

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(80A)
Indiranagar
Bangalore - 560 038

Dated : 28 SEP 1988

APPLICATION NO. 462/87(F)

Applicant

Shri B.S.G.K. Setty

V/s

Respondent

The Secretary, Department of Telecommunications,
New Delhi

To

1. Shri B.S.G.K. Setty
No. 558, 9th 'A' Main
Indiranagar 1st Stage
Bangalore - 560 038
2. Dr M.S. Nagaraja
Advocate
35, (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 035
3. The Secretary
Department of Telecommunications
Sanchar Bhavan
20, Ashoka Road
New Delhi - 110 001
4. Shri M.S. Padmarajaiah
Central Govt. Staff Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy each of the ORDERS dated 27-4-88, 23-6-88
and 7-9-88 passed by this Tribunal in the above said application.

Encl : As above

for DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 27TH DAY OF APRIL, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan, .. Member(A).

APPLICATION NUMBER 462 OF 1987.

B.S.G.K. Settty. .. Applicant.

(By Sri S.K. Srinivasan, Advocate)

v.

The Secretary,
Department of Telecommunications,
New Delhi.

(By Sri M.S. Padmarajaiah, SCGSC)

.. Respondent.

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Justice K.S. Puttaswamy, Vice-Chairman.

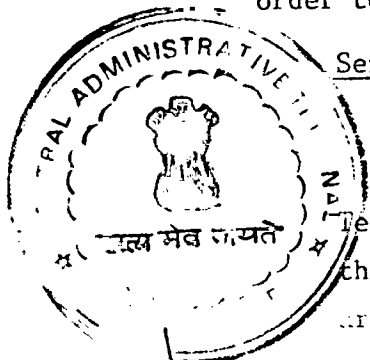
ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. On the recommendations of the Cadre Review Authority for Cadre Review of Indian Telecommunication Service Group-A Officers of the Department of Telecommunications (CRA), Government in exercise of its executive powers, in its order No.6-17/85-TE.I dated 26/28th November, 1985 (Annexure-D) sanctioned the creation and upgradation of various posts of the Department as indicated in that order. That order to the extent which is material for this case reads thus:

Senior General Managers (Rs.2500-2750 with Special Pay
of Rs.250/- per month).

Three (3) posts of General Manager of the Metro Telephones Districts in Bombay, Delhi and Calcutta and the post of Director of Telecom. Research Centre which are at present carried in SAG Level-I or II



(Rs.2250-2500/2500-2750) will hence forth be in SAG Level-I (Rs.2500-2750) with Special Pay of Rs.250/- per month. The posts of G.Ms will be redesignated as Senior General Managers.

This part sanctioned a special pay of Rs.250-00 per month for those holding the posts detailed therein. In pursuance of this order those who were holding the posts or posted against them appear to have drawn a special pay of Rs.250-00 per month.

3. From 28-11-1985 to 30-9-1986 the applicant was working as the Deputy Director General (DDG) in the office of the Secretary to Government, Department of Telecommunications, New Delhi. On 30-9-1986 he has retired from service on attaining superannuation.

4. In the general revision of pay scales granted to all civil servants of the Union of India, the pay of the applicant had been fixed as on 1-1-1986 in the appropriate scale and he had been allowed the retiral benefits on that basis from 1-10-1986.

5. When in service and thereafter, the applicant claimed that he should have been posted against any of the posts carrying the special pay of Rs.250-00 and consequent benefits in the revision of his pay from 1-1-1986 and retirement should be extended to him. In its office Memorandum No.315-24/85-STG-III dated 15-1-1987 (Annexure-C) Government had rejected the same. Hence, this application reiterating his very claim made before Government.

6. This application was originally filed on 13-3-1987 before the Principal Bench as O.A.No.330 of 1987 and on an application made by the applicant, it has been transferred to this Bench and is registered as Application No.462 of 1987.

7. In its reply, the respondent had urged that the application was barred by time. On merits the respondent had urged that the applicant who had not performed the duties of any of the posts to



which special pay was attached, was not entitled for the same and that his non-posting against any one of those posts when in service was within its powers, legal and justified.

8. Sri S.K.Srinivasan, learned Advocate had appeared for the applicant. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel had appeared for the respondent.

9. Sri Srinivasan had contended that the posts to which special pay of Rs.250-00 was sanctioned by Government were promotional posts and the applicant, being senior to some of the officers posted against them, must now be deemed to have been posted against any one of them and all the consequential and financial benefits flowing from the same, extended to him. In support of his contention, Sri Srinivasan has strongly relied on the ruling of this Tribunal in R.KAPUR v. UNION OF INDIA AND ANOTHER (ATR 1986 CAT 31) and the rulings of the Supreme Court which have explained the new dimension of Article 14 of the Constitution, namely arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution.

10. Sri Padmarajaiah refuting the contention of Sri Srinivasan had sought to support the action of Government.

11. The claim of the applicant for special pay and consequential benefits was rejected by Government on 5-1-1987 and this application was made before the Principal Bench on 13-3-1987 which is within a year of the order of Government. Hence, this application is in time. We see no merit in the vague and general objection of the respondent to the contrary. We, therefore, reject the same.

12. On special pay of Rs.250-00 sanctioned by Government in its order dated 28-11-1985, the CRA recommended thus:

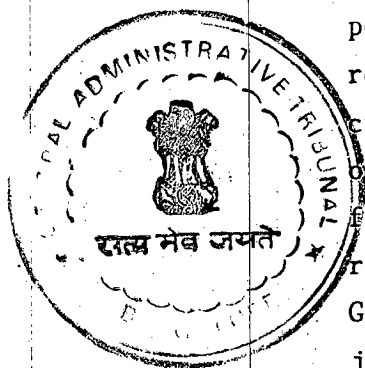
4. Higher Grades (Rs.3000/- fixed, SAG level-I plus Special Pay of Rs.250-00 p.m)



4.1. The Telecommunications Board comprises one Chairman (Rs.3500/- p.m.) and five Members (Rs.3000/- fixed). The post of Chairman is filled up under the Central Staffing Scheme. Out of the five posts of Members, four are cadre posts of the Indian Telecommunication Service. The Cadre Controlling Authority has not proposed any change in this regard.

4.2. The cadre controlling authority has pointed out that at present only four posts are available in the grade of Rs.3,000-00 fixed to the cadre officers against a total strength of nearly 2400 Group 'A' posts. Therefore, in order to improve career prospects of the Service, the strength of higher grade posts needs to be increased. It has further pointed out that in each of the three Metropolitan Districts of Bombay, Delhi and Calcutta, there are at least 3 more SAG officers apart from the General Manager. In these proposals, 2 more SAG posts for Bombay, 2 more for Delhi and 1 for Calcutta have been proposed. Hence, each G.M in the three Metro Districts will be controlling at least 4 SAG level officers. In order to ensure effective supervision and control, the General Manager's post should be in a higher grade. Similarly the Director of the Telecom Research Centre is supervising the work of 5 Additionnal Directors in SAG. Hence, this post should also be in a higher grade. It has been proposed by the cadre authority that the above four posts should be operated in SAG level-I (Rs.2500-2750) and allowed a special pay of Rs.250-00 per month.

4.3. At present, the Metro Districts of Bombay, Delhi and Calcutta have 5, 4 and 4 posts in SAG (including the post of General Manager). In this 'brief', we are recommending the strengthening of these Districts by creating one more post of Additional GM in SAG in each of these three Districts. Thus, each will have at least four Additional General Managers in SAG whose work is required to be supervised and controlled by the concerned General Manager. Functionally, therefore, there is adequate justification for upgrading these 3 posts from SAG (Rs.2250-2500/2500-2750) to SAG level (Rs.2500-2750) plus a special pay of Rs.250-00 p.m. Similarly there is adequate



justification for upgrading the post of Director, TRC from SAG to SAG level-I plus a special pay of Rs.250-00 p.m. Creation of these four special pay posts will marginally improve the promotion prospects of officers working in SAG level posts. Such posts have been created in other Central Services like IRS (Income Tax), IRS (Customs & Central Excise) IDAS etc.

The CRA summed up its recommendations on this thus:

8. Summary of Recommendations & Threshold Analysis.

8.1 Consequent to the recommendations made in this 'Brief', the existing proposed and recommended strength of the Indian Telecommunication Service is given in Table IV:-

T A B L E - IV

The existing, proposed and recommended cadre structure of the Indian Telecommunication Service Group-A

Sl. No. Grade/Designation	Existing strength as on 1-1-1984	Proposed strength by the C.C.A.	Recommended by DP& T
<u>1. Higher Grade</u>			
Member (Rs.3000/-fixed)	4	4	4
Senior General Manager (Rs.2500-2750 + Spl.Pay of Rs.250=00p.m.	-	4	4
xx	xx	xx	

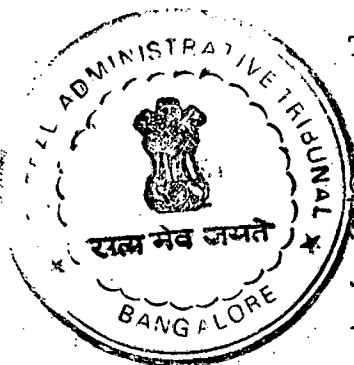
8.3 Threshold profiles as on 1-1-1985 in respect of the service based on the existing, proposed and recommended structure are given in Table VI below:-

T A B L E -VI

Threshold analysis of the Indian Telecommunication Service Group 'A'

Grade	<u>Number of years for promotion to the grade</u>		
	<u>Existing</u>	<u>Proposed</u>	<u>Recommended</u>
SAG level-II	22	20	21
JAG	9	9	9

8.4 To sum up, following recommendations are placed before the Cadre Review Committee for favour of consideration:



- i) Upgradation of the 3 posts of G.M. for the Metro Districts of Bombay, Delhi, Calcutta and the post of Director, Telecom Research Centre from SAG (Rs.2250-2500/2500-2750) to SAG level I (Rs.2500-2750) plus special pay of Rs.250-00 p.m.

Accepting these recommendations, Government issued its order on 28-11-1985.

13. The CRA in its recommendations or Government in its order, had not defined the term 'special pay'. But, the concept of 'special pay' or that term are not an unknown concept or term evolved for the first time by the CRA or by Government on 28-11-1985.

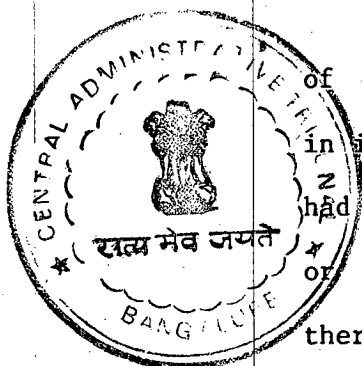
14) Rule 9(25) of the Fundamental Rules ('FR') which are in force from 1-1-1922 and are statutory defines that term thus:

(25) Special Pay 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, and includes non-practising allowance granted to doctors in lieu of private practice.

