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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 29 of 1991.
C.A. No.

DATE OF DECISION 06.2.1995.

Shri M.H.Sojitra and ors. Petitioner

Shri D.M.Thakkar Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

*The Hon'ble Mr. V.Radhakrishnan : Member (A)

* The Hon'ble Mr. Dr. R.K.Saxena : Member (A)

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 Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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1. M.H.Sojitra
2. A.G.Chavda
3. M.B.Joshi
4. S.C.Shukla
5. H.B.Ganatra
6. C.B.Kiyada
7. Tony Dias.

Address :

Accountant General,
Gujarat State,
Race Course Road,
Rajkot.

...Applicants.

(Advocate : Mr.D.M.Thakkar)

Versus

1. The Comptroller and Auditor General of India, Union of India, (Notice to be served through the Comptroller and Auditor General of India), 10, Bahadurshah Zafar, Marg, New Delhi.
2. The Accountant General, (A&E) Gujarat State, Race Course Road, Rajkot - 1.

...Respondents.

(Advocate : Mr.Akil Kureshi)

JUDGMENT

O.A.NO. 29 OF 1991.

Date: 06.02.1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.D.M.Thakkar and Mr.Akil Kureshi learned counsel for the applicants and the respondents respectively.

2. The applicants are at present working as Accountants (Senior Grade) under the respondents no.2. The applicants were originally appointed as Lower Divisional Clerks and later on promoted as Upper Divisional Clerks and Auditor on 1st March, 1984.

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They were redesignated as Accountants and were given pay scale of Rs.1200-2040 from 1.1.1986. They were later given Senior Grade of Rs.1400-2600 from 1.4.1987 and called the Senior Accountants.

3. In May 1973 the Government of India issued the orders introducing a scheme by which a special pay of Rs.35/- per month was granted to Upper Divisional Clerks attending to more complex and important nature of work as per orders at Annexure-A/1. It was further clarified by the Government that the special pay of Rs.35/- should be related to the post and not to the individual Government employee. In other words posts were to be identified as carrying discernible duties and responsibilities of work of complex nature. The posts were identified by the respondents vide office order no.13 dated 24.3.1984 - (Annexure-A/2). A total number of 34 posts were identified in such a way by this order. Even though the applicants were performing duties in the posts identified in the above mentioned office order, they were not paid any special pay for discharging the complex nature of duties. Even though no individual office orders were issued, the applicants have been discharging the said duties for different periods against posts so identified by the respondents as mentioned in Annexure-A/3. The respondents granted special pay of Rs.35/- per month to the persons who have got at all performed duties in the identified posts. As soon as the applicants came to know of this fact they made representations to the respondents no.2 for redressal of grievance (Annexure-A/4). By way of order dated



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8.5.1989, Government of India, decided to treat this special pay of Rs.35/- per month as part of the 'existing emoluments' for fixation of pay under Rule 7 (1) (b) of the C.C.S.(R.P.)Rules, 1986 (Annexure-A/5). By not being given the special pay of Rs.35/- per month, the applicants lost the benefit of higher pay in the revised pay fixation from 1.1.1986. The contention of the applicants is therefore, that respondent no.2 acted in arbitrary manner in granting special pay to the employees who had never done the complex nature of duties by depriving the applicants of the special pay, even though, they were working in such posts. Hence, they claimed for the following reliefs :

- (a) "Your Honour be pleased to quash and set aside the impugned action of the respondents in depriving and denying the benefit of special pay of Rs.35/- per month to the applicants and not fixing their pay scales in consonance with the Government of India Order dated 8.5.1989, as being arbitrary, illegal, discriminatory, null and void.
- (b) Your Honour be pleased to declare that the applicants are entitled to get the benefit of special pay of Rs.35/- with effect from 1.3.1984 and the refixation of their pay scales accordingly in consonance with the order of the Govt. of India dated 8.5.1989."

4. The respondents have filed reply. In the first place they state that the scheme for grant of special pay was introduced by the Government of India Ministry of Finance, Department of Expenditure, O.M.NO.



