

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 232/89

Transfer Application No:

DATE OF DECISION 13-12-93

Rajaram Shankar Gawade Petitioner

Shri S.P.Kulkarni Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri S.S. Karkera Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Smt.~~ Smt. L.Swaminathan, Member(J)

The Hon'ble Shri

1. ~~Whether Reporters of local papers may be allowed to see the Judgment?~~
2. To be referred to the Reporter or not ? yes
3. ~~Whether their Lordships wish to see the fair copy of the Judgment?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? NO

Lakshmi Smt. L.
(Smt. L.Swaminathan)
Member(J)

(5)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.232/89

Rajaram Shankar Gawade

...

Applicant

vs

Union of India
through the Secretary
Ministry of Defence
Production, New Delhi.

...

Respondents.

Coram: Hon'ble Smt. L.Swaminathan, Member (J)

Appearances:

Shri S.P.Kulkarni, Advocate
for the applicant.

~~Shri S.S. Karkera for~~
Shri P.M.Pradhan, Advocate
for the respondents.

Dated: 13-12-93

Oral Judgement

(Per: Hon'ble Smt.L.Swaminathan, Member(J))

The applicant has filed this application claiming that the special pay of Rs. 100 per month granted to the Assistant Foreman (Non-technical) in view of the separate pay scale should be reckoned as pay with the consequential benefits flowing from such fixation of the pay.

2. The applicant is Assistant Foreman in the Grade of Rs. 550-750. It is not disputed that this grade was higher than the grade of Chargeman Gr.I (NT) and was in fact a feeder post to the promotion to the cadre of Asstt. Foreman (NT). However, it appears that the 4th Pay Commission had recommended the same scale of pay, namely, Rs.550-750 for both the grades of Chargeman Gr.(I) (NT) and Assistant Foreman (NT). In order to rectify this anomaly, the Ministry of Defence, vide item 7 of the Order, MPF Ambernath Part I dated 2-1-81, amended the CDS (RP) Rules, 1973. The following amendment was made to the Factory Order Pt. I No. 166 dated 17-5-77 by adding the words "in lieu of separate higher pay

scale " after the words " Rs.100/- P.M." in the pay scale of Asstt. Foreman (NT). This amendment was notified on 17-12-1980. The respondents have reckoned this special pay of Rs. 100/- per month as basic pay for all purposes, including ~~for~~ TA/DA, Pension, Gratuity and House Rent Allowance. The grievance of the applicant is that the special pay of Rs.100/-P.M. was, however, not taken into account as part of his basic pay for the purpose of boosting on basic pay and interim relief, while fixing his pay in the revised pay scale with effect from 1-1-1986.

3. The learned counsel for the applicant contends that the special pay in this case should be taken as part of the pay under FR - 9 (21) (a) (i) of the rules. On the other hand, the learned counsel for the respondents states that having regard to the provisions of FR 9 (25) read with FR 9 (21)(9)(ii), the special pay paid to the applicant in lieu of separate higher pay scales cannot be considered as part of his basic pay.

4. The definition of 'special pay' as given in FR 9 (25) 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. Admittedly, the special pay granted in the instant case does not fall within the provisions of FR 9 (25).

5. The issue, therefore is whether this special pay of Rs.100/-P.M. in lieu of separate higher pay scale duly sanctioned by the Government of India to the cadre of the Asstt. Foreman (NT) falls within the provisions of FR 9 (21)(a) (i) or not. The orders regarding grant

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of special pay to various cadres of government servants for the fixation of pay is dealt with in Appendix 8 of Swamy's Compilation F.R.S.R. (1992 edition) Pt. I of General Rules, Page 512. The Ministry of Finance OM No. 6(1)E-III/B/85 dated 25th Feb. 1965 deals with the treatment of special pay sanctioned in lieu of separate higher pay scale for the purpose of fixation of pay on promotion. The learned counsel for the respondents could not produce any ^{LS.} ~~other~~ relevant rules on the question of treatment of special pay which has been granted in lieu of separate higher pay scale for the purposes of boosting of pay, which is under consideration here. The learned counsel for the applicant has urged that on the analogy of the provisions contained in the Ministry of Finance OM dated 25th Feb. 65 the special pay sanctioned in lieu of separate higher pay scale should be taken into consideration as part of the basic pay in the instant case also.

6. FR 9 (21) (a) (i) reads as follows:-

"Pay means the amount drawn monthly by a Government servant as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre".

The special pay granted in the instant case is in lieu of separate higher scale in respect of the post held by him. The Government has duly sanctioned this amount to the persons in the cadre and grade of Asstt. Foreman (NT) due to the anomalous position mentioned above. Therefore, having regard to the provisions of FR 9 (21) (a) (i), it is possible to take the view that the special pay sanctioned for the post of Asstt. Foreman (NT) is pay which he is entitled to ^{LS.}

by reason of his ^{18.}position in that cadre. This special pay has been duly considered and sanctioned by the Govt. of India to the persons holding the post of Asstt.Foreman (NT). It may also be noted that the special pay has been taken into consideration by the Government for all other purposes, like HRA, DA & Interim Relief as part of the pay. I do not, therefore, see any reason why, in the absence of any specific provision, the special pay cannot be considered as part of the basic pay in this case.

7. In the result the application succeeds and is allowed. The respondents are directed to refix the applicants pay, treating the special pay as part of his basic pay for calculating his revised pay with effect from 1-1-1986, with consequential benefits including retirement benefits. The respondents shall take the necessary action within a period of six months from the date of receipt of a copy of this order.

8. The application is disposed of with the above directions. No order as to costs.

Lakshmi Swaminathan
(Smt. L. Swaminathan)
Member(J)