Under this provision, special pay is an additional pay granted to an incumbent of a post which involves specially arduous nature of duties or a specific addition to the work or responsibility, and includes practising allowance granted to doctors in lieu of private practice.

15. When the CRA recommended for grant of special pay to holders of certain posts and Government accepted and sanctioned the same in its order dated 28-11-1985 both of them, without an iota of doubt, had used that term only as defined in Rule 9(25) FR and had not given or contemplated any other meaning to that term at all. I have, therefore, no hesitation in holding that the CRA and Government had sanctioned 'special pay' only for the purposes and object of FR 9(25) and no other. From this it necessarily follows that what is



adumbarated in this Rule must be decisive in deciding the question.

16. In deciding the scope and ambit of Rule 9(25) Rule 5A FR which confers power on Government to relax the operation of any of the Rules in individual cases has no application at all. Rule 5A does not control Rule 9(25) of the Rules.

17. In para 4 of its recommendations, the CRA had expressed that the posts to which special pay, was attached, had to be treated as promotional posts. The CRA in its final recommendations or Government in its order do not expressly say so. But, notwithstanding of what is stated by the CRA, we cannot treat the posts to which 'special pay' is attached as promotional posts or that one posted against them as promoted from a lower post to a higher post. Undoubtedly an officer posted to a post with 'special pay', gets certain additional benefits. But, by reason of that only, it is not possible to hold that they are promotional posts.

18. Before considering the cases relied on by counsel for the applicant, it is apt to recall the pregnant observations of Chinnappa Reddy, J. in AMAR NATH OM PRAKASH AND OTHERS v. STATE OF PUNJAB AND OTHERS (AIR 1985 SC 218) on the law of precedents. On precedents and applying the ratio decidendi of a decided case, the learned Judge warned thus:

11. There is one other significant sentence in Sreenivasa General Traders v. State of A.P (supra) with which we must express our agreement. It was said, "with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as Statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co.Ltd. v. Horton, 1951 AC 737 at p.761 Lord Mac Dermot observed:



"The matter cannot of course be settled merely by treating the ip sissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge". In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294, Lord Reid said "Lord Atkin's speech..... is not to be treated as if it was a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J., as if it were an Act of Parliament". And, in *Herrington v. British Railways Board* (1972) 2 WLR 537 Lord Morris said:

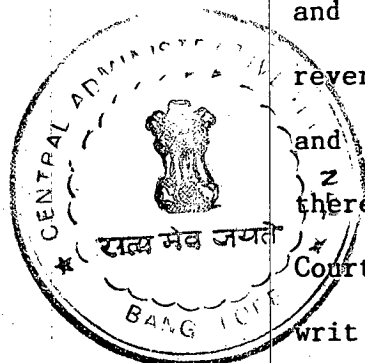
"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

Also see the passage under the caption "Judgments must be read in the light of the facts of the cases in which they are delivered" on pp.42 to 45 in "Precedents in English Law" by Rupert Cross (III Edition). Bearing the above, I will now examine the cases relied on for the applicant.

19-1. In *PADMANABHAN AND OTHERS v. DIRECTOR OF PUBLIC INSTRUCTION AND OTHERS* (AIR 1981 SC 64) the Supreme Court was dealing with the legality of posting of Padmanabhan and others from the posts of Assistant Educational Officers (AEOs) to the posts of High School Assistants (HSAs) in the State of Kerala.

19-2. While Padmanabhan and others, who were the appellants maintained that the posts of AEOs which they were holding, were higher and promotional posts and their postings as HSAs were in truth reversions, the State of Kerala maintained that the posts of AEOs and HSAs were equivalent posts and were inter-changable and, therefore, there were no reversions to lower posts. The Kerala High Court accepted the case of the State of Kerala and dismissed the writ petitions filed by Padmanabhan and others.

19-3. On appeals, the Supreme Court examining the nature of



the duties and powers of AEOs and HSAs and all the statutory and other provisions bearing thereto, disagreeing with the Kerala High Court ruled that the posts of AEOs carrying a special pay of Rs.50/- per month were promotional posts and allowed their appeals. In reaching its conclusions, the Supreme Court relied on Rule 12(31) of the Kerala Service Rules (KS Rules) which defined the special pay thus:

12. (31) Special Pay means an addition of the nature of pay to the emoluments of a post or of an officer granted in consideration of the following:

- (a) Where a post would call for a higher scale of pay in view of the additional and/or higher responsibilities attached to it; or
- (b) Where the nature of work is specially arduous; or
- (c) Where an officer has to attend to work in addition to normal duties attached to his post.

Clause (a) of this rule provides for reckoning the higher scale of pay attached to the post as also special pay under Rule 12(31) of the KS Rules. On this, the Court also distinguished the earlier ruling of the Court in P.G.JOSHI v. DIRECTOR GENERAL, POSTS AND TELE-GRAPHS, NEW DELHI [(1975) 4 SCC (L & S) 330: (1975) 2 SCR 115] which interpreted Rule 9(25) FR.

19.4. The fact situations and the Rules that came up for consideration and more so the questions that arose for determination in Padmanabhan's case are entirely different to the fact situations, the Rules and the questions that arise for determination in the present case. Every one of the observations made in Padmanabhan's case must be read in the context of the fact situations, the Rules that came up for consideration. I am of the view that the principles enunciated in Padmanabhan's case are distinguishable and do not bear on the precise point that arises for our determination in this case. On the other hand, the principles enunciated in Joshi's case



which has not been departed in Padmanabhan's case governs the question.

20. In Kapur's case this Tribunal was dealing with the transfer of Kapur from the post of Director General (Special Investigation) and Director of Inspection, New Delhi which carried a special pay of Rs.250-00 p.m. to the post of the Director of Inspection (P and P), New Delhi, which did not carry any special pay. The transfer was assailed by Kapur on the ground that the same had been done as a measure of punishment. In sustaining that case, this Tribunal also relied on the fact that the later post to which he had been transferred and posted did not carry a special pay of Rs.250-00 which the former carried. But, that is not the position in the present case. In Kapur's case, the Tribunal had not held that the post carrying a special pay was a promotional post and a senior officer was entitled to be posted as of right and if not so posted, the senior officer must be deemed to have been posted to that post as of right as urged by the applicant. The observations of the Bench on 'special pay' should only be read as made in the context of deciding whether the transfer was as a measure of punishment or not and as not supporting the very broad proposition urged for the applicant. I am, therefore, of the view that the ratio in Kapur's case does not really bear on the point.

21. On the true meaning of the term 'special pay' defined in Rule 9(25) FR, only a person who has been posted and had actually worked shouldering additional responsibilities was entitled for 'special pay'. The entitlement for special pay arises only when a person had been posted to a post which carries a special pay and that person had actually discharged the additional duties of that post and not otherwise. An officer who is not posted and had not worked for whatever reason that be, whether he is a senior or junior,



cannot claim 'special pay' if he had not been posted and had not actually discharged the onerous duties of that post.

22. On facts, there is no dispute that from 28-11-1985 to 30-9-1986 on which day the applicant retired from service, he had not been posted to any of the posts which carried a special pay of Rs.250-00 p.m. and had not discharged the duties of any one of those posts. If that is so, then the claim of the applicant for the same cannot be upheld.

23. As to who should be posted to man a post which carries a special pay is primarily for the appointing authority to examine and decide. In my view courts and Tribunals which are illequipped to decide on the same should not trench on the same, except in exceptional cases on well settled grounds only. The fact that a person posted against a post carrying a special pay derives some advantageous immediately as also on his retirement, does not in any way alter the character of the post or the power of the appointing authority to post a person against such a post. For whatever reason that be, the applicant was not posted to any one of the posts carrying 'special pay' till he retired from service. In these circumstances, the only inference to be drawn is that the appointing authority did not find it proper to post the applicant to man any of the posts which carried a special pay. From this also, I cannot uphold the claim of the applicant.

24. In my view, the claim of the applicant either directly or indirectly does not attract the vice of arbitrariness to invoke the new dimension of Article 14 of the Constitution. I see no merit in this contention of the applicant.

25. I have so far examined the merits and found against the applicant. As noticed earlier, Government accorded its sanction



to grant special pay on 28-11-1985. From that date to 22-9-1986 on which day only he made his very first written representation, the applicant did not claim for posting him to any of the posts which carried a special pay and was content to work as DDG which did not carry any special pay. The time available for Government was so short to examine and post the applicant to any one of the posts and it is now idle to contend that notwithstanding the same, he should be deemed to have been so posted and the benefits attached to the same notionally extended to him. In my view, these facts themselves justify me to decline to interfere, even if there is any merit in the claim of the applicant.

26. I have carefully read the dissenting opinion proposed to be delivered by the Hon'ble Sri P.Srinivasan, Member(A). For the very reasons stated in my opinion, I regret my inability to subscribe to his view that a post to which a 'special pay' is attached is a promotional post. But, if that view of Sri P.Srinivasan is held to be correct view, then I concur with his other view that the case of the applicant requires to be considered by Government as directed by him in his opinion.

27. Before parting with this case, I deem it proper to observe that to remove heart burns and needless claims, it is desirable for Government to evolve a criteria for posting officers to posts carrying a special pay urgently, publish the same and scrupulously follow the same. Such a course is in the interest of sound public administration and the public servants also. I do hope and trust Government will earnestly examine this and evolve the criteria.

28. As all the grounds urged for the applicant fail, this application is liable to be dismissed. I, therefore, dismiss this application. But, in the circumstances of the case, I direct the parties to bear their own costs.

np/

sdl-
VICE-CHAIRMAN
27/9/88

Shri P. Srinivasan, Member (A)

ORDER

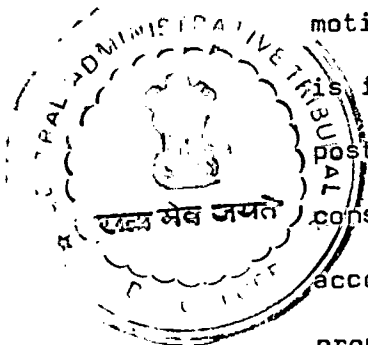
I have had the benefit of reading the judgment ⁱⁿ draft prepared by the Hon'ble Vice-Chairman in this case. With utmost respect, for reasons to be stated presently, I am obliged to disagree with the conclusions reached by him.

2. The applicant, who retired as Deputy Director General, Department of Telecommunications, a post in the Senior Administrative Grade ('SAG' for short) in the scale of Rs.2,500-2750 belonging to the Indian Telecom Service Group A (ITSA) complains that he was wrongly denied promotion to a post in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250/- per month ('Special Pay Post' for short), when four such posts were created in September 1985, though persons Junior to him in SAG were so promoted.

