

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 354/2000

Date of Decision *3rd June 2003*

V.Ranganatha Rao

Applicant

Shri S.P.Inamdar

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the
Respondents

CORAM :

The Hon'ble Shri B.N.Singh Neelam, Vice Chairman

The Hon'ble Shri V.Srikantan, Member (A)

- (i) To be referred to the reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*
- (iii) Library *Yes*

V. Srikantan
(V.SRIKANTAN)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.354/2000

Dated this the 3rd day of June 2003.

CORAM : Hon'ble Shri B.N.Singh Neelam, Vice Chairman

Hon'ble Shri V.Srikantan, Member (A)

V.Ranganatha Rao,
Junior Time Scale Group 'A'
Sr.Superintendent of Post Offices,
Sangli Division,
Sangli.

...Applicant

By Advocate Shri S.P.Inamdar

vs.

1. Union of India
through the Director General/
Secretary, Deptt. of Posts,
Ministry of Communications,
Dak Bhavan, New Delhi.
2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai.
3. The Postmaster General,
Goa Region, Panaji.
4. The Director of Accounts
(Postal), Nagpur.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri V.Srikantan, Member (A)}

In this application the applicant has sought for quashing of the order dated 3.1.2000 (Ex.A-1) and for direction to the respondents to count the Special Pay received by the applicant while fixing his pay in JTS Group 'A' by applying provisions of FR.22-1(a)(i) and to direct the respondents to fix his pay accordingly and pay arrears with 18% interest.

2. The brief relevant facts are that the applicant was working as Assistant Director (PLI) from 5.6.1995 to 31.8.1998 and was drawing a Special Pay of Rs.200/-p.m. which was attached to this post. The applicant was promoted to the Group 'A' (JTS) cadre on regular basis and posted as Sr.Suptd. of Post Offices and joined in the new post on 4.9.1998 (Ex.A-5). The regular pay slip in respect of the applicant was received on 5.8.1998 followed by correction dated 16.9.1999 (Ex.A-11) and the pay of the applicant has been fixed in Group 'A' JTS cadre without taking into account the special pay drawn by the applicant as Assistant Director in Group 'B' cadre. Accordingly, the applicant submitted a representation on 25.8.1999 for fixation of pay in JTS Group 'A' cadre after taking into consideration the special pay drawn by him in PSS Group 'B' cadre. However, the applicant was informed vide letter dated 3.1.2000 that the pay of the applicant has been correctly fixed in the Group 'A' JTS cadre. Being aggrieved, the applicant has filed this OA.

3. The contention of the applicant is that in terms of FR.22 I (a)(i) the pay drawn in the lower Group 'B' cadre was required to be considered for fixing the pay in the Group 'A' JTS post subject to the following two conditions :-

(a) A Special Pay in lower post should have been granted in lieu of a separate higher scale.

(b) Special Pay should have been drawn continuously for a minimum period of 3 years.

The brief relevant facts are that the applicant was working as Assistant Director (R1) from 1.6.1997 to 31.3.1998 and was drawing a Special Pay of Rs.200/- p.m. which was attached to this post. The applicant was promoted to the Group 'A' UTS cadre on regular basis and posted as Sr. Deputy of Post Office and joined in the new post on 4.9.1998 (EX-4-5). The regular pay of Rs.100/- p.m. was received on 2.8.1998 followed by sanction dated 16.7.1999 (EX-A-11) and the day of the applicant has been fixed in Group 'A' UTS cadre without regard to account the special pay drawn by the applicant as Assistant Director in Group 'B' cadre. Accordingly, the applicant submitted a representation on 25.8.1999 for fixation of pay in UTS Group 'A' cadre after taking into consideration the special pay drawn by him in Post Group 'B' cadre. However, the applicant was informed vide letter dated 31.1.2000 that the pay of the applicant has been correctly fixed in the Group 'A' UTS cadre. Being aggrieved, the applicant has filed this CA.

The contention of the applicant is that in terms of Rule 16(1) the pay drawn in the lower Group 'B' cadre was reduced to be considered for fixing the pay in the Group 'A' UTS post subject to the following two conditions:

- (a) A Special Pay in lower post should have been granted in lieu of a separate higher scale.
- (b) Special Pay should have been drawn continuously for a minimum period of 2 years.

The applicant contends that he fulfilled both the above mentioned conditions. The applicant has also pointed out that in similar cases decided by the Central Administrative Tribunal, this Tribunal has held that the applicants therein were entitled to pay scale in Group 'A' cadre taking into account the Special Pay drawn by them in Group 'B' posts if they fulfill the condition under FR.22 I (a)(i). This matter had been examined and decided by the Mumbai Bench of the Tribunal in OA.Nos.107/88, 365/90, 560/92, 601/98, 808/96, 809/96, 280/96 and 715/97. He, therefore, contends that the case of the applicant is similar and on all fours with the above mentioned cases and hence the applicant is also entitled for the relief as sought for.

