand taken by the respondents is that the special pay in the lower post was allowed only because the employees concerned had to attend to certain additional duties and therefore the benefit of fixation by taking into account the special pay can not be extended. This stand can not be faulted.

9. In the circumstances, the OA is dismissed. No costs.

P. T. Thiruvengadam

(P.T.Thiruvengadam)
Member(A)
22.5.1995

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