3. The main question for determination in this application is whether the aforesaid Special Pay Posts created in September 1985 were higher than those in SAG without Special Pay, so that appointment to one of the Special Pay posts constituted a promotion to officers in SAG without Special Pay. If the answer is in the affirmative, then the applicant who was holding a post in SAG in September, 1985 was surely entitled to be considered for promotion to one of the Special Pay Posts in accordance with his seniority in SAG and if found fit to be promoted to one of them when they were first filled in.

The approach of the learned Vice-Chairman to

P. Srinivasan



to the problem is also the same. But, he has recorded a finding that the aforesaid Special Pay Posts were not higher than the posts in SAG and that therefore, appointment to one of the Special Pay Posts did not constitute a promotion of an officer in SAG. On that finding, he has further held that it was upto the authorities concerned to decide who should man the Special ^{Pay} Posts and not for this Tribunal to determine such appointments. On the other hand, as I will attempt to show in the following paragraphs, I am of the view that the Special Pay posts in question were indeed higher and promotional posts and as such, the applicant was entitled to be considered for promotion to one of them on the basis of his seniority and to be so promoted if found fit when his juniors in SAG were promoted to those posts. On the view I am taking, it would be begging the question to say that since the applicant did not actually hold one of the Special Pay Posts prior to his retirement, he cannot be given the benefit of Special Pay while in service and consequential additional retirement benefits such as pension, gratuity etc., on his retirement. If, in fact, he was wrongly kept out of one of the Special Pay Posts while in service and was thereby denied the financial benefits flowing therefrom, it would not be right to say by a circular process of reasoning that because he did not in fact hold such a post he is not entitled to the financial benefits attached to them either during his Service or after retirement. I now proceed to give the reasons which have led me to the view that I have indicated above.



P. S. S. S.

4. The Special Pay Posts in question, were created in September, 1985, as a result of the cadre review undertaken by Government in respect of the ITSA to which the applicant belonged. On the basis of the recommendations of the III Pay Commission accepted by the Central Government, review of cadre prospects once every 3 years was to be undertaken and proposals for creation of posts submitted for the approval of the Central Government to relieve stagnation with adequate functional justification. The Note submitted to the Cabinet along with the proposals of the Cadre Review Committee for the ITS-A, one of which was to create 4 posts in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250 per month may be ^{referred to} ~~referred~~ usefully in this connection: H

"The career advancement prospects of these officers"

the Note says, referring to officers of the ITS-A:

"have been somewhat bleak for the last few years. There has been stagnation especially at Senior Administrative Grade level for periods considered too long and timely corrective action is deemed necessary to boost the morale of the officers

The recommendations of the Third Pay Commission accepted by the Central Government provide, in such situations, for a review of the cadre prospects once every three years and the Departments concerned have to put forward proposals for creation of posts in various cadres keeping in view the functional needs of the organisation and the promotional prospects of the officers for consideration by the Cabinet."

The Note for the Cabinet then goes on to set out the proposals of the Cadre Review Committee. The proposal with which we are



P. S. - 5

concerned, reads as follows:

"Upgradation of 3 posts of General Manager.....
from SAG (2250-2500/2500-2750) to SAG level-I
(2500-2750) plus special pay of Rs.250/- per
month and their upgradation as Senior General
Manager"

(Emphasis supplied)

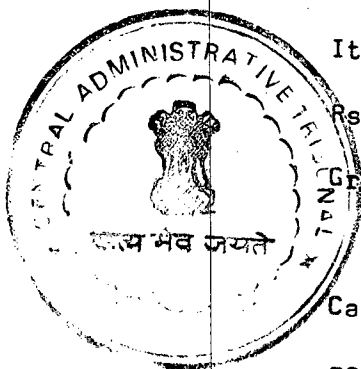
5. The proposals contained in a "Brief" prepared
in the Department of Personnel and Training for the Cadre
Review Committee which ^{was initiated} made the aforesaid proposal, include
the following:

"TABLE-I

Sl. No.	Grade/Designation	Existing Strength as on 1-1-1984.	Proposed strength.	Variation (+ or -) (4 - 3)
1	2	3	4	5
1.	<u>Higher Grades:</u>			
	Member(Rs.3000 fixed)	4	4	Nil
	Senior General Manager (Rs.2500-2750+Spl.Pay Rs.250/-p.m.)	-	4	+4
2.	<u>Senior Administrative</u>			
	<u>Grade</u> (Rs.2250-2500/2500- 2750).	83	136	+53 "

It will be seen that the newly created posts in the grade of
Rs.2,500-2,750 plus Special Pay are placed separately in Higher
Grades above SAG.

6. The "Brief" goes on to explain that in order to "improve"
Career prospects of the Service, the strength of higher grade posts
needs to be increased." The General Manager at Bombay, Delhi and
Calcutta, it was pointed out, would be controlling 4 SAG level
officers (2250-2500/2500-2750) and similarly, the Director of



the Telecom Research Centre, was supervising 5 Additional Directors in SAG. It was proposed, therefore, that these four posts "be operated on SAG level-I(Rs.2,500-2,750) and allowed a special pay of Rs.250/- p.m." In this way, it would appear that the newly created posts with Special Pay of Rs.250/- per month, were contemplated as higher posts above the SAG of Rs.2250-2500/2500-2750, and the holders of these higher posts would actually control persons working in SAG. The creation of these posts with special pay, it was said, would "marginally improve the promotion of officers working in SAG level posts" similar posts having already been created in other Central - Services. This also indicates that the Special Pay posts were regarded as promotional avenues for officers in SAG.

7. In R.KAPUR v. UNION OF INDIA AND ANOTHER (A.T.R. 1986 - C.A.T. 31), though in a different context, the Principal Bench addressed itself specifically to the question whether the post of Director General in the scale of Rs.2,500-2,750 with a Special - Pay of Rs.250/- p.m. also created as a result of a cadre review in the Incometax Department was a higher post than one in the SAG (Rs.2500-2750) without Special Pay. There also 5 Directors of Inspection in the SAG, as in this case, were placed under the Director General. On these facts, the Principal Bench speaking through Justice Madhava Reddy, Chairman, held that, ".....it is clear that the post of Director General is a superior post to that of a Director of Inspection." In my opinion, this view squarely applies to the facts of the present case so far as the position of the Special Pay Posts and the SAG Posts in ITS-A are concerned.



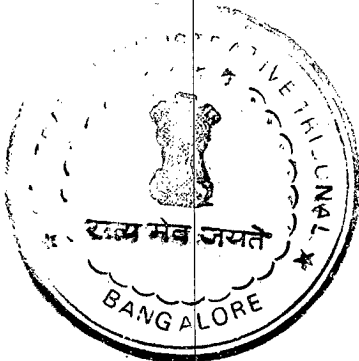
8. It is also significant to note that when the Special Pay Posts were initially sanctioned in this case, they were given a separate designation as Senior General Manager, though this designation was later dropped. That also indicates that the special pay posts were higher posts meant to provide promotional avenues to officers working in SAG Rs.2250-2500/2500-2750 in ITS-A.

9. That the intention of Government in creating the special pay posts was to give promotional avenues, albeit marginally, for officers in the SAG of Rs.2250-2500/2500-2750 is further reinforced by the fact that the Fourth Pay Commission recommended a higher scale of pay for these posts, viz., Rs.7300-7600 as compared to posts without special pay which were placed in the scale of Rs.5900-6700 and these recommendations were accepted by the Government and became effective from 1-1-1986 before the applicant retired from service.

10. It would not seem to be correct to go merely by the definition of Special Pay in FR-9(25) for resolving the dispute in this case, ignoring the circumstances in which the special pay posts were brought into existence. ^{of} ~~in this case.~~

The Fundamental Rules themselves provide for relaxation of the said Rules in suitable cases by the Government (See: FR 5-A).

Essentially special pay as defined in FR-9(25) is meant to cover situations where a person continues in the same post but is called upon to perform more arduous duties or to shoulder additional responsibilities. The facts discussed earlier show



P. S. - 8

that the special pay posts with which we are here concerned, were in fact, ^{M designed} ~~designated~~ to be higher posts, the holders of which were expected to supervise and control the work of SAG officials without special pay. There is nothing ^M ~~preventing~~ Government in the exercise of its executive power from attaching special pay to posts in situations not strictly covered by the provisions of FR 9(25). After all, FR 9(25) only provides a definition of the expression "Special Pay" as used in the Fundamental Rules and that too, "unless there be something repugnant in the subject or context", it does not confer power on the Government to create Special Pay Posts, much less limit such power to the situations set out therein. Clearly the context in which the Special Pay Posts were created in the present case indicates that the special pay attached to those posts would not fall within the definition of FR 9(25).

11. In P.G. JOSHI v. DIRECTOR GENERAL, POSTS AND TELEGRAPHS, NEW DELHI (1975) SCC (L&S) 330, decided by the Supreme Court, the situation as obtaining in this case viz., (1) the posts with special pay having been created as a result of cadre review, the primary object of which was to relieve stagnation in the service and to suggest creation of posts for providing promotional avenues; (2) the functional justification for creation of the special pay posts being that the holders of those posts would supervise and control the work of officers in SAG without special pay; (3) the special pay posts being assigned a higher scale of pay with effect from 1.1.1986 compared to posts in SAG without special pay; and (4) the special pay posts being placed under "Higher G grades" above SAG in the proposal submitted to the cabinet and being initially designated as Senior General Managers when sanctioned, ^M ~~while~~ ^{were} ~~persons in SAG being~~ called just General Managers did not exist. On the other hand, in Joshi's case, the posts carrying special pay were not higher posts and the special pay had been sanctioned specifically in terms of FR 9(25) (a) (see para 11 of judgment at para 333 of the report). The judgment in Joshi's case has, therefore in my view, no application to the present case.



12. For the reasons stated above, I hold that the Special Pay Posts were higher posts to which officers in SAG were to be promoted. That being so, the applicant was clearly entitled to be considered for such promotion when his admitted juniors viz., M/s Satyapal, U.D.N.Rao and S.G.Watwas and others were so considered and promoted.

13. I, therefore, direct the respondents to consider the case of the applicant for promotion to ~~xxx~~ one of the Special Pay Posts from the date his juniors were promoted and if found fit, give the applicant the benefit of Special Pay of Rs.250/- per month from such date and of the revised scale of Rs.7300-7600 applicable to those posts from 1-1-1986 till the date of his retirement and all consequential retirement benefits flowing therefrom. I do not wish to lay down - it is not the function of this Tribunal to do so - the criteria to be applied for such promotion, which is entirely upto the respondents depending on the requirements of the service and the nature of the special pay posts in question.

14. In the result, I allow the application. Parties to bear their own costs.



Sd/-
(P.SRINIVASAN)
MEMBER(A)

kms:

ORDER BY THE BENCH

In this case the applicant has claimed for the benefit of special pay, revision of his time scale of pay from 1-1-1986 and for consequential reliefs.

