

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 8TH DAY OF DECEMBER, 1986.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 1542 OF 1986.

Dataram Gangaram Sawant,
Age Major, Occupation:
Service in Civil Aviation
Department, resident of Sambre,
Tal. & Dist: Belgaum.

.. Applicant.

v.

1. The Secretary,
Ministry of Tourism
and Civil Aviation,
Government of India,
New Delhi.

2. Director General of Civil Aviation,
Block-II, East, R.K. Puram, New Delhi-66.

3. Regional Director,
Civil Aviation Department,
Bombay Region, Airport,
Bombay-99.

.. Respondents.

(By Sri M. Vasudeva Rao, Standing Counsel)

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This application coming on for hearing this day, Vice-Chairman made the following:

ORDER

In this transferred application received from the Court of the Munsiff, Belgaum under Section 29 of the Administrative Tribunals Act of 1985 the applicant has sought for a direction to the respondents to pay him the arrears of pay of Rs. 2956-30.

2. For the period from 1-10-1984 to 31-5-1986 the applicant was working as a Senior Clerk in the office of Aerodrome Officer, Civil Aerodrome, Belgaum. He claims that during that period with which only we are concerned, he had been entrusted with duties and responsibilities of a complex nature, higher than those that were normally expected to be discharged by him as a senior clerk. On this basis, he claims that he was entitled for a special pay of Rs. 35/- per month

in terms of O.M.No.F.7(52)-E.III/78 dated 5-5-1979 issued by Government and the same had been rightly sanctioned to him by the competent authority. But, on 28-9-1984/1-10-1984 the Regional Director, Bombay Region, Bombay ('Director') had illegally disallowed the same from 30-9-1984 . He has asserted that even after the said order till 31-5-1986, he had been entrusted with the duties and responsibilities of a complex nature, higher than those normally expected of him as a senior Clerk and he was, therefore, entitled for payment of special pay in terms of the order of Government for the said period aggregating to Rs.2956-30. On 19-6-1985 the applicant filed O.S.No.383/1985 in the Munsiff's Court for a decree for Rs.2956-30 and for other reliefs. But, at the hearing to-day Sri Dataram Gangaram Sawant, the applicant in the case appearing in person confined his claim only for payment of special pay at the rate of Rs.35/- ^{per month} for the period 1-10-1984 to 31-5-1986 and did not press the other claims before us. We, therefore, deal with this claim only.

3. In their written statement filed before the Munsiff Court, the respondents have asserted that the applicant had been permitted to handle cash for which he was allowed to draw a special pay of Rs.30-00 per month for the very period the claim is made by the applicant. Hence, the respondents contend that the applicant was not entitled for payment of a second special pay for one and the same period.

4. Sri Sawant contends that on the terms of the order made by Government on 5-5-1979, he was entitled to a special pay of Rs.35/- per month when he had discharged the duties and responsibilities of a complex nature higher than those normally expected of an Upper Division Clerk and the payment of another special pay for handling cash was irrelevant to determine his claim.

5. Sri M.Vasudevarao, learned Additional Central Government Standing Counsel appearing for the respondents contends that a civil servant cannot claim more than one special pay at one and the same time and since the applicant had been paid a special pay of Rs.30/-

per month for handling cash he cannot claim for payment of another special pay of Rs.35/- per month. Sri Rao also contends that the civil Aerodromes of Government had become a part of National Airport Authority (NAA) under the National Airport Authority Act of 1985 (Central Act 16/85) (NAA Act) from 1-6-1986 and the applicant's claim had devolved on the NAA over which this Tribunal had no jurisdiction to adjudicate, as held by us in S.NARASAYYA v. THE SECRETARY, MINISTRY OF CIVIL AVIATION AND TOURISM, NEW DELHI AND ANOTHER (Application No.223 of 1986 decided on 20-10-1986). In the very nature of things it is necessary to examine this preliminary objection of Sri Rao first.

6. Under the NAA Act, the NAA a statutory authority has been constituted from 1-6-1986. But, in the present case, the claim of the applicant pertains to a period before the NAA was constituted and he was a civil servant of the Union of India. His claim had also crystallised against Government before the NAA was constituted. If that is so, then the constitution of the NAA from 1-6-1986 does not affect the jurisdiction of this Tribunal to deal with this transferred application as in Narasayya's case. For these reasons, we see no merit in this objection of Sri Rao and we reject the same.

