

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

357 1990

DATE OF DECISION 30.4.1991

1. V.R.Ramachandran & Anr. Applicant (s)
2. V.K.Gangadharan

Mr.M.R.Rajandran Nair Advocate for the Applicant (s)

Versus

UOI rep. by Secy., Cabinet Respondent (s)
Secretariat, New Delhi & 2 others

Mr.V.V.Sidharthan, ACCSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

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

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicants who are working as Assistant Engineers, T.V.Centre, Shornur & Palghat are aggrieved by the Annexure-I order of the Director General, All India Radio, New Delhi, respondent No.2, dated 24th April, 1990 by which the Pay and Accounts Officer, IRLA, Ministry of I & B, was informed that the persons named in the order were paid special pay in addition to deputation allowance which was not admissible to them inadvertently by the Cabinet Secretariat, while they were on deputation there and directing him to recover the over-payment made to them and to remit the same to the Accounts Officer, Cabinet Secretariat, New Delhi.

The applicants have prayed that this order may be quashed and that, it may be declared that they were entitled to the special pay which was sanctioned by the Office Order No.1880 E.6/76 of the Director, Cabinet Secretariat dated 18th November, 1976, Annexure-II for the whole period for which they were on deputation in the Cabinet Secretariat.

2. The applicants while working as Senior Engineering Assistants in the AIR, Trichur were deputed as FOs(Telecom) in the Cabinet Secretariat and they reported to the Special Pay Bureau, Bombay in the establishment of the Cabinet Secretariat on 29.10.1976. On the basis of their Last Pay Certificates their pays were fixed in the scale Rs.550-900. They were also sanctioned a special pay at the rate of Rs.75 per mensum by order dated 18.11.1976 at Annexure-II. On the basis of the pay thus fixed, the applicants received pay and special pay till May, 1990. On 6th May, 1990 by a teleprinter message it was intimated that the Cabinet Secretariat had ruled that the Central Government Deputationists who had opted to draw their grade pay as admissible to them from time to time in their parent department and deputation duty allowance were not entitled for grant of special pay, and that the special pay of Rs.75 paid till then to Shri V.R. Yadav, V.R.Ramachandran, V.K.Gangadharan and K.R.Ramakrishnan,

posted at Bombay would be discontinued from 1st May, 1980 onwards. V.R.Ramachandran and V.K.Gangadharan referred to in this order Annexure-III are the applicants herein.

Coming to know of the teleprinter message, the ^{second} applicant on 17.5.1980 submitted a representation, at Annexure-IV

to the Deputy Director, Cabinet Secretariat, New Delhi

stating that the unilateral decision to remove special

pay had no validity and also it was against the basic

principles of administration, that the special pay

granted to the particular post considering the special

nature of the work had nothing to do with the deputation

duty, that State Government servants on deputation to

the Cabinet Secretariat were getting special pay as well

as the deputation allowance, that there was no reason to

discriminate against persons like him and requesting

that the decision may be reconsidered. While the matter

rested there for ^{the} time being, the impugned order dated
24.4.1990 was issued, directing the third respondent

to recover the special pay paid to the persons named

in this order including the applicants, on the ground

that the payment was made inadvertently. The amount

directed to be recovered from the applicants 1 and 2

were to Rs.3879.30 and Rs.4105.30 respectively. The

applicant No.2 submitted a telegraphic representation

to the third respondent requesting ^{him} not to implement
the order as the applicant feels that the impugned order

directing recovery of the special pay paid to them while they were on deputation after a decade ago is illegal and unjustified. They have impugned the order on the ground that it is arbitrary, illegal and discriminatory as other persons who are similarly on deputation are allowed to receive ~~extra~~ special pay as well as deputation allowance and also on the ground that the impugned order issued after a decade without varying or cancelling Annexure-II order and without issuing a show cause notice to the affected persons is opposed the principles of natural justice.

