

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 507 1990
T.A. No.

DATE OF DECISION 15.2.91

Mr. K. G. Raghavan Applicant (s)

Mr. K. Karthikeya Panicker Advocate for the Applicant (s)

Versus

U.O.I. rep. by D.G., Deptt. of Posts, New Delhi and another Respondent (s)

Mr. TPM Ibrahim Khan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The applicant is a Junior Accountant in the office of the Deputy Director of Accounts (Posts), Trivandrum, the second respondent. While so he was assigned the duty of a Cashier which ^{he is} continued to discharge from 8.3.1976 to 6.7.1987. As a Cashier he was given a special pay of 50/- per month which however in the normal course is not to be reckoned for fixation of pay on revision of pay or on promotion.

2. He submits that under a scheme evolved by the Ministry of Finance O.M. dated 5.5.1979 referred to in Annexure A-1, 10% of the Upper Division Clerks attending to work of a complex and important nature were granted Rs. 35/- as special pay... This was ~~xxx~~ counted for fixation of pay under the C.C.S. (Revised Pay) Rules 1986 under

the O.M. dated 8.5.1989 of the Ministry of Finance ~~xxxxxx~~ thereafter. This arrangement was also adopted in the Circle Postal Accounts Offices and Junior Accountants were also granted the benefit by Annexure-1 order dated ~~been~~ 12.3.1981. The Junior Accountants, who have/identified as doing the work of complex and important nature, ~~been~~ ^{been} granted the special pay from 5.5.1979. The applicant's name also figures at Sl. No. 3 in that list. However, in the Annexure A-1 order there is a special mention that special pay of Rs. 35/- sanctioned to the applicant will be drawn only on receipt of clarification from the Directorate since he is already in receipt of special pay for handling cash.

3. After obtaining such clarification, the second respondent has informed the applicant by the impugned (Annexure A-V) memo dated 4.1.1990/that since the applicant is already drawing a special pay as Cashier he cannot be granted one more special pay for working in the same post. Hence, it was stated that the post of Cashier held by him cannot be treated as an identified post for purpose of drawal of special pay of Rs. 35/-.

4. The applicant is aggrieved by the impugned order. He contended that he does not ask for grant of double special pay. The relief sought by him is that his pay/ should be refixed after taking into account his special pay of Rs. 35/- sanctioned by Annexure A-1 letter as part of the existing emoluments.

5. The respondents contended that the question whether the Cashier should be given the benefit of the special pay under Annexure A-1 order was specially examined along with other points of doubt raised with regard to Annexure A-1 circular. Annexure R-2(A) is a

letter from the Ministry to all authorities containing clarifications on various issues in regard to the question whether Cashiers in a Postal Accounts office who are in receipt of special pay are also entitled to special pay of Rs. 35/- as an additional special pay. The clarification was given that they will not be entitled to the special pay of Rs. 35/- in addition to the special pay attached to the post of Cashier as two special pays cannot be paid for the same post. The respondents have contended that the applicant is not entitled to the reliefs as prayed for in the application.

6. We have heard the counsel and perused the records. There is a difference between the special pay of Rs. 50/- attached to the post of Cashier under the normal orders and a special pay of Rs. 35/- attached to 10% of the posts of UDCs and 10% of Junior Accountants as mentioned in Annexure A-1. In so far as the special pay of Rs. 50/-, it will not form part of pay for fixation of pay for refixation or when promotion is made whereas the special pay of Rs. 35/- to be taken into granted by Annexure-1 orders is directed/account for fixation of pay. It is seen from the counter affidavit that the special pay of Rs. 35/- sanctioned by Annexure A-1 order has been directed to be treated as existing emoluments for the purpose of fixation of pay in the revised scale of pay under rule 7 (I)(B) of the Central Civil Service (Revised Pay) Rules 1986 by the Ministry of Finance O.M. dated 8.5.1989. In other words ~~xx~~ by ^{the} order dated 8.5.1989, the special pay of Rs. 35/- was given/different status than the special pay of Rs. 50/-. In such circumstances

it is only fair to presume that had the applicant known this when the Annexure A-1 order has come in to force, he would have opted for special pay of Rs. 35/- in place of the special pay of Rs. 50/-. This is a case where an option has to be given because Government has changed the condition governing the special pay materially and retrospectively. It is only proper to add that as a Cashier was getting a special pay of Rs. 50/- per month, it is clear that the applicant was holding responsibilities as onerous and complex as any of the other posts to which a special pay of Rs. 35/- was sanctioned by the Ministry of Finance O.M. dated 5.5.1979.

7. In this view of the matter, we feel that justice demands ^{W.e.f. 5.5.1979} the applicant should be given the benefit of giving the special pay of Rs. 35/- for fixation of pay on 1.1.1986. If that be the case, it is also true that the applicant should not get away with the special pay of Rs. 50/- which he was drawing. He should be required to refund the excess amount of Rs. 15/-. The learned counsel for the applicant agrees that this refund can be directed to be paid by the applicant.

8. In the circumstances, we dispose of this application by directing the respondents to grant the applicant the special pay of Rs. 35/- in terms of Annexure A-1 order and grant him the benefit of this special pay for fixation in the revised pay scale in terms of the Ministry of Finance O.M. dated 8.5.89. The respondents may recover the sum of Rs. 15/-, being the difference between the special pay of Rs. 50/- actually drawn by the applicant and the special pay of Rs. 35/- due to the applicant w.e.f. 5.5.89, till he had actually received the pay of Rs. 50/- as Cashier.

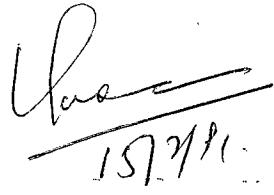
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The amount either due to the applicant or to be recovered from the applicant on the basis of this order may be calculated and necessary ^{payment or} ~~adjustments~~ ^{after appropriate adjustment,} deductions be made ~~be made~~

The respondents are directed to comply with the order within three months from the date of receipt of this order.

The application is allowed to the extent indicated above. There will be no order as to costs.


(N. Dharmadan) 15/1/91
Judicial Member


(N. V. Krishnan)
Administrative Member
15/1/91

kmn