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F.7(52)-E.III/78, dated 5.5.1979. This scheme was introduced in the respondents Department from 1.3.1984. The scheme envisaged that the total number of posts on which the special pay of Rs.35/- per month can be granted should be limited to the 10% of the posts in the respective cadre and these posts should be identified as carrying discernible duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks. The respondents have confirmed the contention made by the applicants that the grant of special pay of Rs.35/- per month is related to the post of UDC as such and not to individual Government servants as contemplated by the Ministry of Finance O.M. dated 29.11.1982. The selection of employees to this post was to be made by the Controlling Authority on the basis of suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of a complex nature. Accordingly, the Controlling Authority appointed a Committee consisting of Senior Deputy Accountant General (A&E) of both Ahmedabad and Rajkot offices and the Committee submitted its recommendations to the Accountant General on 22.3.1984. The Administration issued office order No.13 dated 22.3.1984 identifying the posts which were considered to be those of complex nature and eligible for special pay of Rs.35/- per month. Out of 7 applicants the following 4 were already working on their respective posts prior to 1.3.1984.



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1. Shri Tony Dias from 1.3.1984.
2. Shri M.B.Joshi from 1.3.1984.
3. Shri C.B.Kiyada from 14.6.1961.
4. Shri M.H.Sojitra from 20.2.1980.

The other three applicants viz.,

1. Shri H.B.Gantra from 21.7.1984,
2. Shri A.G.Chavda from 6.9.1985,
3. Shri S.C.Shukla from 1.3.1985,

were subsequently posted. It has been stated by the respondents that due to various problems like restructuring of the department and transfer of work to the State Govt. they did not actually order the transfer of persons selected to the posts carrying special pay of Rs.35/- per month. This position continued up to 31.12.1985. The respondents have admitted that the applicants continued to work in the identified posts eligible for special pay pending the reorganisation of the office which was contemplated but these persons were not specifically posted to these identified posts. With the introduction of higher grade of Rs.1400-2600 for Accountants based on the recommendations of Pay Commission, the special pay was abolished from 1.1.1986. However, as per Rule 7(1)(B) of C.C.S. Revision of Pay Rules 1986, special pay was not treated as part of 'existing emoluments' for the purpose of fixation of pay in the revised scales. This led to number of petitions before the Central Administrative Tribunal for treatment of special pay of Rs.35/- as part of existing emoluments. This was allowed by the Tribunal. Government of India issued orders by O.M.NO.F(9)/III/89,

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dated 8.5.1989, to implement this judgment. In view of this order, those getting special pay on 31.12.1985, were put in a more advantageous position in regard to their pay fixation in the revised scale at a higher stage. The present applicants were not getting any special pay on 1.1.1986 and hence they could not get this benefit. The respondents' contention is that the applicants started representing only after the issue of the Government of India letter dated 8.5.1989. They did not agitate their claim for special pay in March, 1984, when the posts were identified for special pay. Hence, they are late in their claim and hence time barred.

5. The respondents have admitted that due to administrative changes appearing in the office the contemplated changes regarding the transfer of persons who were selected for special pay cannot be effected. It was never the intention of the competent authority to allow the applicants to continue on these posts as it was contemplated to make changes as soon as the situation in the office permitted them to do so. The selection of persons to work on the identified posts was made by the competent authority and notified as Annexure-2 to the office order no.13 dated 24.3.1984. Subsequently orders selecting the employees for these posts were issued on different points of time. Hence, the applicants cannot deny the knowledge of such orders. The respondents have stated that benefit of Rs.35/- as special pay could not be extended to the applicants because of the anticipation by the competent authority that the persons selected by the appropriate committee would eventually man these posts within a reasonably



short period. However the persons nominated could not be placed in position in the identified posts to replace persons like the applicants who were already doing the work. This could not be done until 31.12.1985 and the special pay was abolished w.e.f. 1.1.1986. In view of the foregoing, the applicants were not able to derive the benefit of taking into account the special pay for refixation of that pay in the revised pay scale from 1.1.1986. This position has been accepted by the respondents. They have taken up this matter with C.A.G. and Government of India for further examination and instructions, but still it appears, no decision has been taken by the C.A.G. or Government of India. As the decision has not been taken by the Government/C.A.G. the respondents contend that the application is premature. Hence, they have prayed for dismissal of the application.