3. The respondents have sought to justify the impugned order on the ground that, as per the rules, Central Government deputationists drawn from one department to the other department who opt to draw grade pay admissible to them in their parent department are not entitled to special pay. It is also contended that, since as early as in the year, 1980 by the Annexure-III order the applicants and similarly situated persons were informed that they were not entitled to receive special pay, and as the representations submitted by the second applicant at Annexure-IV has been considered, and a reply has been given communicating the clarification of the Ministry of Finance regarding the inadmissibility of the special pay to all deputationists who had opted to draw grade pay admissible to them in their parent

department, it is not necessary that before ordering recovery of the over-payment, notice should be given to the applicants. The respondents have prayed that and the application is devoid of merit/should be dismissed. (M)

5. We have heard the arguments of the counsel on either side and have also perused the pleadings and documents produced.

6. It is a common case that, as per order dated 18.11.1976, Annexure-II, the pay of the applicants 1 and 2 were fixed at Rs.700 per month and Rs.675 per month respectively on the basis of their LPC, and that a special pay of Rs.75 per month was sanctioned to them. The applicants 1 and 2 were on deputation under the Cabinet Secretariat for about 4 years. While the applicants were receiving the special pay in addition to the deputation allowance as granted by Annexure-II order a decision by the Cabinet Secretariat that the FO(T)s who had opted for their grade pay and deputation duty allowance over their grade pay are not entitled to receive the special pay of Rs.75 and to discontinue the practice of paying special pay thereafter. The representation submitted by the second applicant against the decision to ~~take~~ discontinue the payment of special pay at Annexure-IV was not disposed of according to the averments in the application. But the respondents in

the reply statement have contended that the representation was duly considered and the decision taken that he would not be entitled to special pay basing on the clarification received from the Ministry of Finance had been given to him through the then ADSB, Bombay. But no intimation was even given to the applicants of an intention on the part of the respondents to recover the special pay already paid. The matter rested with an intimation to the applicants that the practice of paying special pay to them would be discontinued by Annexure-III in the year, 1980. Thereafter, apart from the impugned order at Annexure-I, where by the third respondent was directed by the second respondent to recover the special pay paid to the applicants during 1976 to 1980 on the ground that the payment was made inadvertently, no notice was given by the respondents to the applicants requiring the applicants to show cause why the amount paid to them as special pay should not be recovered. The impugned order at Annexure-I has got civil consequences on the applicants because, it directs recovery of Rs.3879.30 from the first applicant and Rs.4105.30 from the second applicant. These amounts are sought to be recovered on the ground that these amounts were paid to them as special pay while they were not actually entitled to special pay. Since the recovery is ordered after a period of long 10 years, the applicants may have

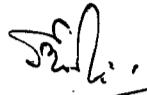
reasons to state about their non-liability to refund the amount or dispute the correctness of the amount claimed. Therefore, the impugned order at Annexure-I, directing recovery of money allegedly paid inadvertently about 10 years ago without giving an opportunity to the applicants to put forth their views on the matter is opposed to the principles of natural justice and cannot therefore be sustained. Even if as a matter of fact the amounts shown against the applicants in Annexure-I are liable to be recovered from them, fairness and equity demands giving them an opportunity to explain their views about their liability or non-liability to refund these amounts. Several questions such as their right to receive the amount, the correctness of the amount, etc. may have to be considered and decided. It may be open for the respondents to recover the amount in accordance with law and subject to the rules, but the demand should be made only after giving the applicants a notice and giving them an opportunity to put-forth their case. Therefore, we are of the view that the impugned order at Annexure-I has to be quashed.

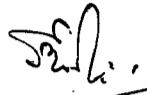
6. In the conspectus of facts and circumstances of the case, we allow the application in part and quash ~~to the extent it affects the applicants~~ the impugned order at Annexure-I. If the respondents want to take steps for recovery of the amount shown in Annexure-I, they may do so only after giving the

applicants a notice and an opportunity to show cause
against such demands. There is no order as to costs.


(A.V. HARIDASAN)

JUDICIAL MEMBER


30.4.91


(S.P. MUKERJI)

VICE CHAIRMAN

30.4.1991