7. The claim of the applicant is founded on an order made by Government on 5-5-1979 which reads thus:

"Copy of O.M.No.F.7(52)-E.III/78 dated the 5th May, 1979 from the Ministry of Finance (Department of Expenditure) New Delhi.

Sub: Grant of Special pay of Rs.35/- per month to the Upper Division Clerks in the non-secretariat Administrative Offices.

The undersigned is directed to state that a committee of the National Council (JCM) was set up to consider the request of the staff side that in the non-secretariat Administrative Offices since a certain percentage of Upper Division Clerks in the scale of Rs.330-560 is handling cases of complex nature involving deep study and competence to deal with these cases, a certain number of posts of UDCs should be upgraded to the grade of Assistants in the scale of

Rs.425-800

"Rs.425-800 in the Secretariat. The Committee's Report which was finalised on the 27th January, 1979 was adopted by the National Council at its meeting held on 2nd and 3rd February, 1979. Pursuant to the agreed conclusions arrived in the Committee, the President is pleased to decide that the upper Division Clerks in the non-Secretariat Administrative Offices attending to work of a more complex and important nature may be granted a special pay of Rs.35/- per month. The total number of such posts should be limited to 10% of the posts in the respective cadre and these posts should be identified as carrying discernible duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks.

2. These orders take effect from the date of issue."

Under this order, the competent authority must identify the posts that involve duties and responsibilities of a complex nature, higher than those normally expected of an Upper Division Clerk. When once that is done and a civil servant is posted against such post, such a civil servant till he holds that post ^{he performs} or the duties and responsibilities of a complex nature higher than those normally expected of him, ^{he} automatically becomes entitled for payment of a special pay of Rs.35/ per month. The payment of special pay under this order is subject to the above conditions only and no other. An authority cannot impose any other conditions other than those imposed by Government in its order dated 5-5-1979. The order made by Government on 5-5-1979 does not hedge it or make it a condition that special pay should not be paid to a civil servant if he is allowed to draw another special pay for handling cash. Sri Rao has not pointed any Rule or order of Government that expressly or impliedly disallows a civil servant to draw a special pay in terms of the order dated 5-5-1979 ^{as to} from drawing the same on his drawing another special pay like the special pay for handling cash. From this it follows that the theory propounded by the respondents that a civil servant was not entitled to draw more than one special pay except for its assertion, has no basis in law or fact.

8. When a civil servant discharges the duties and responsibilities of

of a complex nature higher than those normally expected of an Upper Division Clerk and also handles cash, we do not see as to why such a civil servant should be denied the two special pays for performing two special nature of duties which are different to each other and are not related to each other also. Even otherwise, the grant or payment of one special pay is not dependent on the grant or payment of another special pay for performing another special nature of duty like handling cash. We are, therefore, of the view that the defence urged by the respondents has no merit and we reject the same.

9. Whether the applicant has really discharged the duties and responsibilities of a complex nature higher than those normally expected of an Upper Division Clerk for the period from 1-10-1984 to 31-5-1986 has necessarily to be examined and decided by the competent authority at any rate in the first instance. On this aspect, the parties are at variance. When that is so, we can only direct the authority to re-examine the claim of the applicant with due regard to the declaration made by us and extend the benefit of special pay if he finds that he had really discharged the duties and responsibilities of a complex nature. We need hardly say that after the authority makes its order, if the applicant is still aggrieved by the same, he is entitled to approach the competent authority for relief.

10. In the light of our above discussion, we make the following orders and directions:

- (1) We declare that the applicant is entitled to the special pay of Rs.35/- per month in terms of the Government order dated 5-5-1979 if he has discharged the duties and responsibilities of a complex nature higher than those normally expected of an Upper Division Clerk for the whole or any lesser period from 1-10-1984 to 31-5-1986.
- (2) We direct the respondents to examine the claim of the applicant for payment of special pay of Rs.35/- per month with reference to their records and orders made from time to time and the duties performed by the applicant and make him available the amounts to which he is entitled to for such period as is found due by them.

11. Application