

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
~~XXXXXX~~

205/89 199

DATE OF DECISION 16.7.90

P.K.Viswambaran Applicant (s)

Shri M.Girijavallabhan Advocate for the Applicant (s)

Versus

Chief of Naval Staff and Respondent (s)
6 others.

Shri C.Kochunni Nair (for
R-1 & 2) Advocate for the Respondent (s)

Shri V.R.Ramachandran Nair (for R-5)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 29.3.89 filed under section 19 of the Administrative Tribunals Act, the applicant who has been working in the grade of UDC under the Officer Commanding-in-Chief, Southern Naval Command, Cochin, has challenged the panel of UDCs prepared vide Annexure-E dated 20th September, 1988 for the grant of special pay without including him. He has also prayed that he should be paid special pay during the period of his deputation. The brief

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10/10/90
etc. 10/10/90

facts of the case are as follows:

2. The applicant has been working as UDC in the Southern Naval Command since 1979. He was deputed to Naval Headquarters from June 1984 to June 1988. The Ministry of Defence vide their O.M. of 29th June 1979 (Annexure-A) decided that "in Non-Secretariat Administrative Offices where the posts of Assistants do not exist the Upper Division Clerk 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 post 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 UDC." The applicant has stated that Respondent 2 has not identified the post of UDCs carrying duties and responsibilities of complex nature but on the other hand in March 1988 drew up a panel of UDCs for grant of special pay of Rs 70. In that panel names of UDCs junior to him who were not holding posts of UDCs of onerous nature were included and granted special pay. According to the applicant, during the period of his deputation to the Naval Headquarters, he was holding the post of UDC which has been accepted by the authorities (Annexure-C dated 20th July, 1983) as carrying duties of complex nature entitling the holders to special pay of Rs 35 per month.

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His representations for grant of special pay in his parent department during the period of his deputation at the Naval Headquarters after his reversion to Southern Command in 1988 were rejected. On the other hand, on 28.9.88 another panel was prepared of UDCs for grant of special pay, again excluding his name, but including the names of his juniors who have been impleaded as Respondents 3 to 5. His argument is that the fact of his being on deputation with the Naval Headquarters did not disentitle him for the special pay and that the DPC could not identify the post of UDCs for the grant of special pay. His further contention is that identification of posts of onerous nature is a pre-condition for grant of special pay and only those who are assigned the duties of those identified posts are eligible for special pay.

3. In the counter affidavit the Respondents 1 and 2 accepted that the applicant is a member of the Scheduled Caste and that he was posted at Naval Headquarters on deputation and that a Departmental Promotion Committee was constituted to recommend names of UDCs for grant of special pay. They have conceded that when the DPC prepared the panel, the posts of UDC carrying discernible duties of onerous nature were not identified and the special pay was granted on the basis of seniority subject to fitness. According to them, the instructions for

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on seniority cum fitness^h
selection of UDCs^h for grant of special pay were modified
vide Ministry of Defence's Corrigendum dated 31st March,
1981 (Annexure-R2) which provided that "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 responsi-
bilities of complex nature. Seniority-cum-fitness would
not be the criteria for filling up such posts." Accordingly
the DPC by selection^{on merit} prepared a list of persons for^h
grant of special pay on the basis of relative merits of
candidates and by this process a senior could be superseded
by a junior who is less meritorious. Respondents 1 and 2
have further stated that two panels were prepared by the
the DPC, one in March 1988 and another in September 1988--
when the applicant's name was also considered but due to
his low merit he was not selected for grant of special pay.
even though some of his seniors and juniors were selected
and granted special pay. The Respondents have conceded
that the work^h of UDC's^h at^h Naval Headquarters is said to be of
complex nature but every person posted at Naval Headquarters
is not entitled to special pay which is governed by
definite instructions, and entitlement to special pay is
only when the name of the incumbent is recommended by the
DPC. They have denied that Respondents 4 and 5 suffered
from any mental disability as alleged by the applicant.

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4. Respondents 1 and 2 have significantly indicated that in accordance with the orders of this Tribunal dated 30th September 1988 in OA 599/87 the second Respondent appointed a Board of Officers for identifying 10% of the 174 posts of UDCs in the Command carrying discernible duties and responsibilities of more complex nature, ^{that} 17 posts of UDCs have been identified and the list published through Annexure-R3 dated 20th April 1989. They have stated that the UDCs selected for special pay have since been posted to the identified posts. They however indicated that the third DPC which met in June 1989 again excluded the applicant as being of low merit.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question of admissibility and modality of granting special pay to the UDCs in accordance with the Ministry of Defence's O.M. of 29th June 1979 at Annexure-A was considered by this Tribunal in its judgement dated 30th September 1988 (to which one of us was a party) in O.A.599/87, (Annexure-F). It was felt that grant of special pay is for handling onerous duties of identified posts of UDCs and before any UDC can be allowed special pay, such posts have to be identified and that UDC has to discharge the duties of one of the identified posts. The following extracts

