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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 180 of 1990
~~**T.A.NO.**~~

DATE OF DECISION 30/9/99

Shri. M.K. Khan & Ors.

Petitioner

Mr. K.K. Shah

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr. B.N. Doctor

Advocate for the Respondent [s]

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The Hon'ble Mr. V. Ramakrishnan : Vice-Chairman

The Hon'ble Mr. P.C. Kannan : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

For

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1. Shri. M.K. Khan
2. Shri. K.M. Agrawal
3. Shri. H.N. Kantawala
4. Shri. N.L. Christi

All are working as Upper Division Clerks
In the Regional Provident Fund
Commissioner Office, Ahmedabad,
In the scale of Rs. 1200-2040

-- Applicant --

(Advocate : Mr. K.K. Shah)

Versus

1. Union of India, Notice to be
Served through,
Central Provident Fund Commissioner,
Office of the Central P.F. Commissioner,
9th Floor, Mayur Bhavan,
Cannaught Palace, New Delhi.
2. Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Near Income Tax Circle,
Ashram Road, Ahmedabad.

-- Respondents --

(Advocate : Mr. B.N. Doctor)

JUDGMENT
O.A 180 OF 1990

Date : 30/9/99

Per Hon'ble Shri. P.C. Kannan : Member (J).

All the four applicants who were working as U.D.Cs under the respondents

File

are aggrieved against the action of the respondents in not granting Special Pay to the applicants while issuing the order dated 09.01.90 and 21.02.90 (Annexure A and A-1) and seeks direction to the respondents to implement the order dated 01.01.90 (Annexure A-4) granting special pay to the applicants from 01.01.90 or in the alternative from the date when similarly situated juniors to the applicants have been given the benefit of Special Pay and other consequential benefits.

2. The applicants case is that they joined the respondents as L.D.C. in the years 75 - 76, and were subsequently promoted as U.D.C. While the applicants 1 to 3 were promoted in the year 1978, the 4th applicant was promoted in the year 1979. Pursuant to the instructions contained in the Department of Expenditure O.M. dated 05.05.79, special pay of Rs. 35/- was sanctioned to the eligible U.D.Cs limited to the 10 % of the posts of U.D.C. The posts are required to be manned on the basis of seniority-cum-fitness. After the selection of eligible U.D.Cs, they are posted against the posts carrying discernable duties of complex nature involving deep study and competence.

The applicants state that the respondents keeping in view their seniority and fitness, selected and posted them for the 10 % of posts carrying Special Pay. The first applicant was granted Special Pay with effect from Jan'81, the second and third applicants were granted Special Pay in December'81 and the fourth applicant was granted Special Pay in June'82. All the four applicants were granted special pay till July'87. Consequent upon the recommendations of IV Pay Commission, benefit of Special Pay was discontinued with effect from 01.01.86 by order dated 30.07.87



(Annexure A-3). However, the respondents re-considered the decision and decided to extend the benefit of Special Pay subject to the condition specified by the Ministry of Finance O.M. dated 05.05.79 and the eligibility for the grant of Special Pay shall be on the basis of seniority-cum-fitness.

3. The applicants state that the respondents granted Special Pay to them under their order dated 01.01.90 (Annexure A-4). However, without giving any opportunity of hearing or complying with Article 311 of the Constitution, the respondents by their order dated 21.02.90 superseded their earlier order dated 01.01.90 (Annexure A-4) and granted Special Pay to persons named therein who the applicants claimed as juniors. The applicants therefore filed the present O.A. and challenged the action of the respondents.

4. The respondents in their reply stated that the Special Pay of Rs.35/- was sanctioned in terms of the order of the Ministry of Finance to the eligible U.D.Cs limited to the 10 % of the posts of U.D.Cs in the region. Consequent to the recommendations of IV Pay Commission, the benefit of special pay was withdrawn vide letter dated 19.03.87. However, the respondents reviewed their earlier decision and decided to grant Special Pay at the rate of Rs.70/- per month to 10 % of posts of U.D.C. to the eligible U.D.Cs. The respondents issued order dated 01.01.90 and granted special pay to the applicants despite their seniority was depressed following the preparation of fresh seniority list on the basis of directions issued by the City Civil Court in Suit No. 4196 of 1982. However, the Central Provident Commissioner advised that while identifying the persons eligible to the benefit of Rs.70/- as Special

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Pay, the entitlement as per seniority list as it existed on the date of sanction should be taken into consideration. In the circumstances, the payment of Special Pay to the applicants was kept in abeyance by the order dated 09.01.90 (Annexure A). Subsequently, the order dated 21.02.90 and order dated 30.03.90 have been issued identifying the eligible U.D.Cs on the basis of revised seniority list. As an appeal (first Appeal No. 692 of 1984) against the order of City Civil Court was pending in the Gujarat High Court, the respondents clearly stated in their orders dated 21.02.90 and 30.03.90 that the grant of Special Pay will be subject to the condition that in case of the seniority list is revised subsequently as per the Court's order, any individual in receipt of Special Pay but not entitled to after the revision of the seniority list is liable to refund the same. The respondents further stated that the Regional Provident Fund Commissioner is the appointing authority and is fully competent to make appointments, selections, grant promotions etc., in the cadre of U.D.Cs. The respondents also submitted that the O.A is filed after the period of limitation as prescribed under Sec. 21 of the Administrative Tribunals Act, 1985.

