

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 592/90
Transfer Application No.

Date of decision 3.4.97

Amar Singh Applicant(s)

Shri Lalji Singh Counsel for the
Shri Sanjay Kumar applicant(s)

VERSUS

W.O. & others Respondent(s)

Shri N. B. Singh Counsel for the
respondent(s)

COURT :-

Hon'ble Mr. T. L. Verma, J. M.

Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Benches ?

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(SIGNATURE)

(Pandey)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the....21... day of April 1997.

CORAM : Hon'ble Mr. T.L. Verma, Member-J

ORIGINAL APPLICATION NO. 592 OF 1990.

Amar Singh, aged about 46 years,

S/o Late Shri Gajadhar Prasad,

R/o Mundera, Allahabad.

..... Applicant.

(By Counsel Shri Lal Ji Sinha and Shri Sanjay Kumar)

Versus

1. Union of India through Defence Secretary,
Government of India, New Delhi.

2. Air Officer Commanding-in-Chief,
Headquarters Maintenance Command, I.A.F. Nagpur.

3. Air Officer Commanding,
No. 24 E.D.A.F. Station, Manauri, Allahabad.

..... Respondents.

(By Advocate Shri N.B. Singh)

O R D E R

By Hon'ble Mr. T.L. Verma, J.M.

1. This application under Section 19 of the
Administrative Tribunals Act, 1985, has been filed
for quashing order dated 30.3.1990 and order

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dated 12.5.1990 and for issuing a direction to the respondents to pay a sum of Rs 70/- per month as special pay to the applicant with arrears.

2. The admitted facts of the case are that the applicant while working as Upper Division Clerk in the office of Air Officer Commanding Manauri, Allahabad, was posted in the department of civil administration which admitted to the incumbent a sum of Rs 70/- as special pay in performing, discernable duties and responsibility of complex nature. So long the applicant remain posted on the said post he receive the special pay. He was subsequently transferred from the office of the civil administration to the department of Logistic Wing and the special pay of Rs 70/- per month, he was receiving was withdrawn by the impugned order dated 30.3.1990.

3. The contention of the applicant is that he having been selected for working in the department of civil administration on the recommendation of the departmental promotion committee could not have been transferred to other department under the extent rules and also that the special pay which has become part of his pay could not have been withdrawn except on his retirement, posting out, promotion and death. Therefore, the impugned order is illegal and without jurisdiction.

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4. The respondents have contested the claim of the applicant in the counter affidavit filed on behalf of the respondents, it has been stated that the applicant was not recommended by the Departmental Promotion Committee for appointment on the identified post. It has also been stated that prior to the issue of the Ministry of Defence corigendum dated 31.3.1983 special pay was granted to the Upper Division Clerks by the Appointing Authority on the basis of seniority subject to fitness adjudged by the D.P.C. After the above Corigendum was issued seniority cum fitness is to be the criteria for appointment on the post of Carrying special pay of Rs 70/- per month. The further case of the respondents ~~was~~ is that the special pay is awarded to the U.D.C who is attached with the particular table for performing identified discernible duties of complex nature. The moment the incumbent is shifted ~~for~~ ^{from} the said post, ~~he would not~~ ^{he} ~~is to~~ be entitled for such special pay.

5. We have heard the learned counsel for both the parties and perused the record very carefully.

6. The respondents have annexed the copy of Government of India, Ministry of Defence, Corigendum dated 21.3.1993 to the counter affidavit which has been marked as Annexure C.A-1. From Corigendum issued by the Government of India it appears that selection to the post

Carrying special pay is to be made by the Controlling Authority on the suitability of particular officer to handle the work on the post identified as carrying discernible duties and responsibility of complex nature and that seniority-cum fitness would not be the criteria for filling up the such post. This corrigendum was issued by Ministry of Defence O.M. dated 29.4.1980 regarding grant of special pay to the Upper Division Clerk in the non Secretariate office. It would thus appear that system of awarding special pay to U.D.C for working on such post was introduced by O.M. dated 29.4.1980, this was amended by the Government of India letter dated 31.3.1983. The applicant, admittedly, was appointed in the department of civil administration in 1988, after the instruction regarding grant of special pay were amended. It, therefore, follows that the applicant was not recommended by the D.P.C for appointment on identified post carrying for special pay and that he was by Controlling Authority on the said post.

7. In view of the foregoing second question that arise for our consideration is whether the applicant once having been allowed special pay cannot be deprived of the same. The applicant has filed the copy of letter no. MC/5908/50/PC dated 13th May 1985 (Annexure-A-5). This letter reveals that the units mentioned in the letter were authorised to grant special pay to U.D.C indicated in the letter w.e.f. 1.5.1988. The AOCs/COS name has been authorised to appoint one U.D.C on the post Carrying special pay. Para 4 of the said letter provides that where the U.D.C's name ceased to receive the

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special pay due to retirement / pension / death, the special pay may be paid to another U.D.C without the approval of the Head Quarter. The instruction contended in para 4, thus make out very clearly that any U.D.C working on a post Carrying Special Pay if is shifted to another post, ~~is~~ ~~will~~ ~~not~~ ~~claim~~ ~~special~~ ~~pay~~ will ceased to be entitled for special pay. The learned counsel for the applicant submitted that the meaning of the word posting in para 4 of the letter referred to above is that the incumbent is posted ^{out} of the station ^{from} and not shifted ^{one} table to another table. We are unable to agree with this interpretation of the learned counsel of the applicant. As has already been noticed above, the post Carrying special pay are fixed and once an U.D.C is shifted from that post to some another post, though in the same station cannot be claimed special pay which he was receiving on the post identified as the post Carrying special pay.

8. The learned counsel for the applicant next argued that the special pay ~~is~~ become the part of the pay, the same cannot ~~be~~ ^{therefore} withdrawn not-with-standing the transfer of the incumbent to some other post. This argument is misconceived. The special pay becomes part of the pay, so long the incumbent holds that post which carries special pay. While he is working on the said post and enjoying the benefit of the special pay, ~~is~~ is entitled to all the consequential benefits of the pay including special pay.

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But the moment he is shifted from that post to the post which does not carry special pay, he will ceased to have the consequential benefits also.

9. In the facts and circumstances of the case discussed above, I find and hold that this application is devoid of merit and the same is, therefore, dismissed. No order as to costs.

John J. Quinn
MEMBER (J)