4. The respondents have filed the reply stating that the applicant is not entitled to have his pay fixed in the Group 'A' JTS cadre by taking into account the special pay drawn in the lower Group 'B' post since he does not fulfil the condition prescribed under Section 22 FR.22-I (a)(i). The first condition is that the pay is granted in lieu of a separate higher scale and secondly the applicant should have drawn the spl.pay for a continuous period of three years. The respondents contend that the special pay granted to the applicant in Group 'B' post was not in lieu of separate scale and secondly, that the applicant does not fulfil the condition of having drawn special pay for a continuous period of three years as the applicant has drawn special case only from 5.6.1995 to 31.7.1997 since from 1.8.1997 the special pay was discontinued in terms of Government of India's orders dated 22.4.1998 which order was made effective

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with retrospective effect from 1.8.1997. In terms of this order, only special allowance was payable from 1.8.1997. This being so, the period from 5.6.1995 to 31.7.1997 during which the applicant was paid special pay was less than three years. Accordingly, the applicant is not entitled to the benefit of fixation of pay in the Group 'A' JTS post by taking into account the special pay drawn by him in the lower post.

5. Heard both counsel and perused the documents on record.

6. It is no doubt correct that the applicant would be entitled to have special pay drawn by him in the lower grade post taken into account for fixation of pay in the higher Group 'A' JTS post if the applicant fulfils the two conditions under FR.22 I(a)(i). The respondents, however, contend that the special pay which the applicant was drawing in Group 'B' post was not in *lieu* of a separate higher scale. This contention is, however, not tenable. This matter was considered at length in OA.NOs.808/96 and 809/96 in which orders were passed on 4.4.1997 and it had been held in these orders that special pay drawn by Assistant Director Postal Service is in lieu of higher pay scale and it is not special pay attached to the post because of arduous nature of duties. The second contention of the respondents is that the applicant does not fulfil the second condition under FR.22 I(a)(i) since he had not drawn special pay for a continuous period of three years. It is seen that the applicant had drawn

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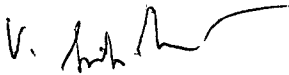
special pay from 5.6.1995 to 31.7.1997 and thereafter drawn special allowance. However, it was argued by the counsel for the applicant that the special allowance was only a change in the nomenclature and that what the applicant continued to draw w.e.f.1.8.1997 to 31.8.1998 was nothing but special pay and in this view of the matter, the applicant was drawing special pay continuously for more than three years. It was also contended by the counsel for the applicant that the orders were issued discontinuing special pay and introducing the concept of special allowance vide order dated 22.4.1998 and hence upto that period the applicant was entitled to treat what he was drawing as special pay.


7. However, this was controverted by the counsel for the respondents who pointed out that though orders were issued by the Government of India on 22.4.1998, this order was made effective from 1.8.1997 and that these orders have not been challenged by the applicant at any stage, although the respondents had filed their reply long back. The counsel for the respondents also pointed out that only special pay is taken into account for the purpose of pay fixation and that as a general rule allowances are not to be taken into account for the purpose of pay fixation and this being so, the special allowance drawn by the applicant from 1.8.1997 cannot be considered for the purpose of pay fixation.

8. We are in agreement with the views of the counsel for the respondents. Special allowance has a different connotation from special pay and hence special allowance cannot be considered for the purpose of pay fixation. It is also seen that the orders

dated 22.4.1998 have been made effective with retrospective effect from 1.8.1997 and this order has not been challenged in this application. Accordingly, the special allowance drawn by the applicant from 1.8.1997 in 'the Group'B' cadre cannot be considered for the purpose of pay fixation in the Group'A' post of JTS. It has therefore to be held that the applicant had drawn special pay in Group'B' post only for the period from 5.6.1995 to 31.7.1997 which period is less than three years. This being so, the applicant has not fulfilled the two conditions prescribed under F.R.22 I(a)(i). In the facts and circumstances, the action of the respondents in not taking into account the special pay while fixing the pay of the applicant in the Group'B' JTS post cannot be faulted. Further, the applicant is not entitled to the benefits of the orders passed by this Tribunal in OA.NOs.107/88, 365/90, 560/92, 601/98, 808/96, 809/96, 280/96 and 715/97 as the case of the applicant is distinguishable the facts being different.

9. For the above reasons, we do not find any merit in the application. Accordingly, the application is dismissed. No costs.


(V.SRIKANTAN)
MEMBER (A)


(B.N.SINGH NEELAM)
VICE CHAIRMAN

mrj.