2. On an examination of the claim of the applicant, the Hon'ble Vice-Chairman has held that the post to which 'special pay' was attached was not a promotional post and his claim for special pay and revision of pay scales was not well founded. But, the Hon'ble Sri P.Srinivasan, Member(A) in his differing opinion has held that the post to which special pay was attached was a promotional post and that his case requires to be examined by Government on that basis.

3. On the differing opinions expressed by the Members of the Bench, the point of difference that arises for determination is 'whether the post to which a special pay of Rs.250=00 p.m. sanctioned by Government was a promotional post or not?

4. In exercise of the powers conferred by Section 26 of the Administrative Tribunals Act, 1985 ('the Act'), we refer the above point of difference to the Hon'ble Chairman to hear the said point either by himself or refer the same to such other member/members as may be decided by him under Section 26 of the Act.

5. We direct the Registrar to submit a copy of this reference along with our differing opinions to the Hon'ble Chairman for his orders under Section 26 of the Act.

6. Call on 23-5-1988 to await the orders of the Hon'ble Chairman.



Sd/-

VICE-CHAIRMAN.

27/5/17

TRUE COPY

Sd/-

MEMBER(A)

for DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
BANGALORE.

APPLICATION NUMBER 462/1987. Date of Decision: 23-8-1988

Shri B.S.G.K. Setty. Applicant.

Vs.

The Secretary, ... Respondent.
Department of Telecommunications,
New Delhi.

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

For the applicant ... Shri S.K. Srinivasan, Advocate.

For the respondent ... Shri M.S. Padmarajaiah, SCGSC.

The applicant is a Telecommunication Engineer was recruited for appointment to Telegraph Engineering Service Group 'A' now redesignated as Indian Telecommunication Service (for short 'ITS'). He was posted as the Deputy Director General (DDG) from 28.11.1985 to 30.9.1986 in the office of the Secretary to Government, Department of Telecommunications, New Delhi. That is a post in Senior Administrative Grade, Level-I (SAG Level-I) carrying a pay scale of Rs. 2500-2750. On the recommendations of the Cadre Review Authority, the Government in exercise of its executive powers sanctioned the creation and upgradation of various posts in the Department of Telecommunications by its order dated 26/28.11.1985 (Annexure 'D'). Under this order inter alia 3 posts of General Manager of the Metro Telephone Districts in Bombay,



Delhi and Calcutta and the post of Director of Telecom. Research Centre which were then carried in SAG Level-I or Level-II (Rs.2250-2500/2500-2750) were hence-forth put in a SAG Level-I (Rs.2500-2750) with special pay of Rs.250/- per month. The posts of General Managers were to be redesignated as Senior General Managers. Accordingly special pay of Rs.250/- was allowed to those that were holding the aforesaid 4 posts. Although the applicant as DDG was holding the SAG Level-I post in the scale of Rs.2500-2750, he was not awarded the special pay of Rs.250/-. Nor was he considered for appointment to the post of General Manager of the Metro Telephone Districts in Bombay, Delhi and Calcutta and to the post of Director, Telecom. Research Centre which carried a special pay of Rs.250/- per month. In the general revision of pay scales, the Fourth Pay Commission recommended a higher scale of pay for the above mentioned posts carrying a special pay of Rs.250/- per month. Thus while the posts in the scale of Rs.2500-2750 without special pay were recommended a scale of Rs.5900-6700, the posts in the scale of Rs.2500-2750 with special pay of Rs.250/- were recommended a scale of Rs.7300-7600. These recommendations were accepted by the Government of India and became effective from 1.1.1986. Before the applicant retired from service, he was



denied the higher scale of Rs.7300-7600. Some of the posts carrying special pay were manned by juniors to the applicant and were allowed this higher scale of pay. His representations that he should have been posted against any of the posts carrying a special pay of Rs.250/- and awarded consequent benefits in the revision of his pay from 1.1.1986 was not acceded to. He retired from service on attaining the age of superannuation on the Afternoon of 30.9.1986. His further representation to revise his pay and accord him the retirement benefits on that basis from 1.0.1986 also having been rejected by the Government in its Office Memorandum dated 15.1.1987 (Annexure 'C'), the applicant has moved this Tribunal.

While one of the Members of the Bench, K.S. Puttaswamy J, Vice-Chairman, even while expressing his "inability to subscribe to the view that a post to which a 'special pay' is attached is a promotional post" observed that "if that view of Sri P.Srinivasan is held to be correct view, then I concur with his other view that the case of the applicant requires to be considered by Government as directed by him in his opinion". However, in the view he had taken opined that the application be dismissed.

Shri P.Srinivasan, Member (A), however, took the view that "the Special Pay posts were higher posts to which officers in SAG were to be promoted.

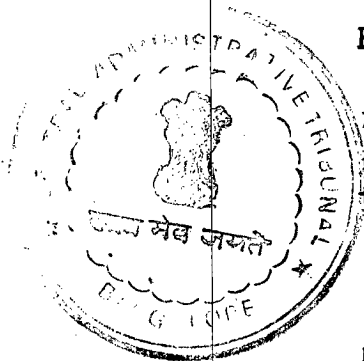


That being so, the applicant was clearly entitled to be considered for such promotion when his admitted juniors viz., S/Sh.Satya Pal, U.D.N. Rao and S.G. Watwe and others were so considered and promoted". He accordingly directed:

" the respondents to consider the case of the applicant for promotion to one of the Special Pay Posts from the date his juniors were promoted and if found fit, give the applicant the benefit of Special Pay of Rs.250/- per month from such date and of the revised scale of Rs.7300-7600 applicable to those posts from 1.1.1986 till the date of his retirement and all consequential retirement benefits flowing therefrom".

Before the Government of India, Ministry of Communications (Telecom. Board) made the order dated 26 November, 1985 28 (Annexure 'D'), the 3 posts of General Managers of the Metro Telephone Districts in Bombay, Delhi and Calcutta and the post of Director of Telecom. Research Centre in the Department of Telecommunications were in the SAG Level-I or Level-II (Rs.2250-2500/ Rs.2500-2750).

From that date onwards they were put in SAG Level-I in the scale of Rs.2500-2750. So much so, prior to the issuance of that order either Level-I SAG Officers or Level-II SAG Officers were posted as G.Ms. of Metro Telephone Districts Bombay, Delhi and Calcutta and the Director of Telecom. Research Centre. But thereafter they were required to be manned only by SAG Level-I officers in the scale of Rs.2500-2750 with a special



pay of Rs.250/- per month. The posts of G.Ms were also initially redesignated as Sr. G.Ms. Only such SAG Level-I officers who were posted against the above referred four posts would get the special pay of Rs.250/- per month and not all SAG Level-I officers'.

The background in which these orders were issued would convincingly establish that they were created as posts of Higher level than that of other SAG Level-I posts and were also intended to be by way of promotion. These posts were created in September, 1985 as a result of the cadre review undertaken by the Government in respect of ITS Group 'A' officers on the basis of the recommendations of the Third Pay Commission accepted by the Central Government.

The Note submitted to the Cabinet along with the proposals of the Cadre Review Committee referred to in detail in the order of the learned Member (A) shows that these four posts in the grade of Rs.2500-2750 plus special pay of Rs.250/- per month were created for "the career advancement prospects of these officers". It was observed in that Note that the prospects of these officers:

"have been somewhat bleak for the last few years. There has been stagnation especially at Senior Administrative Grade level for periods considered too long..... the Departments concerned



have to put forward proposals for creation of posts in various cadres keeping in view the functional needs of the organisation and the promotional prospects of the officers (emphasis supplied) for consideration by the Cabinet".

Having regard to that, the proposal made was as follows:

"Upgradation of 3 posts of General Manager... from SAG (2250-2500/2500-2750) to SAG Level-I (2500-2750) plus special pay of Rs.250/- per month and their upgradation as Senior General Manager".

In the Brief prepared by the Department of Personnel for the Cadre Review Committee in 'Table I' are the particulars of the posts in the existing scales. The posts are grouped into "higher grades" and "Senior Administrative Grade". All the special pay posts under consideration were shown under the Higher Grade. The Senior Administrative Grade Level-I posts and Level-II posts not carrying any special pay were not under Higher Grade Posts. That itself may not be clinching; but that would certainly indicate that these posts are superior to Sr. Administrative Grade Level-I posts not carrying special pay. Justifying the creation of these 4 special pay posts, it was stated that the General Managers at Bombay, Delhi and Calcutta would be controlling 4 SAG Level Officers (Rs.2250-2500/2500-2750) and the Director, Telecom. Research Centre would be supervising 5 Additional Directors of SAG level. The holders of these higher posts would be actually



controlling persons working in SAG Level-I posts also. These posts were categorically created to "marginally improve the promotion of officers working in SAG level posts". They were created in ITS as similar posts were created in other Central Services

These posts carried not only higher emoluments but higher duties and responsibilities. They were in actual control of more than one officer of SAG Level-I/ Level-II, they were also initially designated as Sr.G.Ms. Though this designation was later dropped.

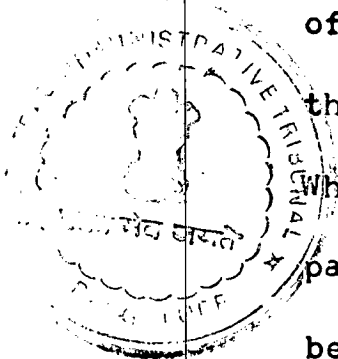
The SAG Level-I posts carrying a special pay are thus posts in a higher grade created to relieve stagnation and open promotional avenues for SAG Level-I officers. They get not only higher emoluments by way of special pay, but
/as a consequence of the revision of pay scales pursuant to the Fourth Pay Commission recommendations w.e.f.

1.1.1986, they also get a higher scale of pay than the other SAG Level-I officers holding posts without special pay. In such circumstances, appointment to such posts cannot be made without any regard to rank in the Seniority List and without regard to his suitability or merit. It cannot certainly be made upon the fortuitous circumstance of a person being posted on the date when these orders were issued either as General Managers of Metro Telephone Districts in Bombay, Delhi and Calcutta or of Director of Telecom. Research Centre; postings to such



higher grade posts must be based on some intelligible criteria. In the absence of any Rule, these posts should be manned on the basis of seniority-cum-fitness. Or by framing a Rule and making it a selection post to be filled in on the basis of seniority-cum-merit. Irrespective of whether these posts are promotional posts or upgraded posts, in my view, they cannot be manned by juniors ignoring the claims of the seniors without any assessment of the fitness of the seniors. If seniority is to be ignored, at least fitness of all persons holding SAG Level-I posts should have been considered and senior appointed if found fit. If selection criteria was to be applied, such a Rule should have been made. Appointments to such posts carrying higher emoluments and created for increasing the promotional avenues cannot be made arbitrarily ignoring the claims of all persons entitled to be considered for the posts. Nor can the appointment thereto be made dependent on the fortuitous circumstance of a particular officer holding that post on which date these posts were declared as posts carrying special pay. When duties and responsibilities are higher and special pay is granted to such persons, such posts must undoubtedly be treated as posts higher than SAG Level-I posts without special pay.

