

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 566 1990
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DATE OF DECISION 28-06-91

C. SYAMALA DEVI Applicant (s)

Shri G. Sasidharan Chempazhan Advocate for the Applicant (s)
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Versus

DIVISIONAL OFFICER, ENGG. ADMN. Respondent (s)
TELECOM DIST. TRIVANDRUM-23 AND 3 OTHERS

Shri NN Suganapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. Mukerji, Vice Chairman (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

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

JUDGEMENT

N. Dharmadan, M(J)

The applicants in this case, who are working as Full Time Technicians Instructors in Circle Telecom Training Centre, Thiruvananthapuram, filed this application to quash Annexure-V order of the Assistant Engineer (Administration), Circle Telecom, Training Centre, Thiruvananthapuram to the extent it fixes the date in Annexure-IV as 25-8-89, for the entitlement of special pay/incentive allowance and for a direction to the respondents to pay the applicants the special

pay/incentive allowance for the period from 1-4-86 to 24-8-89.

2. The applicants were posted as Full Time Technician Instructors in the Circle Telecom Centre from 21-1-83, 20.2.81 and 4-5-79 respectively. Except the third applicant others are still continuing in the posts. The applicants were sanctioned special pay of Rs.30/- from the period they joined duty ^{at b} Circle Telecom Training Centre (CTTC for short) as Instructors. The Director General, P&T later decided that only Technical Supervisors alone should be posted as Instructors in CTTC and not Technicians. Consequently, Annexure-II order was passed on 31-8-84. The relevant portion reads as follows:

"...I am directed to refer to this office letter No.10-31/75-PAT dated 28-11-75 and to say that since it has been decided, vide this office letter No.12-3/80-PAT(pt.)/NCG dated 12-3-84, to post only the Technical Supervisors as Instructors in Telecom Training Centres, the President is pleased to grant special pay of Rs.30/- p.m. to those Technical Supervisors who are posted as Full Time Instructors.

2. The special pay will be admissible with effect from the date of issue of those orders or the date of Technical Supervisors takes over charge as full time Instructors in Telecom Training Centre whichever is later. No Technician will be entitled for special pay from the date of issue of these orders..." (emphasis ours)

Pursuant to Annexure-II the 2nd respondent also decided to replace all Technical Instructors in CTTC, Trivandrum

by Technical Supervisors. Accordingly, the applicants gave them option to be replaced from CTTC. Since there were not sufficient number of Technical Supervisors to replace the applicants the applicants were retained in CTTC to do the instructional duties. In the mean time another order Annexure-III was also issued on 26-12-85

The relevant portion of it reads as follows:

".... 3. It has now been decided that the grant of special pay at the rate of Rs.30/- per month of Technicians posted as Full Time Instructors in Telecom Training Centres, might be allowed to continue upto 31-3-86, subject to the following conditions.

- (i) The Technical Supervisor presently working as Full Time Instructors in Telecom Training Centres will continue to get special pay at the rate of Rs.30/- per month.
- (ii) Technicians, posted as Instructors in Telecom Training Centres after 31-8-84 i.e. the date of issue of orders for grant of special pay to Technical Supervisors, will not be entitled to special pay.
- (iii) No Technicians will be entitled for special pay beyond 31-3-1986, even if they are not replaced by Technical supervisors" (emphasis ours)

The applicants were paid special allowance only upto 31.3.86 as indicated in Annexure-III. But they worked as Instructors, after fully knowing the conditions in Annexure-III. The applicants got the special allowance again in terms of Annexure-IV dated 25-8-89 which provided as follows:

"...2. It has now been decided that a mix of Technical Supervisors and Technicians may continue in the Telecom Training Centres. Technicians, if posted on instructional job, will be entitled to the special pay/incentive allowance as admissible under the rules..."

The applicants filed representations, Annexure-VI is one of the representations for getting special pay for the period from 1-4-86 to 25-8-89. They were turned down by Annexure-V letter. Hence the applicants have filed this application.

3. The respondents have filed a detailed reply statement denying all the averments and allegations in the application.

4. We have examined the documents and heard the arguments of the learned counsel on both sides. The only question to be considered on the facts and circumstances of this case is whether the applicants have a legal right to get special pay in the light of Annexure-II read with the terms and conditions contained in Annexure-III.

5. The department decided in March 1984 as indicated in Annexure-III that only Technical Supervisors alone would be posted in CTTC as Instructors and 'no Technicians will be entitled for special pay.'

Annexure-III made further clarification that "Technicians posted as Full Time Instructors in CTTC might be allowed to continue upto 31-3-86" and they would not be granted special pay "beyond 31-3-86 even if they are not replaced by Technical Supervisors". In the light of these clear statements the applicants have no legal right to claim any special pay from 1-4-86, until Annexure-IV.

6. The learned counsel for the applicant contended that after Annexure-II the applicants opted to go from CTTC. This statement of the applicants had not been admitted by the respondents in the reply statement. They submitted that the applicants should be put to strict proof regarding this allegation. No such proof is forthcoming. So, we are not in a position to accept the case of the applicants that they worked as Instructors in compelling circumstances beyond their volition and hence they should be paid special pay.

7. However, it is, admitted in the reply statement *filed by* by the respondents that a mix of Technical Supervisors and Technicians was continued during 1986 to 1989 in CTTC. But in the light of the specific condition in Annexure-II and III it is not possible for us to grant the special

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pay to the applicants even if we accept the contention that they had worked as Instructors in CTTC in the absence of Technical Supervisors particularly when they had not challenged Annexure-II and III before us.

8. But, it is seen from the reply statement filed by the respondents in this case that the representations received from the applicants were examined and the matter had been referred to the Department of Telecommunications, New Delhi for clarification whether the applicants are eligible for special pay from 1-4-86 or from 25-9-89. This is clear from Annexure R-2 letter of Assistant General Manager dated 10-10-90. If the Govt. makes a clarification favourable to the applicants they are entitled to the benefits of such clarification notwithstanding the observations in the judgment. We also hope that the Govt. would take a decision in this matter clarifying the position, if it had not already taken the decision so far, without any further delay uninfluenced by any of the observations in the judgment.

9. Accordingly, we dismiss this application

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subject to the above observations. There will no
order as to costs.

N. Dharmadan

(N. Dharmadan)
Member (Judicial)

28.6.91.

S.P. Mukerji

(S.P. Mukerji)
Vice Chairman

28.6.91

28-06-1991

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