5. We have heard Shri. K.K. Shah, counsel for the applicant and Shri. B.N. Doctor, counsel for the respondents. Shri. Shah submitted that the question of seniority of the applicants is subject matter of a separate application / Contempt Petition and after the decision of this Tribunal, the matter was taken up before the Gujarat High Court and after the decision of the High Court, the matter has been taken-up before the Hon'ble Supreme Court and the decision of the apex court is awaited. He submitted that in the facts and circumstances, the order dated 30.04.87 (Annexure A-3) of the respondents, ordering the withdrawal of Special Pay to the applicants

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with retrospective effect from 01.01.86 by the impugned order was bad in law. He also submitted that applicants were granted Special Pay, keeping in view their seniority with effect from 01.01.90 (Annexure A-4). He therefore, submitted that the action of the respondents to revoke the same by the order dated 09.01.90 (Annexure-A) and grant Special Pay to the juniors of the applicants excluding them under the order dated 21.02.90 (Annexure A-1) and 30.03.90 (Annexure A-2) are not valid in law. Shri. B.N. Doctor, counsel for the respondents submitted that consequent to the orders of the City Civil Court, the seniority of the applicants was revised and on the basis of revised seniority list, the respondents issued the orders dated 21.02.90 and 30.03.90 for the grant of Special Pay subject to the condition that in case the seniority list is revised subsequently as per Courts order, any individual in receipt of the Special Pay, but not entitled to after revision of the seniority list, is liable to refund the amount. Shri. Doctor further submitted that no juniors to the applicants, in terms of the revised seniority list have been granted Special Pay and in the facts and circumstances, the O.A is devoid of any merit.

6. We have carefully considered the submissions of both counsel and examined the pleadings. The grant of Special Pay is regulated in accordance with the instructions contained in the Department of Expenditure O.M. dated 05.05.1979. On the basis of seniority-cum-fitness, eligible U.D.Cs are selected to man certain posts carrying discernable duties of complex nature involving deep study and competence. The applicants were granted Special Pay @ Rs.35/- per month with retrospective effect from 26.10.79 (Annexure A-6). After the acceptance of the recommendations of the IV Pay Commission, the respondents discontinued the grant of Special Pay to the U.D.Cs with effect from 01.01.86 under their order dated 30.07.87 (Annexure A-



3). The applicants did not take any action to challenge the said order and allowed the respondents to recover the Special Pay paid to them from 01.01.86 to July'87. However, the question whether the benefit of Special Pay to the 10 % of U.D.Cs under the respondents should be continued ^{or not} was examined by the Central Board of Trustees and on 26.09.89, the Board recommended the grant of Special Pay @ Rs.70/- per month to 10 % of U.D.Cs working in the regional and sub-regional offices of the respondents subject to the conditions specified in the Ministry of Finance O.M dated 05.05.79. The City Civil Court in suit No. 4196 of 1982 issued certain directions with regard to the seniority of U.D.Cs and the respondents accordingly issued the revised seniority list of U.D.Cs. In terms of the revised seniority, the applicants became juniors to several others and in the facts and circumstances, while issuing fresh orders for the grant of Special Pay to eligible U.D.Cs, the applicants became ineligible. The respondents in the first instance erroneously issued the order dated 01.01.90 granting Special Pay to the applicants on the basis of earlier seniority list. However, on reconsideration, they withdrew the said order on 09.01.90. After identifying eligible U.D.Cs in terms of the revised seniority list of U.D.Cs, fresh orders were issued on 21.02.90 and 30.03.90. As the question regarding the seniority list of U.D.Cs is subject matter of litigation before the Gujarat High Court, the revised orders granting Special Pay contained the following condition:-

" 3. The list is prepared after following the principles laid down in the judgment of the City Civil Court in Civil Suit No. 4196 of 1982, and is subject to the judgment of the First Appeal no.692 of 1984, which is pending in the High Court of Gujarat, and is subject to the condition that in case the

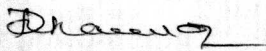
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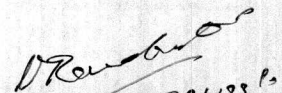
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seniority list is revised subsequently as per Court's order, any individual in receipt of Special Pay, but not entitled after revision, is liable to refund the amount."

7. In the light of the above, we hold that the orders dated 09.01.90, 21.02.90 and 30.03.90 (Annexure A, A-I and A-II) are in accordance with the instructions and valid. As the question of seniority is the subject matter of litigation before the Hon'ble Supreme Court, we direct that in case the seniority list is revised hereinafter as per the Court's order and the applicants become eligible to be considered for the grant of Special Pay, the respondents shall review their earlier orders dated 21.02.90 and 30.03.90 (Annexure A I & A II) and issue fresh orders for the grant of Special Pay in accordance with the instructions.

8. The O.A is disposed of with the above direction. No costs.


(P.C. Kannan)
Member (J)


30/9/1991
(V. Ramakrishnan)
Vice Chairman

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