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from the aforesaid judgement will be relevant:

"We have considered carefully the rival contentions. We are of the view that it is obligatory on the respondent to identify the posts of UDC to which work of a more complex nature and higher responsibilities are attached and appoint persons selected on the basis of seniority-cum-fitness. The procedure adopted by the respondent in calling upon the DPC to select 6 candidates on the basis of seniority-cum-fitness and in treating them as the incumbents of the posts of UDC to which work of a more complex and onerous nature are attached is not in conformity with the instructions set out in Ext. A-1. In other words, the first step of identifying the posts has been skipped over by the respondent and the UDCs who were placed on the panel by the DPC were ipso facto treated as UDCs discharging duties of more complex and onerous nature than others. We have no doubt that the procedure followed by the respondent is in violation of the instructions appearing in Ext. A-1."

The same question was further examined in the judgement of this Tribunal dated 29th May, 1989 (to which one of us was a party) and a similar view was taken. Since there was no identification of posts before the preparation of the panel of UDCs it was felt that the panel cannot be considered as validly prepared.

6. In the instant case, however, the respondents ^{now during the pendency of this application,} have identified 17 posts as on 28th April 1989 at Annexure-R3. The applicant would be entitled to special pay before or after 28th April 1989 if he had held any of these 17 posts during the period of his tenure as an UDC. The ^{term} 'special pay' has been defined in FR-9(25) as follows:-

"Special Pay means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of--

- (a) the specially arduous nature of the duties;
or
(b) a specific addition to the work or responsibility."

Accordingly, irrespective of whether the applicant, or for that matter any other UDC, was or was not included in the panel, so long as he held any of the 17 identified posts of complex and onerous nature of duties, he will be entitled to the special pay admissible at that time. Though ☐ Respondents 1 and 2 are fully within their power to handpick suitable officers for holding any of these posts, so long as an official has discharged the duties of any one of these posts, he cannot be denied the special pay. Non-inclusion in the panel cannot be a valid reason for denying the special pay attached to the post against which the official has ^{actually} discharged the duties of the post.

7. It may also be noted that unlike the selection for promotion on merit, posting to posts carrying special pay does not involve merit as much as suitability to hold a particular post carrying onerous and special duties. We are not able to accept the contention of the Respondents 1 and 2 that selection has to be done purely on merits as in case of promotion by selection. In ☐ Annexure-R1 dated 29th April 1980 it has been clearly stated against item (ii) that "the special pay may be granted by the Appointing Authority on the basis of seniority subject to fitness adjudged by the appropriate DPC. The Appointing Authority may assign the duties of complex nature to such UDCs as have been selected by the

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DPC if not already engaged on such duties." The above will show that selection is made on the basis of seniority subject to fitness and grant of special pay is consequent upon assigning of the duties of complex nature to such UDCs as have been selected by the DPC. Accordingly, mere selection or empanelment by DPC would ^{not} per se entitle an UDC to special pay so long as he is not assigned to a 'special pay carrying post'. Conversely, special pay cannot be denied to an UDC who had been assigned duties of complex nature even though he was not included in the panel. For non inclusion in the panel, unless he is taken away from the 'special pay carrying post' of UDC, he cannot be denied the special pay on the principle of 'equal pay for equal work'.

8. The learned counsel for Respondents 1 and 2 argued that the seniority-cum-fitness criterion was converted to that of selection on merit by the corrigendum of 31st March 1983 at Annexure-R2. This argument also is not entirely acceptable. The clarification given in Annexure-R2 reads as follows:

"The selection is to be made by the controlling authorities 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 criteria for filling up such posts."

The above will show that the selection is to be based not on merit but on suitability of the officer to handle

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the work in an identified post carrying discernible duties and responsibilities of a complex nature. The criterion of general fitness was merely replaced by the criterion of suitability for a particular post. But again, when posts have been identified for special pay, unless that post is held, one does not become entitled to special pay by mere inclusion in the panel and non-inclusion in the panel cannot deny special pay to one who has been allowed to discharge the duties and responsibilities of a complex nature against one of the identified posts.

9. On the same principle of equal pay for equal work, the applicant while working on deputation at ^{the} Naval Headquarters cannot be denied the special pay if while at the Naval Headquarters he had been discharging duties of a complex nature against the post for which special ^{would have} pay ^{been} admissible. In this regard, the following extracts from Naval Headquarters' letter of 20th July 1983 at Annexure-C may be quoted as below:

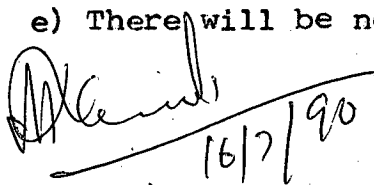
"the work in Naval Headquarters is of complex nature. UDCs deputed to Naval Headquarters would be doing complex nature of work which would if otherwise admissible, entitle them to special pay of Rs 35 p.m."

