

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.33 of 1987

Shri Visvonata Xamba Rau Valaulicar,
Sandeep Apartments,
Dada Vaidya Road,
Panaji,
Goa.

.. Applicant

v/s.

1. Union of India through
the Secretary to the
Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. Government of Goa, Daman & Diu,
through the Administrator of
the Union Territory of Goa,
Daman & Diu,
Panaji,
Goa.

.. Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil

Appearance:

- 1, Applicant in person.
2. Mr.J.D.Desai, Advocate
(for Mr.M.I. Sethna)
for the respondents.

ORAL JUDGMENT:-

Date: 30.3.1988

(PER: Shri B.C. Gadgil, Vice-Chairman)

This is one of those matters which should not have come before the Tribunal.

2. The applicant was working as Superintending Engineer in the Public Works Department of the Union Territory of Goa, Daman and Diu. Post of the Chief Engineer, (Irrigation Department) was created and the

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order appointing the applicant as Chief Engineer was passed on 30.6.1981 vide Exhibit-A to the application. The order states that the applicant was appointed in the scale of Rs. 1500-60-1800-100-2000 plus Rs. 200/- as special pay. Accordingly, the applicant took charge of the new assigned on 1.7.1981. He opted for voluntary retirement on 1.6.1983. The provisional orders about the retirement benefits were passed. The applicant claims that the special pay that was granted to him should be taken into account while calculating pension and gratuity. The Government of Goa, Daman and Diu informed the applicant that the special pay cannot be taken into consideration for such calculation. This order of communication is challenged before me. The emoluments as defined in Rule 33 of the Pension Rules means pay as defined in Rule 9(21) of the Fundamental Rules. The Rule 9(21) of the said rules provides that pay would include special pay. The applicant, therefore, contends that the special pay has to be included in the pay and consequently it is also to be included for determining the emoluments under Rule 33 of the Pension Rules. His grievance is that the respondents are not accepting this position.

3. The respondents filed their reply on 7.4.1987. There is no dispute that the emoluments for pension purpose would also include special pay. However, the respondents allege that the Government of India has not given prior sanction for the grant of special pay to the applicant and that therefore the said special pay cannot be taken into account while computing the pensionary benefits. It was further contended that the Government of India by its letter dtd. 7.9.1983 rejected the proposal of special pay to the applicant.

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4. I have heard the applicant in person and Mr.J.D.Desai, Advocate (for Mr.M.I.Sethna) for the respondents. As observed above the applicant took charge of the post of Chief Engineer on 1.7.1981 on the basis of the appointment order dtd. 30.6.1981. That order specifically states that the applicant would be entitled to the special pay of Rs. 200/-. It is not in dispute that the applicant was paid special pay of Rs. 200/- till the time he retire on 1.6.1983. It is after his retirement that the Government of India rejected the proposal to allow special pay.

5. The applicant was holding the post of Superintendent Engineer and accepted the promotional post of Chief Engineer on the terms mentioned in the appointment order. Not only that he worked for about two years and then opted for voluntary retirement. There is much substance in the contention of the applicant that he would not have accepted the offer if he had known that he would not get special pay of Rs. 200/-. Apart from that equity and justice require that the applicant, who was offered the special pay of Rs. 200/- and received that special pay till his retirement, should be entitled to count that special pay of Rs. 200/- while determining the emoluments for pension purposes. Hence in the peculiar facts of the case it will not be open for the Government to contend (and that too after the retirement of the applicant) that the special pay of Rs. 200/- was not sanctioned.

6. The net result, therefore, is that application succeeds. The respondents are directed to determine the pensionary benefits (such as Pension, Gratuity etc.) payable with effect from 1.6.1983 after taking into account the special pay of Rs. 200/- as emoluments as contemplated by rules 33 of the Pension Rules and to pass appropriate orders within a period of 10 weeks from today.

Parties to bear their own costs.



(B.G. Gadgil)
Vice-Chairman