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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CAMP AT PANAJI

O.A. No. 291/89 & 304/89

198

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DATE OF DECISION 14.9.1990.

S/Shri V.A.Vasudevraju & M.M.Lal _____ Petitioner

Advocate for the Petitioner(s)

Versus

Ministry of Finance & ors. _____ Respondent

Ms. S.Albuquerque. _____ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member(A);

The Hon'ble Mr. N.Dharmadan, Member(J)

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. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

[Signature]
(M.Y.PRIOLKAR)
MEMBER(A)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT PANAJI.

1. Original Application No.291/89.

V.A.VASUDEVARAJU.

... Applicant

V/s.

UNION OF INDIA & OTHERS.

... Respondents

2. Original Application No.304/89.

M.M.LAL.

... Applicant

V/s.

UNION OF INDIA & OTHERS.

... Respondents.

Coram: HON'BLE MEMBER(A), SHRI M.Y.PRIOLKAR,
HON'BLE MEMBER(J), SHRI N.DHARMADAN.

Appearances:-

Applicants present in person.
Respondents by Ms.S.Albuquerque.

JUDGMENT:-

¶ Per Shri M.Y.Priolkar, Member(A)¶ Dated: 14.9.1990

The applicants in both these cases are Officers of the Indian Administrative Service who had served in the North-Eastern Region for different periods between April, 1983 and July, 1988. They have the grievance that by linking special pay with special duty allowance and by giving effect to the Government of India O.M. dated 1.12.1988 liberalising certain benefits for employees serving in the North-Eastern Region from the date of issue of that O.M. and not from 1.1.1986, they have been deprived of the special duty allowance to which they claim they were legally entitled. Since the issues raised and reliefs prayed for are essentially the same, both these applications were heard together and are being disposed of by this common order on consent of parties. *h*

2. The facts, which are not much in dispute, may be briefly narrated. The Government of India vide Finance

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Ministry's O.M. dated 14.12.1983 sanctioned, along with some other incentives, a Special Duty Allowance to Officers like the applicants posted in North-Eastern Region from 1st November, 1983. This was to be paid at the rate of 25 per cent of the basic pay subject to a ceiling of Rs.400/- per month. While this Special duty allowance was to be in addition to any special pay and/or deputation (duty) allowance already being drawn, a condition was also imposed that the total of such special duty allowance plus special pay/deputation (duty) allowance will not exceed Rs.400/- p.m. On a review, after the implementation of the Fourth Pay Commission's recommendations, Government decided vide Finance Ministry's O.M. dt. 1.2.1988 to grant this special duty allowance from that date at the rate of $12\frac{1}{2}\%$ of basic pay subject to a ceiling of Rs.1000/- per month, provided that the total of such special duty allowance plus special pay/deputation(duty) allowance will not exceed Rs.1000/- per month. The applicants were in receipt of special pay of Rs.200/- per month from the date of their posting in the North-Eastern Region. This special pay was raised to Rs.400/- per month with effect from 1.1.1986 on the basis of the Fourth Pay Commission's recommendation. Thus, in view of the ceiling of Rs.400/- per month under O.M. dated 14.12.1983 on the total of special duty allowance and special pay, the special duty allowance of Rs.400/- p.m. otherwise admissible to the applicants for service in the North-East was reduced to only Rs.200/- per month for the period upto 1.1.1986 and it was further reduced to nil from 1.1.1986. The applicants did not get the benefit of the enhanced ceiling of Rs.1000/- p.m. sanctioned from 1.12.1988 as their tenure in the North-Eastern Region had already ended by that date.

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3. Admittedly, Government had felt the need to review the rate and the ceiling in respect of the special duty allowance, sanctioned under O.M. dated 14.12.1983, pursuant to the implementation of the revised pay scales based on Fourth Pay Commission's recommendation, and after careful consideration, revised the rate of special duty allowance from 25% to $12\frac{1}{2}$ % of basic pay and the ceiling from Rs.400/- to Rs.1000/- per month. It is the contention of the applicants that since the revision of this allowance was as a result of the implementation from 1.1.1986 of the pay scales as recommended by the Fourth Pay Commission, it should have been given effect from 1.1.1986 and not from 1.12.1988 as has been done. We find it difficult to accept this contention. Since the Fourth Pay Commission had not made any recommendation on special duty allowance, it follows that the same was reviewed and revised by the Government suo moto so that appropriate rate and ceilings consistent with the revised pay scales could be laid down. Merely because the Government felt the need to review the rate and ceiling in respect of the special duty allowance as a result of the implementation from 1.1.1986 of the revised pay scales, no right has been vested in the applicants to demand that any Government decision on a review of the special duty allowance should also be made effective from 1.1.1986, irrespective of the date of the Government decision. The respondents have stated that such decisions take prospective effect only, as per provisions contained in the general financial regulations of Government. We do not see anything unreasonable, arbitrary or discriminatory, as alleged by the applicants, in the

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application of this general financial regulation to the present case. We accordingly reject the prayer of the applicants for a direction to make the O.M. dated 1.12.1988 effective from 1.1.1986 instead of from the date of issue.

4. The second prayer is for a direction to delink the special pay from the special duty allowance/deputation duty allowance and thereby take it outside the purview of the ceiling limits of Rs.400/- and Rs.1000/- prescribed in OMs dated 14.12.1983 and 1.12.1988, respectively. The ground advanced in support of this prayer is that special pay has been defined as "Pay" in the Fundamental Rules and, therefore, linking the special pay with the special duty allowance/deputation duty allowance for the purpose of applying the ceiling limit thereof, is unfair, unjust and illegal. We are unable to accept this contention also. The ceiling is for the purpose of regulating the special duty allowance ^{by in} alone and ~~no~~ way affects the entitlement to special pay of the applicants. When the government sanctions an allowance, it can also lay down the conditions, including a ceiling, by which it will be regulated. The condition regarding ceiling on the total of special pay plus special duty allowance is applicable not only to the applicants but to all eligible employees. The applicants are also not able to show any rules or provision under which the Government ^{is not} competent to impose a ceiling on such allowances. When the entitlement to special pay of the applicants remains unaffected, the applicants, in our view, should have no legitimate grievance if the special pay is taken into account as one of the factors, only for the purpose of regulating the special duty allowance. This prayer for not considering the special pay for the

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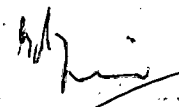
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purpose of the ceiling limit on special duty allowance has also, therefore, to be rejected.

5. In the result, the applications do not succeed and are, accordingly, dismissed with no order as to costs.


(N.DHARMADAN) . . . 14.9.90.
MEMBER(J)


(M.Y.PRIOLKAR) 14.9.90
MEMBER(A)