Though in a somewhat different context, a Bench of this Tribunal to which I was a party in



R.KAPUR Vs. UNION OF INDIA AND OTHER (1) dealing with the question whether a person holding the post of Director General (Special Investigation) and Director of Inspection carrying a special pay of Rs.250/- was holding a post superior to that of Director of Inspection (P&P) which post did not carry any special pay held that having regard to duties and responsibilities enumerated and attached to the post of Director General (Spl.Investigation) and having regard to the special pay attached to the said post, it was clearly a post superior to that of Director of Inspection observed:

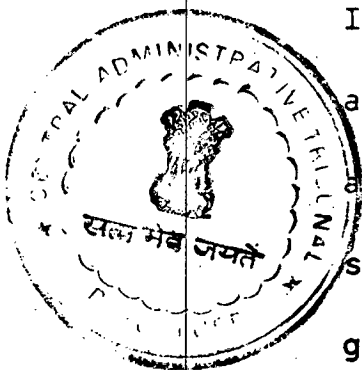
"It is precisely because of these additional duties and responsibilities that this post is created as a special pay post. It does not need a deeper scrutiny to find that the post of Director General (Spl.Inv.) is a post higher to the post of Director Inspection (P&P)."

I, therefore, hold that even they are not posts to which appointments could be made by promotion, they are certainly superior posts. Apart from carrying higher monetary benefits by way of special pay, they are posts with superior administrative functions. Persons holding these posts have controlling authority and exercise supervisory powers over the SAG Level-I officers. They have more onerous duties and responsibilities. They are thus



functionally superior to other SAG Level-I officers.

The additional monetary benefit of special pay enjoyed by such officers would also result in higher retirement benefits. In fact, in the revision of pay scales ordered on the recommendations of the Fourth Pay Commission, it has made a vast difference in the pay scales and consequential retirement benefits. While the scale of Rs.2500-2750 without special pay allowed to SAG Level-I Officers is revised to Rs.5900-6700, the same scale of pay with special pay of Rs.250/- allowed to these "upgraded" posts, which the applicant claims was revised to Rs.7300-7600. That has consequently resulted in higher retirement benefits. Hence irrespective of whether appointment to these posts are made by way of promotion or merely by way of upgradation, the appointments cannot be made to depend upon the fortuitous circumstance of a particular officer being posted on the date when special pay was allowed to persons holding these posts. It should be on some rational basis. In the absence of any valid statutory rule, as observed above, the appointments should have been made on the basis of seniority-cum-fitness. Admittedly, there was no rule governing appointment to these special pay posts. A post such as this is a coveted one for all officers in SAG Level-I. They cannot be deprived of their right to be considered for appointment to these posts. In



any event, juniors cannot be appointed without considering all those who are seniors to them. Otherwise any such appointment would be arbitrary and violative of Articles 14 and 16 of the Constitution.

In C.C. PADMANABHAN AND OTHERS Vs. DIRECTOR OF PUBLIC INSTRUCTIONS AND OTHERS (2) the Supreme Court was dealing with a similar question. By a letter dated May 19, 1977 the Kerala State Government directed that an Assistant Educational Officer (AEO) should be transferred back as a High School Assistant (HSA) after six years of service. In that context the Supreme Court firstly laid down that having regard to the special pay granted in lieu of a higher scale of pay consistent with the higher responsibilities which are entailed in the performance of the functions of an AEO, held that the post of AEO is a grade higher than that of an HSA. The Supreme Court also considered the alternative submission that even if it is not a post of a higher grade to which appointments are made by promotion, transfer could not be made without any rational criteria and held:

"if the post of an A.E.O. is not regarded as higher to that of an H.S.A. either categorywise or gradewise, the impugned reversions are still hit by Article 14 of the Constitution of India.



In this connection two important factors have to be taken note of. The first is that the post of an A.E.O. carries a special pay of Rs.50 per month, and, therefore, ensures for its incumbents higher emoluments than are available to an H.S.A. The second is that the special pay is counted towards pension as is made out from a reading of Rules 12(23) and 62 of the Kerala Service Rules. According to Rule 12(23) special pay is part of 'pay' while Rule 62 states inter alia that emoluments which are reckoned for pension include pay as defined in Rule 12(23). The post of an A.E.O. thus carries with it not only benefits enjoyable by the incumbent so long as he holds the post but also such as are available to him after retirement. The substantial improvements in the benefits which an H.S.A. thus enjoys after his posting as an A.E.O. constitute a compelling circumstance which would necessitate the formulation of rational criteria to be followed in transferring an H.S.A. as an A.E.O. and vice versa so that mere caprice does not deprive an A.E.O. of the benefits enjoyed by him. The direction contained in the letter dated May 19, 1977 that an A.E.O. should be transferred back as an H.S.A. after six years of service as A.E.O. is wholly arbitrary and not based on any principle. It is, therefore, violative of Article 14 and we hold it to be so."



Though the respondents' reliance is placed on the decision of the Supreme Court in P.G. JOSHI AND OTHERS Vs. THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS, NEW DELHI AND OTHERS (3), the Supreme Court itself

in C.C. Padmanabhan's case referred to P.G. Joshi's case and pointed out the distinction in para 19 thereof as under:

"The special pay of Rs.30 in that case (Joshi's case), it may thus be seen, was something quite different from the special pay in the instant case (Padmanabhan's case) which, as we have already found, was granted in lieu of a higher scale of pay consistent with the higher responsibilities which are entailed in the performance of his functions by an A.E.O..... the case cited (Joshi's case) is thus fully distinguishable and is of no assistance to the case propounded on behalf of the State Government".

Keeping in view the dicta laid down by the Supreme Court, if we examine the nature of the posts in question and the background and circumstances in which they were created it is clear that they are posts superior to SAG Level-I posts. As is clear from the Cadre Review Committee's recommendations and the Note submitted to the Cabinet this special pay post of SAG Level-I was intended to be a promotional post. These posts were sanctioned to relieve stagnation. It was also envisaged that persons appointed to these posts were required to discharge more onerous duties and responsibilities and vested with functions of controlling and supervising the working of 3 or 4 SAG Level-I officers within their jurisdiction. They are certainly posts in a higher grade not merely upgraded posts in the same scale of pay. Appointment to such posts must be guided by a rational criteria and every person eligible has a right



to be considered before an appointment is made to these posts.

Much reliance was placed by the respondents on the definition of 'Special Pay' entailed in F.R. 9(25). This definition reads as follows:

"(25) Special Pay 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, and includes non-practising allowance granted to doctors in lieu of private practice."

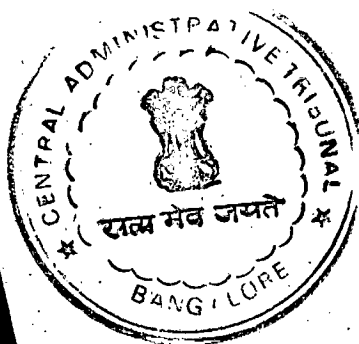
Ordinarily a definition by itself is not the source of power. Moreover, all definitions including the definition of 'Special Pay' in Rule 9(25) of the Fundamental Rules must give way to the subject and context. In fact, the definition clause itself begins with the words "unless there be something repugnant in the subject or context". These posts were allowed the special pay and simultaneously they were placed in higher grade. Though ultimately it was not actually described as promotion, it was certainly intended to relieve stagnation. Although the definition of 'Special Pay' in FR 9(25) is not identical to the definition of 'Special Pay' in Rule 12 (31) of the Kerala Service Rules (which was considered in C.C. Padmanabhan's case extracted in Justice Puttaswamy's judgment) still the



criteria laid down for determining whether a post is in a higher grade or is a superior post, laid down by the Supreme Court in Padmanabhan's case squarely apply to the posts with which we are concerned in this case.

Applying the said criteria, the 4 posts to which special pay is allowed must be held to be posts higher to that of SAG Level-I posts. I may observe that while no one has a right to be appointed to a post, every public servant has a right to be considered for appointment to the higher post or a post carrying higher emoluments. More so, where such emoluments are by way of special pay and special pay is allowed for posts created to relieve stagnation and open avenues of promotion and are vested with controlling and supervisory functions over officers hitherto to the same level.

Having given my very careful thought, I find myself in entire agreement with the view expressed by Shri P.Srinivasan, Member (A) ^{am} and unable to concur with the conclusions arrived at by Shri Justice Puttaswamy, Vice-Chairman for the reasons hereinbefore recorded. I also agree with the opinion of Shri P.Srinivasan that a direction be issued to the respondents to consider the case of the applicant for promotion to one of the Special Pay posts from the date his juniors were promoted and if



found fit, give the applicant the benefit of special pay of Rs.250/- per month from that date and of the revised scale of Rs.7300-7600 applicable to those posts from 1.1.1986 till the date of his retirement and also all consequential retirement benefits flowing therefrom. I am, therefore, of the opinion that Application No.462/87 should be allowed with no order as to costs.

This case may now be posted before the Division Bench for disposing of Application No.462/87 in accordance with the majority opinion.

Sd/-

(K. Madhava Reddy) 23.8.88
Chairman.

TRUE COPY



for DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 7TH DAY OF SEPTEMBER, 1988.

PRESENT:

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

.. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan,

.. Member(A)...

APPLICATION NUMBER 462 OF 1987

B.S.G.K. Setty,
S/o B. Siddananjappa Setty,
Aged 58 years
No. 5/1 M.S. Flats, Shahjahan Road,
NEW DELHI-110 011.

.. Applicant.

(By Dr. M.S. Nagaraja, Advocate)

v.

The Secretary,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110 001.

.. Respondent.

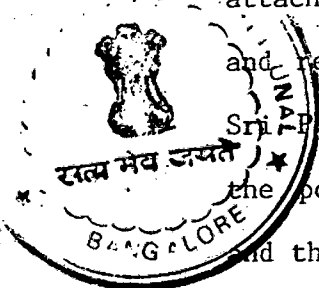
(By Sri M.S. Padmarajaiah, SCGSC)

This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

In this case the applicant has claimed for the benefit of special pay, revision of his time scale of pay from 1-1-1986 and for consequential reliefs.

2. On an examination of the claim of the applicant, the Hon'ble Vice-Chairman has held that the post to which 'special pay' was attached was not a promotional post and his claim for special pay and revision of pay scales was not well founded. But, the Hon'ble Sri P. Srinivasan, Member(A) in his differing opinion has held that the post to which special pay was attached was a promotional post and that his case requires to be examined by Government on that basis.



