

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 82
T. A. No.

1990

DATE OF DECISION 27.2.91

Ms P. Rajalakshmi & 9 others Applicant (s)

Mr. C S Rajan Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary Respondent (s)
M/o Labour, New Delhi & Others

Mr. N. N. Sugunapalan SCGSC Advocate for the Respondent (s) 1-3
Mr. P. V. M. Nambiar for R-5, 7, 8, 10, 13-16, 18-29, 31-41, 43, 44,
46-50 and 52
Mr. Mathews P. Mathews for R-4, 6, 9, 11, 12, 17, 30, 42 & 45

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicants are working as Upper Division Clerks in the office of the Provident Fund Commissioner, the third respondent. Their complaint in this case is that the grant of special pay of Rs. 70/- to respondents 4 to 52 simply on the ground of their seniority as indicated in the impugned order is illegal. They filed this application under section 19 of the Administrative Tribunals' Act, 1985 with the following prayers:

- "i) to issue an order quashing Annexure A-8 order passed by the third respondent in so far as granting special pay to respondents 4 to 52
- ii) to declare that the applicants are entitled to receive the special pay granted under Annexure A-5 and direct the third respondent to grant the same to them; and
- iii) to grant any other reliefs that this Hon'ble Tribunal may deem fit and necessary."

2. According to the applicants the Government of India had taken a decision in 1979 for granting a special pay of Rs. 35/- per month to the Upper Division Clerks in the non-Secretariat Administrative offices attending to work of a more complex and important nature. It is contained in Annexure A-1. The relevant portion reads as follows:

"Pursuant to the agreed conclusion arrived at in the Committee, the President is pleased to decide that the Upper Division Clerks in the non-Secretariat Administrative Offices attending to work of a more complex and important nature may be granted a special pay of Rs. 35/- p.m. The total number of such posts should be limited to 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 UDCs."

3. Accordingly, Annexure A-2 letter dated 23.5.1980 was issued by Directorate of the Commissioner of Central Provident Fund, New Delhi for the identification of the 10% posts and thereafter selection of "persons eligible for the said benefits on the basis of seniority -cum-fitness" for being posted to perform these duties of a harduous nature. It was made clear in Annexure A-2 that the total number of posts should not exceed 10% of the posts in respect of the cadre and these posts should be identified as carrying discernible duties and responsibilities of a complex nature higher than those normally expected by UDCs. According to the applicants they are working in posts identified as involving discernible duties of complex nature and are eligible for special pay. It is alleged that the third respondent without first identifying any post/task as involving discernible duties of complex nature as directed in Annexure A-2 decided

h

..

to grant the special pay to 10% of the seniormost UDCs.

This is illegal and against the decision of the Government of India. The applicants were deprived of the benefit of special pay and they had no occasion to know the posts/tasks identified for special pay. According to them as per the O.M. seniority-cum-fitness would not be the criterion for filling posts as classified by Annexure A-4 when a query was made in this behalf. The query and clarification are quoted below:

"Point of query-

2. Whether the posts should be filled on seniority-cum-fitness basis in consultation with the suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature

Decision taken

The selection is to be made by the controlling authority on the suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature. Seniority-cum-fitness would not be the criterion for filling such posts."

The applicants further submitted that though the practice of special pay was discontinued from 1.1.1986, after the implementation of the IV Pay Commission, the same was restored after increasing the special pay to Rs. 70/- as per the decision contained in Annexure A-5. The representations Annexure A-6 and A-7 filed by respondents No. 2 and 5 respectively and similar representations filed by others were all turned down by the respondents 1 to 3. Hence, they have filed this application.

4. Separate counter affidavits were filed by Respondents 1 to 3 and other contesting respondents contraverting the averments and allegations in the application. They submitted that the posts involving deep study and of complex nature have rightly been identified before the grant of special pay. Since there are almost hundred posts coming

under the eight categories prescribed in the letter Annexure A-5 dated 24.11.89, which are only certain of the specified areas which have been identified as relatively important, sensitive and involving duties of a complex nature requiring deep study and competence to deal with such case, the payment of special pay was limited to 10% of the total UDC strength based on seniority. Accordingly the seniormost UDCs doing discernible duties were granted the benefit of special pay.

5. The controversy in this case is very much limited and can be formulated as follows. Whether the third respondent before passing the impugned order at Annexure A-8 granting the special pay to respondents 4 to 52 strictly complied with the directions in Annexure A-1 and A-2 as clarified by the query contained in Annexure A-4 as contended by the respondents or the decision was taken merely on seniority alone?

6. The case of the applicants is that the respondents 4 to 52 are not working in posts involving discernible duties of a complex nature as identified and mentioned in Annexure A-5 and that the third respondent granted the special pay by Annexure A-8 merely on the basis of seniority. It is further contended that he has no legal authority to deviate from the directions contained in Annexure A-5 and hence his action is illegal.