6. The applicants have filed rejoinder. They have stated that even by the admission by the respondents, the applicants have been discharging the duties and responsibilities of posts of **complex** nature from various **dates** beginning from 1980 and the applicants who were actually working on the posts identified by the respondents are **eligible** for special pay by the office order dated 23.4.1984-Annexure-A/2. The applicants had given the benefits of special pay of Rs.35/- to those employees who had not at all discharged his duties. The applicants who have been discharging his duties have been deprived of

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special pay. The applicants could not be granted special pay as no specific orders on their behalf was issued. Hence, the action of the respondents is arbitrary. The applicants have contended that the orders dated 23.4.1984 issued by the respondents were not circulated and they came to know about the facts only when the arrears of special pay was paid to the employees who have not actually done the work. Hence, they are not late in approaching the Tribunal.

7. The respondents have filed further reply. They have stated that the applicants were not specifically assigned discernible duties and responsibility of a complex nature but those persons who are already working in respective posts on 1.3.1984 were simply allowed to continue to work in their respective posts. A Committee appointed by the Controlling Authority made recommendations regarding suitable persons identified for the special pay on 22.3.1984, which did not include the name of the applicants. Hence, they have justified in not giving the special pay to the applicants.

8. After going through the statements filed by both the parties and after hearing the arguments it is quite clear that the applicants were in fact posted in the various seats which were identified for grant of special pay of Rs.35/- per month vide Annexure-A/1, the office order No.13 dated 23.4.1984, issued by the respondents (Annexure-A/2). In fact the respondents have themselves admitted in their written statement that the following applicants were posted in the various posts and working therein for the period mentioned against them.

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1. Shri H.B.Ganatra from 21.7.1984
2. Shri A.G.Chavda from 6.9.1985,
3. Shri S.C.Shukla from 1.3.1985.

This is in addition to the other four applicants who are already working in the identified posts for a longer period as shown below :

1. Shri Tony Dias from 1.3.1984.
2. Shri M.B.Joshi from 1.3.1984.
3. Shri C.B.Kiyada from 14.6.1961
4. Shri M.H.Sojitra from 20.2.1980.

It may be true that a specially constituted committee decided about the list of 50 persons in Rajkot office and 52 persons from Ahmedabad office to man these posts. But the respondents due to various administrative reasons could not by their own admission reorganise the office and post the selected persons to the various specified posts. The applicants who were working in the specified posts were also not shifted. In other words the applicants continued to do duty in the specified posts identified to be relating to complex nature of work. There is no whisper that the work of the applicants was not up to the mark or they were doing unsatisfactory work. In the circumstances it was unfair for the department not to have granted special pay to these applicants. The applicants not only lost special pay which they were entitled to but they also lost the benefit of counting the special pay in refixation in the revised scale of pay from 1.1.1986 as per orders of

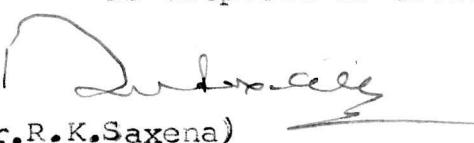
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the Government of India, O.M.NO.F.1 (9)/III/89, dated 8.5.1989. The respondents contention is that the application is not sustainable due to late filing is not acceptable as financial loss to the applicants is of a recurring nature and cannot be barred by limitation. In view of the facts and circumstances of the case we have no doubt that the applicants who were actually doing work of a complex nature in the posts identified by the respondents were entitled to receive the special pay of Rs.35/- per month. Accordingly the application is allowed and we pass the following order :

ORDER

"The applicants are deemed to in respect of special pay of Rs.35/- per month as on 1.1.1986. The respondents shall take into account the special pay in refixing their pay in the revised pay scale from 1.1.1986 as part of 'existing emoluments'. However, the applicants will be entitled for arrears only one year prior to the date of filing this present application, i.e. from 1.8.1989. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. The application is disposed of accordingly. No order as to costs".


(Dr. R.K. Saxena)
Member (J)


(V.Radhakrishnan)
Member (A)