On this difference of opinion the case was posted before the Hon'ble Chairman, who by his opinion rendered on 23-8-1988 has concurred with the opinion of Sri P.Srinivasan.

3. We have perused the opinions rendered by all the three members and heard the counsel again.

4. In conformity with the majority opinion, we direct the respondent to consider the case of the applicant for promotion to one of the Special Pay posts from the date ^{of} ~~of~~ his juniors were promoted and if found fit, give the applicant the benefit of Special Pay of Rs.250/- per month from such date and of the revised scale of Rs.7300-7600 applicable to those posts from 1-1-1986 till the date of his retirement and all consequential retirement benefits flowing therefrom.

5. Application is allowed. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-

VICE-CHAIRMAN. 7/9/88

Sd/-

MEMBER(A)

TRUE COPY

[Signature]
For DEPUTY REGISTRAR, INDIA
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 31 JAN 1990

CONTEMPT
PETITION (CIVIL)

~~APPLICATION~~ NO (S)

41

/ 89

IN APPLICATION NO. 462/87(F)
M.P. NO (S)

Applicant (s)

Shri B.S.G.K. Setty
To

Respondent (s)

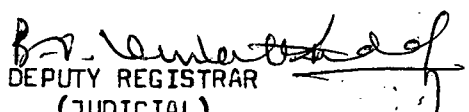
V/s The Secretary, Dept of Telecom, New Delhi

1. Shri B.S.G.K. Setty
No. 558, 9th 'A' Main
Indiranagar 1st Stage
Bangalore - 560 038
2. Shri S.K. Srinivasan
Advocate
No. 10, 7th Temple Road
15th Cross, Mallaswaram
Bangalore - 560 003
3. The Secretary
Department of Telecommunications
Sanchar Bhavan
20, Ashoka Road
New Delhi - 110 001
4. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~XXXX/XXXXXX~~ ORDER
C.P.(Civil) No.
passed by this Tribunal in the above said ~~application~~ on 25-1-90.

Encl : As above


DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 25TH JANUARY, 1990

Present: Hon'ble Shri P. Srinivasan ... Member(A)
Hon'ble Shri D.Surya Rao ... Member(J)

CONTEMPT OF COURT PETITION NO.41/89

Shri B.S.G.K.Setty,
No.558, 9th 'A' Main,
Indiranagar 1st Stage
BANGALORE-5600038.

... Petitioner

(Shri S.K.Srinivasan, Advocate)

vs.

Shri Satyapal,
Secretary,
Department of Telecommunications,
Sanchar Bhavan,
20, Ashoka Road, NEW DELHI-110001.

... Respondent

(Shri M.S.Padmarajaiah, Advocate)

This petition having come up for hearing before this Tribunal today, Hon'ble Shri P.Srinivasan, Member (A), made the following:

ORDER

In this Contempt of Court petition, the petitioner alleges that the respondents in application No.462/87(F) have not implemented the order dated 7-9-1988 by which the said application was disposed of by a Bench of this Tribunal.

2. Shri M.S. Padmarajaiah, counsel for the respondents states that his clients have complied with the said judgement and that there is no case for contempt against them.

3. Shri S.K.Srinivasan, counsel for the petitioner, very fairly and rightly, in our opinion, confirms this and prays that the proceedings for contempt may be dropped.

4. In view of the above, the notice issued to the respondents is discharged and the Contempt of Court petition dismissed. Parties to bear their own costs.



TRUE COPY

DEPUTY REGISTRAR (JDL) *Sd/-*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE (P. SRINIVASAN)
MEMBER(A)

Sd/-
(D.SURYA RAO)
MEMBER(J)



CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

2nd FLOOR,
BDA COMMERCIAL COMPLEX,
INDIRANAGAR,
BANGALORE-560 038.

File of A.No 462/87(F)

Dated 12th October, 1990

To

Hon'ble Shri R. Balasubramanian,
Member (A)
Central Administrative Tribunal,
Hyderabad Bench,
New Insurance Buildings Complex,
6th Floor, Tilak Road,
Hyderabad.

Subject : COPY OF ORDERS IN A.NO 462/87 - FORWARDING OF

Sir,

As desired over telephone, I am sending herewith a copy each of orders dated 27-04-88, 23-08-88 and 07-09-88 in A.No 462/87 - B.S.G.K. Setty Versus Secretary, Deptt. of Telecommunications, New Delhi, for information.

Yours faithfully,

[Signature]
12/10/90
(VENKATESH PATIL)
REGISTRAR

Encl. : as stated

Sis
Pl. Bme thro Des. Rmstr
12/10/90

Issued thro
12/10/90
Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 27TH DAY OF APRIL, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan, .. Member(A).

APPLICATION NUMBER 462 OF 1987.

B.S.G.K. Settty. .. Applicant.

(By Sri S.K. Srinivasan, Advocate)

v.

The Secretary,
Department of Telecommunications,
New Delhi. (By Sri M.S. Padmarajaiah, SCGSC) .. Respondent.

Justice K.S. Puttaswamy, Vice-Chairman.

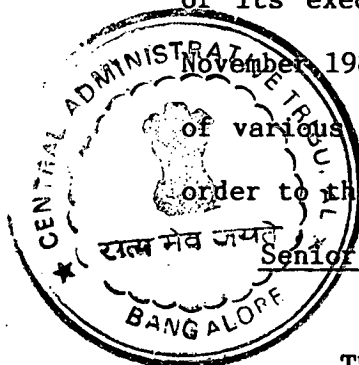
O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. On the recommendations of the Cadre Review Authority for Cadre Review of Indian Telecommunication Service Group-A Officers of the Department of Telecommunications (CRA), Government in exercise of its executive powers, in its order No.6-17/85-TE.I dated 26/28th November, 1985 (Annexure-D) sanctioned the creation and upgradation of various posts of the Department as indicated in that order. That order to the extent which is material for this case reads thus:

Senior General Managers (Rs.2500-2750 with Special Pay of Rs.250/- per month).

Three (3) posts of General Manager of the Metro Telephones Districts in Bombay, Delhi and Calcutta and the post of Director of Telecom. Research Centre which are at present carried in SAG Level-I or II



(Rs.2250-2500/2500-2750) will hence forth be in SAG Level-I (Rs.2500-2750) with Special Pay of Rs.250/- per month. The posts of G.Ms will be redesignated as Senior General Managers.

This part sanctioned a special pay of Rs.250-00 per month for those holding the posts detailed therein. In pursuance of this order those who were holding the posts or posted against them appear to have drawn a special pay of Rs.250-00 per month.

3. From 28-11-1985 to 30-9-1986 the applicant was working as the Deputy Director General (DDG) in the office of the Secretary to Government, Department of Telecommunications, New Delhi. On 30-9-1986 he has retired from service on attaining superannuation.

4. In the general revision of pay scales granted to all civil servants of the Union of India, the pay of the applicant had been fixed as on 1-1-1986 in the appropriate scale and he had been allowed the retiral benefits on that basis from 1-10-1986.

5. When in service and thereafter, the applicant claimed that he should have been posted against any of the posts carrying the special pay of Rs.250-00 and consequent benefits in the revision of his pay from 1-1-1986 and retirement should be extended to him. In its office Memorandum No.315-24/85-STG-III dated 15-1-1987 (Annexure-C) Government had rejected the same. Hence, this application reiterating his very claim made before Government.

6. This application was originally filed on 13-3-1987 before the Principal Bench as O.A.No.330 of 1987 and on an application made by the applicant, it has been transferred to this Bench and is registered as Application No.462 of 1987.

7. In its reply, the respondent had urged that the application was barred by time. On merits the respondent had urged that the applicant who had not performed the duties of any of the posts to



which special pay was attached, was not entitled for the same and that his non-posting against any one of those posts when in service was within its powers, legal and justified.

8. Sri S.K.Srinivasan, learned Advocate had appeared for the applicant. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel had appeared for the respondent.

9. Sri Srinivasan had contended that the posts to which special pay of Rs.250-00 was sanctioned by Government were promotional posts and the applicant, being senior to some of the officers posted against them, must now be deemed to have been posted against any one of them and all the consequential and financial benefits flowing from the same, extended to him. In support of his contention, Sri Srinivasan has strongly relied on the ruling of this Tribunal in R.KAPUR v. UNION OF INDIA AND ANOTHER (ATR 1986 CAT 31) and the rulings of the Supreme Court which have explained the new dimension of Article 14 of the Constitution, namely arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution.

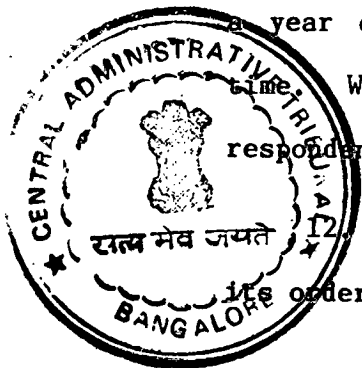
10. Sri Padmarajaiah refuting the contention of Sri Srinivasan had sought to support the action of Government.

11. The claim of the applicant for special pay and consequential benefits was rejected by Government on 5-1-1987 and this application was made before the Principal Bench on 13-3-1987 which is within a year of the order of Government. Hence, this application is in

We see no merit in the vague and general objection of the respondent to the contrary. We, therefore, reject the same.

12. On special pay of Rs.250-00 sanctioned by Government in its order dated 28-11-1985, the CRA recommended thus:

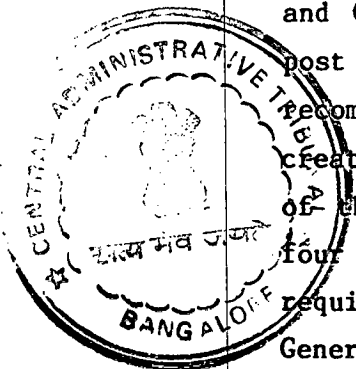
4. Higher Grades (Rs.3000/- fixed, SAG level-I plus Special Pay of Rs.250-00 p.m)



4.1. The Telecommunications Board comprises one Chairman (Rs.3500/- p.m.) and five Members (Rs.3000/- fixed). The post of Chairman is filled up under the Central Staffing Scheme. Out of the five posts of Members, four are cadre posts of the Indian Telecommunication Service. The Cadre Controlling Authority has not proposed any change in this regard.

4.2. The cadre controlling authority has pointed out that at present only four posts are available in the grade of Rs.3,000-00 fixed to the cadre officers against a total strength of nearly 2400 Group 'A' posts. Therefore, in order to improve career prospects of the Service, the strength of higher grade posts needs to be increased. It has further pointed out that in each of the three Metropolitan Districts of Bombay, Delhi and Calcutta, there are at least 3 more SAG officers apart from the General Manager. In these proposals, 2 more SAG posts for Bombay, 2 more for Delhi and 1 for Calcutta have been proposed. Hence, each G.M in the three Metro Districts will be controlling at least 4 SAG level officers. In order to ensure effective supervision and control, the General Manager's post should be in a higher grade. Similarly the Director of the Telecom Research Centre is supervising the work of 5 Additional Directors in SAG. Hence, this post should also be in a higher grade. It has been proposed by the cadre authority that the above four posts should be operated in SAG level-I (Rs.2500-2750) and allowed a special pay of Rs.250-00 per month.

