

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A H M E D A B A D B E N C H
XXXXXX XXXXXXXX XXX

O.A. No. 54
XXX No.

1987

DATE OF DECISION 27-8-1990.

Shri R.N.Pathak & Ors. Petitioners

Shri R.N.PAthak (Party- in- person) Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J.D.Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M.Singh : Administrative Member

The Hon'ble Mr. N.R.Chandran : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

1. Shri R.N.Pathak
2. Shri P.Balakrishnan
3. Shri R.R.Rajpal
4. Shri M.M.Balasubramanian
5. Shri P.Narayanan
6. Shri K.C.Simon
7. Shri K.K.Shettigar
8. Mrs.L.Rajagopalan
9. Shri P.P.S.Poduval
10. Shri M.N.Gandhi
11. Shri M.K.Chandrasekharan

Applicants

0-14, New Mental Complex
Ahmedabad-380 016.

Versus

1. The Secretary,
Government of India
Ministry of Finance
Department of Expenditure,
New Delhi.
2. The Comptroller & Auditor
General of India,
10, Bahadurshah
Zafar Marg,
New Delhi-100 002.
3. The Accountant General
(Audit)-I Gujarat,
Ahmedabad-17.

: Respondents

O.A/54/87

JUDGMENT

Date: 27-8-1990.

Per: Hon'ble Mr. M.M. Singh

: Administrative Member

Mr.R.N.Pathak, Assistant Audit Officer in the office of the Accountant General (Audit)-I Gujarat, filed this application for direction to the Respondents to increase the ceiling limit of pay for eligibility to adhoc bonus to Rs.3200 per month or, in the alternative, direction that his pay scale revised with effect from 1.1.1986 as a result of Central Civil Services (Revised Pay) Rules dated 13th October, 1986 (RP Rules for short) be allowed to him with effect from 1.4.1986 so that the ad hoc bonus for the financial year 1985-86 which would have been admissible to him but for the revision of his pay with effect from 1.1.1986

pursuant to the option he exercised becomes admissible to him.

2. After the notification dated 13th October, 1986, Government of India, Ministry of Finance, Department of Expenditure, issued Office Memorandum No.F.14(3)- E(word)/86 dated 7th October, 1986 laying down the conditions for the sanction of adhoc bonus for the financial year 1985-86. These conditions are that the ad hoc bonus is to be computed on the basis of actual emoluments upto and including Rs.2500 per month as on 31.3.1986 subject to the maximum amount of ad hoc bonus admissible on emoluments of more than Rs.1600 per month but not exceeding Rs.2500 per month calculated as if the emoluments were Rs.1600 per month. Emoluments for such calculation includes basic pay, personal pay, special pay, deputation (duty) allowance, dearness allowance and additional dearness allowance. It is significant that this Office Memorandum stipulates that ad hoc bonus paid will be adjustable against the regular bonus on the basis of approved formula when decided. It is thus clear that ad hoc bonus admissible for 1985-86 in accordance with the Office Memorandum dated 7.10.1986 is provisional and subject to final regular bonus which may become admissible as a result of approved formula when decided. Clause (iii) of para 4 of Office Memorandum making the stipulation being significant is reproduced below:

"(iii) The payments will be subject to the condition that the difference between the ad hoc bonus payments and the entitlement of the number of days of bonus which would be calculated on the basis of an approved formula for the accounting year 1985-86 would be refundable by the employees, concerned."

3. The principal contentions of the applicant are that bonus is deferred payment intended to fill the gap

between actual and living wages, that the office Memorandum of 7.10.1986 added more items of emoluments to the earlier items which included only basic pay, dearness allowance and additional dearness allowance, that because of revision of pay some of those who opted for the revision with effect from any date between 1.1.86 and 31.3.86 became ineligible for ad hoc bonus whereas those who opted for revision from any date after 31.3.1986 remained eligible which violates the principle of equality, that the Fourth Central Pay Commission had recommended revised pay scales with effect from 1.4.1986 and had the Government not revised the same with effect from 1.1.86, he would have been entitled to the ad hoc bonus for financial year 1985-86, and that with new items of emoluments came to be added to the items of emoluments for ad hoc bonus calculation for 1985-86, the upper limit of emoluments for ad hoc bonus eligibility was not revised upwards. For such reasons and grounds the applicant prays for the two reliefs, supra.

4. We have perused the record and heard the parties. The respondents, to begin with, submitted reply intended to serve the limited purpose of resisting admission of the application. The applicant filed rejoinder to which also the respondents replied. Each side seems to have carefully audited every item in the pleadings of the other side. The learned advocate for the respondents produced copies of judgments in OA Nos.517/86, 563/86 and 565/86 of Tribunal's Hyderabad Bench by which were dismissed similar applications filed by the applicants who belonged to Audit and Accounts Departments of the Government of India. We notice that besides Mr. Pathak the list of applicants annexed to the application contains the names of ten more applicants

with little light thrown on the reason for each of those to the claim of common cause with Mr. Pathak.

5. We are of the view that neither of the two reliefs prayed alternatively by the applicant are legally tenable. The first relief cannot be allowed for the reason that the payment of bonus is intended to be ad hoc as mentioned in the Office Memorandum dated 7.10.1986 the relevant portion of which has been extracted, supra. When payment of bonus is ad hoc pending decision on regular payment, in this case approved formula for regular bonus, the Government is at liberty to lay down such terms of computation of such ad hoc bonus as considered advisable. The applicant is at liberty to make representation in proper quarters to be taken into consideration for sanction of regular bonus. Indeed the applicant has made a representation dated 15.1.1987 as accepted by him in his rejoinder. The applicant had kept quiet about it till the respondents, in their reply, resisted the admission of the application on various grounds including the ground that the applicant had filed the application without exhausting all other remedies available to him. Even at this belated stage, the applicant did not submit its copy for the purpose of adjudication on his application. The prayer for the second but alternative relief involves modification of the option exercised by the applicant under the RP rules which cannot be allowed because of the stipulation in rule 6 (4) of the Rules that the option once exercised shall be final. Besides, Rule 13 of the RP Rules vests powers in the President to dispense with or relax the requirements of a rule in RP rules where the President is satisfied that its operation causes undue hardship in any particular case. The applicant is aware of the provisions of this rule as seen from para 4 of his rejoinder. Thus, in case

the operation of rule 6(4) supra causes the applicant undue hardship, he has to seek the prescribed remedy provided in rule 13 by making a representation to the President. However, after making representation dated 15.1.1987 the text of which the applicant failed to bring on record of this case, he rushed to the Tribunal on 30.1.1987 to file the application without giving sufficient opportunity to the respondents to consider the representation for a decision. Thus the application is premature, untenable and therefore liable to be dismissed.

6. In our above conclusions we, with respect, agree with Hyderabad Bench but for different reasons as discussed above.

7. We hereby dismiss the application with no order as to costs.

N.R.Chandran

(N.R.Chandran)
Judicial Member

M.M.Singh

(M.M.Singh)
Administrative Member