7. The policy of the Government of India is that special pay should be given only to the persons who are holding posts for handling cases of complex nature involving deep study and competence to deal with such cases. So it is obligatory on the part of the third

respondent first to identify the posts which carry special pay before taking a decision to grant the benefit to the respondents 4 to 52. This is clear from a clear reading of Annexure A-1, A-2 and A-4 and A-5. Annexure A-1 Office Memorandum specifies that ' UDC's in the non-Secretariat Administrative offices attending to work of a more complex and important nature may be granted a special Pay." Further, Annexure A-2 proceedings dated 23.5.1980 issued by the Director (Personnel & Training) to all the Subordinate controlling authorities to implement the policy of the Government of India in this behalf indicated the following two specific directions:

- "(i) the posts/jobs carrying discernible duties of complex nature higher than those normally expected for UDCs in your region and sub-regional office may first be identified" and
- (ii) the persons eligible for the said benefit on the basis of seniority-cum-fitness may be posted to perform these duties."

In 1983 when doubt arose about the implementation of the policy and a querry as to whether the post for grant of special pay should be filled up on seniority-cum-fitness basis, was sent to the Government, it was answered stating " the selection is to be made by the Controlling authority on the suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature. The seniority-cum-fitness would not be the criterion for filling such posts."

The grant of special pay though discontinued from 1.1.1986, the Central Board of Trustees in its 120th meeting held on 26.9.89 recommended payment of special pay at the rate of Rs. 70/- per month to 10% of the UDCs working in the Regional and Sub Regional offices of the E.P.F. Organisation subject to the fulfilment of the conditions specified in the

O.M. dated 5.5.1979. and it was approved by the Government after identifying the following areas as relatively important sensitive involving duties and responsibilities of complex nature requiring deep study and competence to deal with such cases:

- " 1. Pre-Audit
- 2. Leavy and collection of penal damages.
- 3. Posting and reconciliation of Cash Books with Bank statements and identification of missing credits particulars
- 4. Preparation of balance sheet, annual accounts, budgeting, etc.
- 5. Maintenance of service books, GPF accounts, audit of TA bills, LTC bills etc. and preparation of bills of pay of establishment.
- 6. Vigilance work
- 7. Recruitment/appointment, promotion, regularisation and confirmation of staff at various cadres.
- 8. Matters connected with grant of exemption, watching of compliances of exempted establishment, initiating prosecution and revenue recovery proceedings and coverage of establishment."

8. From the above facts and the instructions contained in Annexure A-1, A-2, A-4 and A-5 it is clear that seniority is not the criterion for the grant of special pay of UDCs under the policy statements of the Government of India. Normally a special pay is attached to special work carrying with a post. This is clear from the definition of pay, which under FR 21(a), is the amount drawn by a Government servant in every month as remuneration for his work "other than special pay or pay granted in view of his personal qualification." The special pay is being granted for specific additions to the normal duties or for arduous nature of work attached to a post such as Cashier, particular Machine Operators, etc. The original sanction by the Government of India under the O.M. dated 5.5.1979 was to pay a special pay of Rs. 35/- to 10% of the UDCs who are attending to the work of more complex nature involving deep study and competence to deal with these cases. So the administrative authorities before

h/

giving the special pay to the Government servants are obliged to identify the posts of the more complex and important nature indicated above. If on the other hand, without identification of the posts, payment is made solely on the basis of seniority as done in the instant case, it would be illegal payment and cannot be supported. If after the identification of posts which carry special pay, the authorities take into account the seniority among the grantees for restricting the grant of the benefits to the extent of 10% of the posts as indicated in the order it would not be illegal and against the Government instruction issued in this behalf.

9. In the instant case the respondents 1 to 3 have no case that the procedural formality of first identifying the post of more complex and important nature involving deep study and competence to deal with these cases, had been done. They had stated in the reply statement as follows:

"In fact the work in almost all the Sections in this office are of a complex nature and for the smooth and efficient functioning of the office every task holder has to apply his brain and mind in unison to have a good result. All these aspects are to be considered before arriving to a conclusion as to which task is important and which is unimportant. The identification of tasks has to be looked into from this perspective and cannot be earmarked into narrow and tight compartments to include only a few tasks."

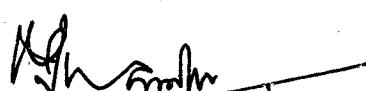
10. This is not a strict compliance of the procedural formalities for implementation of the policy as contained in Annexures A-1, etc. There is no proper identification of the posts for the grant of special pay particularly when the Government have clarified the doubt in this behalf when a query was raised as stated in Annexure A-4 making it clear that "seniority-cum-fitness would not be the criterion for filling such posts."

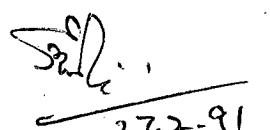
10

11. Having considered the matter in detail, we are of the view that the impugned order, Annexure A-8 was issued by the third respondent without any application of mind in the light of the directions contained in Annexure A-1, A-2, A-4 and A-5. It was issued merely on the basis of seniority. This view is further strengthened by a perusal of Annexure A-9 and A-10 orders dated 17.5.90 and 17.7.90 respectively passed by the third respondent himself.

12. In the result, we set aside Annexure A-8 order passed by the third respondent in so far as granting special pay to the respondents 4 to 52. But this will not stand in the way of the respondents 1 to 3 to consider the claims of special pay of both applicants and respondents 4 to 52 and pass fresh orders after duly complying with the directions and instructions contained in Annexures A-1, A-2, A-4 and A-5 in the light of the above observation in this judgment.

13. The application is thus allowed. There will be no order as to costs.


(N. DHARMADAN) 27.2.91
JUDICIAL MEMBER


(S. P. MUKERJI)
VICE CHAIRMAN

KMN