4.3. At present, the Metro Districts of Bombay, Delhi and Calcutta have 5, 4 and 4 posts in SAG (including the post of General Manager). In this 'brief', we are recommending the strengthening of these Districts by creating one more post of Additional GM in SAG in each of these three Districts. Thus, each will have at least four Additional General Managers in SAG whose work is required to be supervised and controlled by the concerned General Manager. Functionally, therefore, there is adequate justification for upgrading these 3 posts from SAG (Rs.2250-2500/2500-2750) to SAG level (Rs.2500-2750) plus a special pay of Rs.250-00 p.m. Similarly there is adequate



justification for upgrading the post of Director, TRC from SAG to SAG level-I plus a special pay of Rs.250-00 p.m. Creation of these four special pay posts will marginally improve the promotion prospects of officers working in SAG level posts. Such posts have been created in other Central Services like IRS (Income Tax), IRS (Customs & Central Excise) IDAS etc.

The CRA summed up its recommendations on this thus:

8. Summary of Recommendations & Threshold Analysis.

8.1 Consequent to the recommendations made in this 'Brief', the existing proposed and recommended strength of the Indian Telecommunication Service is given in Table IV:-

T A B L E - 1V

The existing, proposed and recommended cadre structure of the Indian Telecommunication Service Group-A

Sl. No.	Grade/Designation	Existing strength as on 1-1-1984	Proposed strength by the C.C.A.	Recommended by DP& T
<u>1. Higher Grade</u>				
	Member (Rs.3000/-fixed)	4	4	4
	Senior General Manager (Rs.2500-2750 + Spl.Pay of Rs.250=00p.m.	-	4	4
	xx	xx	xx	

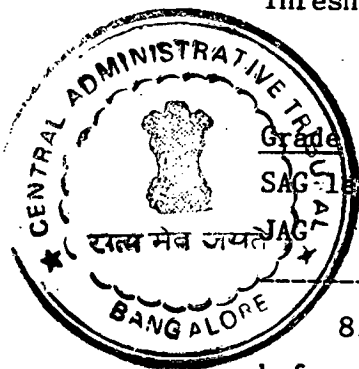
8.3 Threshold profiles as on 1-1-1985 in respect of the service based on the existing, proposed and recommended structure are given in Table VI below:-

T A B L E -VI

Threshold analysis of the Indian Telecommunication Service Group 'A'

		<u>Number of years for promotion to the grade</u>		
Grade		<u>Existing</u>	<u>Proposed</u>	<u>Recommended</u>
SAG level-II		22	20	21
JAG		9	9	9

8.4 To sum up, following recommendations are placed before the Cadre Review Committee for favour of consideration:



- i) Upgradation of the 3 posts of G.M. for the Metro Districts of Bombay, Delhi, Calcutta and the post of Director, Telecom Research Centre from SAG (Rs.2250-2500/2500-2750) to SAG level I (Rs.2500-2750) plus special pay of Rs.250-00 p.m.

Accepting these recommendations, Government issued its order on 28-11-1985.

13. The CRA in its recommendations or Government in its order, had not defined the term 'special pay'. But, the concept of 'special pay' or that term are not an unknown concept or term evolved for the first time by the CRA or by Government on 28-11-1985.

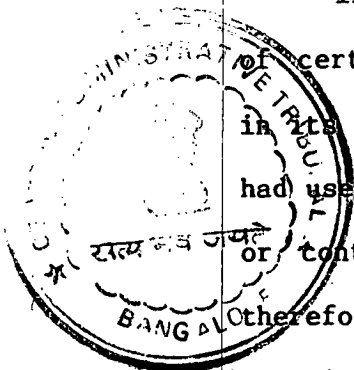
14) Rule 9(25) of the Fundamental Rules ('FR') which are in force from 1-1-1922 and are statutory defines that term thus:

(25) Special Pay 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, and includes non-practising allowance granted to doctors in lieu of private practice.

Under this provision, special pay is an additional pay granted to an incumbent of a post which involves specially arduous nature of duties or a specific addition to the work or responsibility, and includes practising allowance granted to doctors in lieu of private practice.

15. When the CRA recommended for grant of special pay to holders of certain posts and Government accepted and sanctioned the same in its order dated 28-11-1985 both of them, without an iota of doubt, had used that term only as defined in Rule 9(25) FR and had not given or contemplated any other meaning to that term at all. I have, therefore, no hesitation in holding that the CRA and Government had sanctioned 'special pay' only for the purposes and object of FR-9(25) and no other. From this it necessarily follows that what is



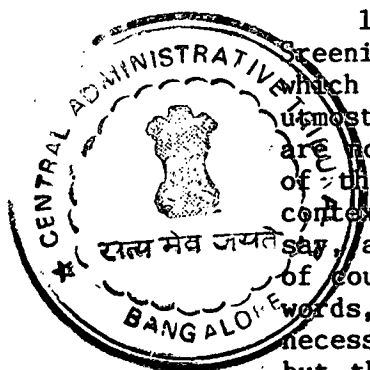
adumbarated in this Rule must be decisive in deciding the question.

16. In deciding the scope and ambit of Rule 9(25) Rule 5A FR which confers power on Government to relax the operation of any of the Rules in individual cases has no application at all. Rule 5A does not control Rule 9(25) of the Rules.

17. In para 4 of its recommendations, the CRA had expressed that the posts to which special pay, was attached, had to be treated as promotional posts. The CRA in its final recommendations or Government in its order do not expressly say so. But, notwithstanding of what is stated by the CRA, we cannot treat the posts to which 'special pay' is attached as promotional posts or that one posted against them as promoted from a lower post to a higher post. Undoubtedly an officer posted to a post with 'special pay', gets certain additional benefits. But, by reason of that only, it is not possible to hold that they are promotional posts.

18. Before considering the cases relied on by counsel for the applicant, it is apt to recall the pregnant observations of Chinnappa Reddy, J. in AMAR NATH OM PRAKASH AND OTHERS v. STATE OF PUNJAB AND OTHERS (AIR 1985 SC 218) on the law of precedents. On precedents and applying the ratio decidendi of a decided case, the learned Judge warned thus:

11. There is one other significant sentence in Greenivasa General Traders v. State of A.P (supra) with which we must express our agreement. It was said, "with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as Statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co.Ltd. v. Horton, 1951 AC 737 at p.761 Lord Mac Dermot observed:



"The matter cannot of course be settled merely by treating the *ip sissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge". In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294, Lord Reid said "Lord Atkin's speech..... is not to be treated as if it was a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J., as if it were an Act of Parliament". And, in *Herrington v. British Railways Board* (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

Also see the passage under the caption "Judgments must be read in the light of the facts of the cases in which they are delivered" on pp.42 to 45 in "Precedents in English Law" by Rupert Cross (III Edition). Bearing the above, I will now examine the cases relied on for the applicant.

19-1. In *PADMANABHAN AND OTHERS v. DIRECTOR OF PUBLIC INSTRUCTION AND OTHERS* (AIR 1981 SC 64) the Supreme Court was dealing with the legality of posting of Padmanabhan and others from the posts of Assistant Educational Officers (AEOs) to the posts of High School Assistants (HSAs) in the State of Kerala.

18-2. While Padmanabhan and others, who were the appellants maintained that the posts of AEOs which they were holding, were higher and promotional posts and their postings as HSAs were in truth reversions, the State of Kerala maintained that the posts of AEOs and HSAs were equivalent posts and were inter-changable and, therefore, there were no reversions to lower posts. The Kerala High Court accepted the case of the State of Kerala and dismissed the writ petitions filed by Padmanabhan and others.

19-3. On appeals, the Supreme Court examining the nature of

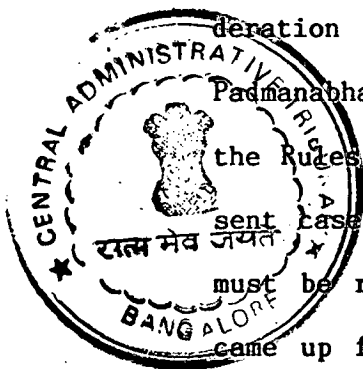
the duties and powers of AEOs and HSAs and all the statutory and other provisions bearing thereto, disagreeing with the Kerala High Court ruled that the posts of AEOs carrying a special pay of Rs.50/- per month were promotional posts and allowed their appeals. In reaching its conclusions, the Supreme Court relied on Rule 12(31) of the Kerala Service Rules (KS Rules) which defined the special pay thus:

12. (31) Special Pay means an addition of the nature of pay to the emoluments of a post or of an officer granted in consideration of the following:

- (a) Where a post would call for a higher scale of pay in view of the additional and/or higher responsibilities attached to it; or
- (b) Where the nature of work is specially arduous; or
- (c) Where an officer has to attend to work in addition to normal duties attached to his post.

Clause (a) of this rule provides for reckoning the higher scale of pay attached to the post as also special pay under Rule 12(31) of the KS Rules. On this, the Court also distinguished the earlier ruling of the Court in P.G.JOSHI v. DIRECTOR GENERAL, POSTS AND TELE-GRAPHS, NEW DELHI [(1975) 4 SCC (L & S) 330: (1975) 2 SCR 115] which interpreted Rule 9(25) FR.

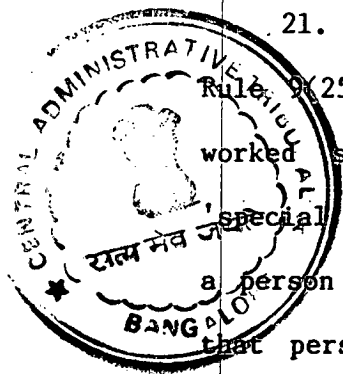
19.4. The fact situations and the Rules that came up for consideration and more so the questions that arose for determination in Padmanabhan's case are entirely different to the fact situations, the Rules and the questions that arise for determination in the present case. Every one of the observations made in Padmanabhan's case must be read in the context of the fact situations, the Rules that came up for consideration. I am of the view that the principles enunciated in Padmanabhan's case are distinguishable and do not bear on the precise point that arises for our determination in this case. On the other hand, the principles enunciated in Joshi's case



which has not been departed in Padmanabhan's case governs the question.

