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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 949 of 1986 (T)

(C.A. No.29 of 1983)

Union of India & Others.....Defendant Appellants

Versus

Hoshiyar Singh Plaintiff Respondent

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Appeal No.29 of 1983 has been received from the Court of District Judge, Kanpur against the judgement and decree dated 26.11.82 in Suit No.499 of 1982 Hoshiyar Singh Versus Union of India and Others passed by the Addl. Munsif V, Kanpur, under Section 29 of the Administrative Tribunals Act 13 of 1985.

2. The plaintiff respondent is posted as U.D.C. in the Small Arms Factory at Kanpur. By a Govt. order of 29.6.79 in non Secretariat Offices, where posts of Asstts. do not exist, UDC's attending to work of more complex and important nature have been granted a special pay of Rs. 35/-p.m. The plaintiff respondent's case is that according to seniority he was entitled to this special pay of Rs. 35/- but he was not granted the same and his juniors have been sanctioned the same. He prayed that a decree be issued to the effect that he is entitled to get Rs.35/-p.m. w.e.f. 26.9.1980.

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3. Defendant appellants have admitted that the plaintiff respondent was eligible to get this special pay. They have further averred that special pay is paid to only such staff who have no disciplinary case against them and since the plaintiff respondent had a case pending against him he was not paid the same. The learned Munsif observed that no documents or evidence had been put before him regarding the pending case. It has also not been indicated when the proceedings were started and neither any rules have been shown that pending investigations the special pay cannot be paid. The special pay is admissible for the complex and important nature of work being done by the plaintiff respondent. He, therefore, decreed the suit in favour of the Plaintiff Respondent.

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4. The Defendant appellants have prayed for setting aside this decree. The grounds of appeal are that special pay is not payable to all UDCs as a matter of right. There was discretion vested in the appointing authority to decide whether a particular incumbent was entitled to special pay or not, the plaintiff respondent was not doing work of complex nature. Moreover a disciplinary enquiry was pending against the plaintiff respondent and he could not be declared to become liable to its payment.

5. We have heard the learned counsel for both sides. In para 5 of their written statement the

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defendant appellants have admitted that the Departmental Promotion Committee had assessed the suitability of the UDCs and the plaintiff respondent was found suitable for the special pay but being involved in a disciplinary case, he was not granted the said special pay. This was also clarified by the HQrs. Thus the suitability of the plaintiff respondent for entitlement to the special pay is not in doubt.

6. The defendant appellants contention is that Govt. servants involved in disciplinary cases are not allowed to get financial benefits which warrant³ consideration by Departmental Promotion Committee and clearance from Vigilance. These benefits are crossing Efficiency Bar and grant of special pay etc. No rules have been cited by the appellants to support this view except the instructions from the Headquarters which say that one post may be kept reserved and if the plaintiff respondent is exonerated he should be granted the same if recommended by the Departmental Promotion Committee otherwise the post may be filled by next junior on Departmental Promotion Committee list and special pay should not be given to an individual against whom disciplinary proceedings are in progress (Paper 40-Ka).

7. The defendant appellants have compared giving up the special pay to the giving of other benefits like crossing of Efficiency Bar. Their contention is that if a Govt. servant is involved in disciplinary cases he is not allowed to get a financial benefit. It will

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be ³the extending ^{the 23}analogy too far to compare the special pay to the stoppage at Efficiency Bar and we do not accept this contention. Once a person has been found fit by the Departmental Promotion Committee in accordance with the rules laid down and he is ^{24 found suitable to be} given the special pay, ²⁵denying him the same tantamounts the withholding of his special pay. The special pay is given for some arduous or special nature of work. It is an addition to the pay granted in consideration of the nature of duties or the additional responsibilities shouldered by the incumbent. It is taken into account for calculation of pension, emoluments, recovery of rent, fixation of pay on promotion, City Compensatory Allowance and House Rent Allowance and it can be a source of profit to the employee. It is not a case where the competent authority had reviewed the circumstances of the grant of the special pay and wanted to withdraw it. It was more in the nature of punishment that the plaintiff respondent was not given special pay though the disciplinary case alleged to have been instituted against him is still pending and nothing has been finally decided inspite of the long period of nearly six years. Withholding of the special pay is also not one of the penalties under Rule 11 of the Discipline & Appeal Rules. No specific rules have been presented before us to support the case that the special pay can be withheld if a person has a disciplinary case against him. We therefore conclude that stoppage of the special pay on the plea of institution of a disciplinary enquiry against an employee is an act which is void ~~and~~ of legal sanctions.

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8. The Office Memorandum dated 29.6.79 (15-Ga) on the grant of special pay says that total number of posts with the special pay should be limited to 10% of the strength and these posts should be identified. The letter of 3.12.79 (16-Ga) lays down the modalities for implementation of the O.M. of 29.6.79. It says that Departmental Promotion Committee will prepare a list and senior most persons in the list will get the special pay and if such a person is not working on the identified post he should be shifted to such post so that he gets the special pay. Thus these are two conditions to be satisfied for one to get the pay :-

- (1) Selection by Departmental Promotion Committee
- (2) Occupation of a pinpointed post.

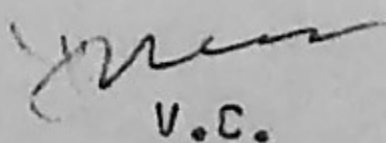
21/ The plaintiff respondent has been declared suitable but it is not known if he is in occupation of the pinpointed post. The defendant appellants had to keep one post in reserve till the finalization of the disciplinary case against the plaintiff respondent. The disciplinary case is reported to be still pending as he has still not been granted the special pay for which he was cleared by the Departmental Promotion Committee sometime in 1980. We have been advised that the plaintiff respondent is working as U.D.C. in Technical Training Section which is not one of the points determined for grant of Rs.35/- special pay to the U.D.Cs. The points ^{3y} were discernible and complex nature of work are being done are 17 and the Technical Training Section where the plaintiff respondent is working is not one of those 17 points, ² when this distribution ^{of came to be} was made is not clear from the copy of the Small Arms Factory letter dated 8.12.1986.

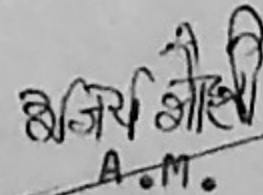
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9. Unfurling the factual canvass it is thus evident that the appellants are not serious regarding the disciplinary case against the plaintiff respondent. We can see this as an adroit attempt to deny the legitimate benefit to the plaintiff respondent and to withhold payment of the special pay resulting is deprivation of additional monthly resources to him. Any administration which is welfare oriented will not leave its employee to suffer for such long duration and leave him to take shelter of courts of law for settling his legitimate grievance.

10. The learned counsel for the defendant appellants have not been able to make a case to convince us for interfering with the pronouncements of the learned Munsif. It is on feeble materials that a stand is being taken in this appeal. It is not a case where the plaintiff respondent is trying to arrogate something.

11. In the result the appeal is dismissed. The judgement and decree of the learned Munsif is upheld with the modification that the plaintiff respondent will be liable to get the special pay from the date he is occupying the nominated post and if he has not been put on such a post he will be shifted to one & special pay paid to him from that day which will be not later than 30 days from the date of judgement. Parties will bear their own costs.


V.C.


A.M.

Dated the 18th Dec., 1986.

RKM