

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : P A T N A .

O.A.NO.: 518 of 1996.

DATE OF DECISION :05-APR-99.

Rajendra Sharma, son of Late Ambika Singh, resident of village Jai Kishun Bigha, Police Station Ghoshi, District Jehanabad. ....APPLICANT.

Vrs.

1. The State of Bihar through Chief Secretary, main Secretariate, Patna.
2. The Secretary [Home Police], Government of Bihar, Main Secretariate, Patna.
3. Treasury Officer, Patna Secretariate, Patna-1.
4. Accountant General, Bihar, Patna.
5. Union of India through Ministry of Home Affairs, New Delhi. ....RESPONDENTS.

Counsel for the applicant.	: Mr. N.K.Singh.
	Mr. Om Prakash.
Counsel for the State of Bihar.	: Mr. B.N.Yadav.
	Standing Counsel.
Counsel for the Union of India.	: Shri V.M.K.Sinha.
	Sr.Standing Counsel.

C O R A M

HON'BLE MR. JUSTICE S. NARAYAN, VICE-CHAIRMAN.

O R D E R


S.NARAYAN, V.C.:- The sole applicant, Rajendra Sharma, has sought for a relief to quash an order of withdrawal of the special pay, which he had already drawn being an officer of Indian Police Service cadre posted as Superintendent of Police [Explosive] in the State of Bihar for the period from 05.12.1986 to 01.02.1990, and also for a direction upon the respondents to repay the deducted amount with interest thereon. It may be mentioned here that in fact, there was no specific order

of the State Government of Bihar for deducting any amount from the pay of the applicant. It so happened, that in the year 1990 when an authority slip, commonly known as Pay/Leave Salary Slip, was issued by the Accountant General, Bihar [Respondent no.4], authorising the applicant to draw salary on different counts for the period 29.10.1982 to 01.02.1991 and onwards, less the amount already drawn, vide pay slip dated 04.04.1990, he was authorised to draw special pay either @ Rs.200/- per month or Rs.400/- per month during the aforesaid period. Subsequently, when another pay slip dated 11.08.1992 was issued by the Accountant General, Bihar, he was not authorised to draw special pay for the aforesaid period. There were several items of pay like, Substantive Pay, H.R.A., C.C.A., etc. and as per the aforesaid pay slips the applicant appears to have drawn the total amount of the salary with the result that automatically, there was deduction from the total emolument on the score of special pay. The deduction, as such, is said to be Rs.11,838.60/-.

2. On factual score, there was practically no conflict between the contentions raised on the either side. The applicant, who was initially appointed as Deputy Superintendent of Police in the Government of Bihar, was promoted to the Indian Police Service on 29th October, 1982, and he was posted as such, on different posts. He, while holding a cadre post of Indian Police Service, did get some special pay and, accordingly, there could be no grievance as such, nor was it raised in the instant case. It was only during the course of his posting as Superintendent of Police

[Explosive], which was a non-cadre post, that a point of controversy was raised whether he should get special pay during his posting on a non-cadre post of Superintendent of Police [Explosive]. His posting on a non-cadre post, as such, was for the period from 1986 to 1990, as already referred to above.

3. From the facts, as narrated above, it is amply clear that it is not a case where there has been reduction in pay-scale or that certain part of the emolument of pay has been reduced by way of punishment. It was, rather, a case to examine the entitlement of special pay of an officer of Indian Police Service while he is posted on a non-cadre post, like that of a Superintendent of Police [Explosive].

4. The fate of the instant case thus, hinges over the decision, whether the ex-cadre post of Superintendent of Police [Explosive] should carry the additional benefit of special pay? In this context, there was a notification bearing letter no.1/P3-1009/87/Home/9261, dated 23.10.1989, of the Home [Police] Department, Government of Bihar, whereby, a policy decision was made by the Government as to which post would carry the special pay w.e.f. 01.01.1986. The advantage of special pay, as per this letter, had not been provided for the non-cadre post of Superintendent of Police [Explosive]. Here, it may be mentioned  that, on this issue, the applicant, alongwith some other officers, had come up before this Tribunal on an earlier occasion challenging the aforesaid notification dated 23.10.1989 of the State Government and claiming special pay even on non-cadre

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post and the Tribunal, by an order dated 08.07.1992, passed in O.A. No. 331 of 1990, clearly held as follows :-


"clearly, this is a policy matter and the State Government in pursuance to its policy under the above amendment have fixed special pay for certain posts and that the posts occupied by the applicants have not been specified for special pay. Whatever has been done by the State Government, it has been done in accordance with the powers conferred on it by the above rules. There seems to be no illegality in the impugned order dated 23.10.1989 [Annexure-2] and, therefore, it does not call for any interference by the Tribunal. We are, therefore, of the view that after fixation of special pay by the State Government vide order dated 23.10.1989 [Annexure-2], we can not compel the State Government to amend their said order so as to specify the posts occupied by the applicants for special pay."

5. Thus, the bone of contention raised in the instant case has already been determined by threadbare discussion in the aforesaid order of this Tribunal passed in O.A.No.331 of 1990. Therefore, there remains nothing to be determined afresh. Since the claim of the applicant for special pay, while being posted on a non-cadre post, has already been refused, the pay-slip, as referred to above, can not be determined to be arbitrary or in any manner unauthorised. I may observe, without any risk of repetition, that there was no deduction from the pay by way of reduction in the pay-scale or by way of any sort of punishment. The applicant has, of course, been put to a pecuniary loss of Rs.11,838.60/-, but that was merely because he was

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not entitled to the special pay while holding a non-cadre post of Superintendent of Police [Explosive]. Since, the payment of special pay was a policy matter depending upon the nature of job rendered by the incumbent on a particular post and the Rule-8 of the Indian Police Service [Fixation of Cadre Strength] Regulations, 1995, did permit the State Government with the prior approval of the Central Government to appoint a cadre officer to hold an ex-cadre post, the denial of special pay can not be deemed to be an infringement of any legal right or breach of any service condition. May it further be observed, that merely because at one point of time the Accountant General, Bihar, issued a pay-slip authorising the applicant to draw special pay, a rightful claim would not arise independently out of it. The basic issue remains, whether an incumbent was entitled to special pay or not and, therefore, in the event, when it is detected that certain amount has been paid in excess by way of special pay against any existing rule, it can be very well revised within the powers and authority of the Accountant General, Bihar, who is supposed to issue authority slip only on the strength of sanction order received from the State Government.

For the reasons, aforesaid, this O.A. is devoid of merit and, accordingly, it is dismissed. There shall be no order as to cost.

  
[S. NARAYAN]  
VICE-CHAIRMAN