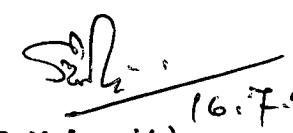
The above extracts clearly entitle ^{the} the applicant who had been deputed as UDC to the Naval Headquarters between ^{or Rs 70/-} 1984 and 1988, to the special pay of Rs 35 ^{irrespective of} whether he was included in the panel or not.

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10. In the facts and circumstances, we allow this application to the extent and on the lines as indicated below:

- a) The applicant would be entitled to the special pay of Rs 35 or Rs 70, as the case may be, while working on deputation as UDC at the Naval Headquarters during the period from June 1984 to June 1988.
- b) The applicant would be entitled to the special pay of Rs 35 or Rs 70 as the case may ^{as attached to UDC's} be ^{and} during the period he was working as a UDC in the Southern Naval Command holding any one of the 17 posts identified at Annexure-R3, irrespective of when he held the post and irrespective of whether he was included in the panel or not.
- c) Since the first representation for special pay was submitted by the applicant on 9.5.88 the grant of special pay on the lines at (a) and (b) above would be only from 9.5.85 keeping the period of limitation of 3 years.
- d) Action on (a), (b) and (c) ^{above} should be completed within a period of three months from the date of communication of this order.
- e) There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

R.A No.112/90
in O.A. 205/89

DATE OF DECISION 30-10-90

~~The Chief of Naval Staff, Naval Headquarters(DCP)~~ Applicant (s)
New Delhi and another

Mr. C.Kochunni Nair Advocate for the Applicant (s)

Versus

P.K Viswambaran Respondent (s)

Mr.Girijavallabhan Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. **A.V HARIDASAN, 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

(Hon'ble Shri S.P Mukerji, Vice Chairman)

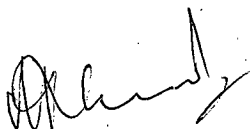
Respondents 1 (The Chief of Naval Staff) and 2 (The Flag Officer Commanding-in-Chief, Southern Command) have filed this Review Application against our order dated 16.7.1990 in O.A 205/89. In that order we had allowed special pay to the applicant while working as U.D.C on deputation at the Naval Headquarters and also directed that in the Southern Naval Command if he had been holding any of the seventeen posts of U.D.Cs identified as posts of complex and onerous nature of duties, he should be granted the prescribed special pay during the period of his holding such a post irrespective of whether he was included in the panel or not. In the Review Application it has been argued that our presumption that all posts of U.D.Cs at the Naval Headquarters are of complex nature would not entitle the applicant to the special pay because special pay would not be admissible where there are Assistants working. It has also been averred that since the applicant was not holding any of the seventeen identified posts after he reverted to the Southern Command, he would not be entitled to any special pay.

2. I am afraid that the grounds taken by the Review Applicants are not admissible for a review of our judgment. So far as the posts of

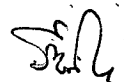
U.D.Cs at the Naval Headquarters are concerned, we had quoted from the Naval Headquarters' own letter of 20th July 1983 which indicated that the "U.D.Cs deputed to the Naval Headquarters would be doing complex nature of work, which would if otherwise admissible, entitle them to special pay of Rs.35/-". Nothing was stated before us during arguments that special pay would not be admissible to the applicant at the Naval Headquarters because the Assistants had been posted there. In any case presence of ~~THE~~ Assistants at the Naval Headquarters cannot deprive the U.D.Cs of the special pay if the U.D.Cs by the Naval Headquarters' own showing had been discharging complex nature of work. A cryptic clause like "if otherwise admissible" cannot deprive the applicant of the special pay which is legitimately due to him. There is no error apparent on the face of the record or any new material warranting a review of our aforesaid order. As regards the second point, it is not understood why a review is at all necessary. Our order clearly indicates that if the applicant had been holding any one of the seventeen identified posts at any time when special pay was admissible, he would be entitled ^{to} special pay. If, as averred by the Review Applicants, the Original Applicant did not hold any of these posts, the question of grant of special pay ^{would} not arise ^{when he was not holding such a post.}

3. I see no force in the Review Application and if Hon'ble J.M(II) agrees, the same will be rejected by circulation and orders pronounced in the open court.

I fully agree



Shri A.V Haridasan,
Hon'ble Judicial Member(II)

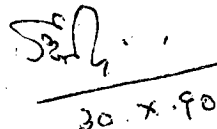


(S.P Mukerji)
Vice Chairman

Order pronounced in open court today
on 30.X.1990.



30.X.90


30.X.90