20. In Kapur's case this Tribunal was dealing with the transfer of Kapur from the post of Director General (Special Investigation) and Director of Inspection, New Delhi which carried a special pay of Rs.250-00 p.m. to the post of the Director of Inspection (P and P), New Delhi, which did not carry any special pay. The transfer was assailed by Kapur on the ground that the same had been done as a measure of punishment. In sustaining that case, this Tribunal also relied on the fact that the later post to which he had been transferred and posted did not carry a special pay of Rs.250-00 which the former carried. But, that is not the position in the present case. In Kapur's case, the Tribunal had not held that the post carrying a special pay was a promotional post and a senior officer was entitled to be posted as of right and if not so posted, the senior officer must be deemed to have been posted to that post as of right as urged by the applicant. The observations of the Bench on 'special pay' should only be read as made in the context of deciding whether the transfer was as a measure of punishment or not and as not supporting the very broad proposition urged for the applicant. I am, therefore, of the view that the ratio in Kapur's case does not really bear on the point.

21. On the true meaning of the term 'special pay' defined in Rule 9(25) FR, only a person who has been posted and had actually worked shouldering additional responsibilities was entitled for 'special pay'. The entitlement for special pay arises only when a person had been posted to a post which carries a special pay and that person had actually discharged the additional duties of that post and not otherwise. An officer who is not posted and had not worked for whatever reason that be, whether he is a senior or junior,



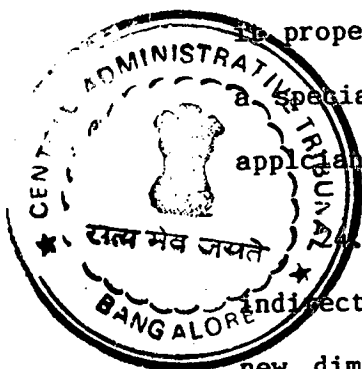
cannot claim 'special pay' if he had not been posted and had not actually discharged the onerous duties of that post.

22. On facts, there is no dispute that from 28-11-1985 to 30-9-1986 on which day the applicant retired from service, he had not been posted to any of the posts which carried a special pay of Rs.250-00 p.m. and had not discharged the duties of any one of those posts. If that is so, then the claim of the applicant for the same cannot be upheld.

23. As to who should be posted to man a post which carries a special pay is primarily for the appointing authority to examine and decide. In my view courts and Tribunals which are illequipped to decide on the same should not trench on the same, except in exceptional cases on well settled grounds only. The fact that a person posted against a post carrying a special pay derives some advantageous immediately as also on his retirement, does not in any way alter the character of the post or the power of the appointing authority to post a person against such a post. For whatever reason that be, the applicant was not posted to any one of the posts carrying 'special pay' till he retired from service. In these circumstances, the only inference to be drawn is that the appointing authority did not find it proper to post the applicant to man any of the posts which carried a special pay. From this also, I cannot uphold the claim of the applicant.

24. In my view, the claim of the applicant either directly or indirectly does not attract the vice of arbitrariness to invoke the new dimension of Article 14 of the Constitution. I see no merit in this contention of the applicant.

25. I have so far examined the merits and found against the applicant. As noticed earlier, Government accorded its sanction

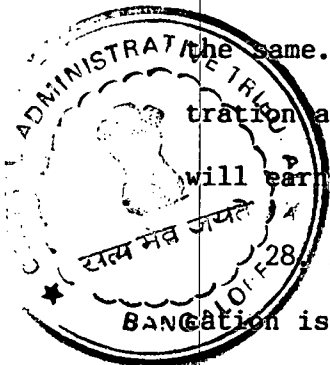


to grant special pay on 28-11-1985. From that date to 22-9-1986 on which day only he made his very first written representation, the applicant did not claim for posting him to any of the posts which carried a special pay and was content to work as DDG which did not carry any special pay. The time available for Government was so short to examine and post the applicant to any one of the posts and it is now idle to contend that notwithstanding the same, he should be deemed to have been so posted and the benefits attached to the same notionally extended to him. In my view, these facts themselves justify me to decline to interfere, even if there is any merit in the claim of the applicant.

26. I have carefully read the dissenting opinion proposed to be delivered by the Hon'ble Sri P.Srinivasan, Member(A). For the very reasons stated in my opinion, I regret my inability to subscribe to his view that a post to which a 'special pay' is attached is a promotional post. But, if that view of Sri P.Srinivasan is held to be correct view, then I concur with his other view that the case of the applicant requires to be considered by Government as directed by him in his opinion.

27. Before parting with this case, I deem it proper to observe that to remove heart burns and needless claims, it is desirable for Government to evolve a criteria for posting officers to posts carrying a special pay urgently, publish the same and scrupulously follow the same. Such a course is in the interest of sound public administration and the public servants also. I do hope and trust Government will earnestly examine this and evolve the criteria.

28. As all the grounds urged for the applicant fail, this application is liable to be dismissed. I, therefore, dismiss this application. But, in the circumstances of the case, I direct the parties to bear their own costs.



[Signature]
VICE-CHAIRMAN
1988

Shri P. Srinivasan, Member (A)

O R D E R

I have had the benefit of reading the judgment ~~or~~ draft prepared by the Hon'ble Vice-Chairman in this case. With utmost respect, for reasons to be stated presently, I am obliged to disagree with the conclusions reached by him.

2. The applicant, who retired as Deputy Director General, Department of Telecommunications, a post in the Senior Administrative Grade ('SAG' for short) in the scale of Rs.2,500-2750 belonging to the Indian Telecom Service Group A (ITSA) complains that he was wrongly denied promotion to a post in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250/- per month ('Special Pay Post' for short), when four such posts were created in September 1985, though persons Junior to him in SAG were so promoted.

3. The main question for determination in this application is whether the aforesaid Special Pay Posts created in September 1985 were higher than those in SAG without Special Pay, so that appointment to one of the Special Pay posts constituted a promotion to officers in SAG without Special Pay. If the answer is in the affirmative, then the applicant who was holding a post in SAG in September, 1985 was surely entitled to be considered for promotion to one of the Special Pay Posts in accordance with his seniority in SAG and if found fit to be promoted to one of them when they were first filled in.

The approach of the learned Vice-Chairman to

P. *h*-*ge*

to the problem is also the same. But, he has recorded a finding that the aforesaid Special Pay Posts were not higher than the posts in SAG and that therefore, appointment to one of the Special Pay Posts did not constitute a promotion of an officer in SAG. On that finding, he has further held that it was upto the authorities concerned to decide who should man the Special ^{Pay} Posts and not for this Tribunal to determine such appointments. On the other hand, as I will attempt to show in the following paragraphs, I am of the view that the Special Pay posts in question were indeed higher and promotional posts and as such, the applicant was entitled to be considered for promotion to one of them on the basis of his seniority and to be so promoted if found fit when his juniors in SAG were promoted to those posts. On the view I am taking, it would be begging the question to say that since the applicant did not actually hold one of the Special Pay Posts prior to his retirement, he cannot be given the benefit of Special Pay while in service and consequential additional retirement benefits such as pension, gratuity etc., on his retirement. If, in fact, he was wrongly kept out of one of the Special Pay Posts while in service and was thereby denied the financial benefits flowing therefrom, it would not be right to say by a circular process of reasoning that because he did not in fact hold such a post he is not entitled to the financial benefits attached to them either during his Service or after retirement. I now proceed to give the reasons which have led me to the view that I have indicated above.

P. S. S. S.



4. The Special Pay Posts in question, were created in September, 1985, as a result of the cadre review undertaken by Government in respect of the ITSA to which the applicant belonged. On the basis of the recommendations of the III Pay Commission accepted by the Central Government, review of cadre prospects once every 3 years was to be undertaken and proposals for creation of posts submitted for the approval of the Central Government to relieve stagnation with adequate functional justification. The Note submitted to the Cabinet along with the proposals of the Cadre Review Committee for the ITS-A, one of which was to create 4 posts in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250 per month may be ~~referred~~ ^{referred to} usefully in this connection: H

"The career advancement prospects of these officers"

the Note says, referring to officers of the ITS-A:

"have been somewhat bleak for the last few years. There has been stagnation especially at Senior Administrative Grade level for periods considered too long and timely corrective action is deemed necessary to boost the morale of the officers

The recommendations of the Third Pay Commission accepted by the Central Government provide, in such situations, for a review of the cadre prospects once every three years and the Departments concerned have to put forward proposals for creation of posts in various cadres keeping in view the functional needs of the organisation and the promotional prospects of the officers for consideration by the Cabinet."



The Note for the Cabinet then goes on to set out the proposals of the Cadre Review Committee. The proposal with which we are

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concerned, reads as follows:

"Upgradation of 3 posts of General Manager.....
from SAG (2250-2500/2500-2750) to SAG level-I
(2500-2750) plus special pay of Rs.250/- per
month and their upgradation as Senior General
Manager"

(Emphasis supplied)

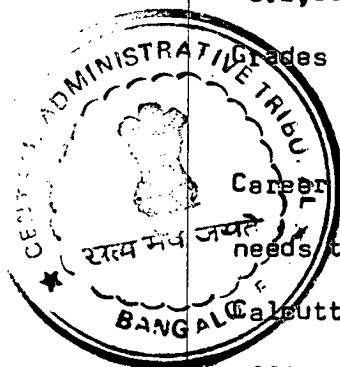
5. The proposals contained in a "Brief" prepared
in the Department of Personnel and Training for the Cadre
Review Committee which ^{was initiated} ~~made~~ the aforesaid proposal, include
the following:

"TABLE-I

Sl. No.	Grade/Designation	Existing Strength as on 1-1-1984.	Proposed strength.	Variation (+ or -) (4 - 3)
1	2	3	4	5
1.	<u>Higher Grades:</u>			
	Member(Rs.3000 fixed)	4	4	Nil
	Senior General Manager (Rs.2500-2750+Sp1.Pay Rs.250/-p.m.)	-	4	+4
2.	<u>Senior Administrative Grade</u> (Rs.2250-2500/2500-2750).	83	136	+53 "

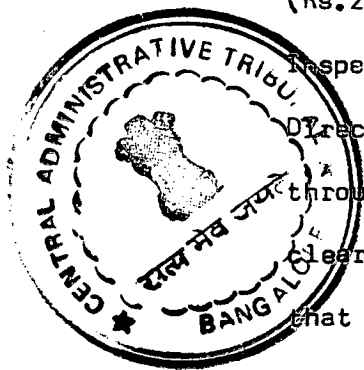
It will be seen that the newly created posts in the grade of
Rs.2,500-2,750 plus Special Pay are placed separately in Higher
Grades above SAG.

6. The "Brief" goes on to explain that in order to "improve
Career prospects of the Service, the strength of higher grade posts
needs to be increased." The General Manager at Bombay, Delhi and
Calcutta, it was pointed out, would be controlling 4 SAG level
officers (2250-2500/2500-2750) and similarly, the Director of



the Telecom Research Centre, was supervising 5 Additional Directors in SAG. It was proposed, therefore, that these four posts "be operated on SAG level-I(Rs.2,500-2,750) and allowed a special pay of Rs.250/- p.m." In this way, it would appear that the newly created posts with Special Pay of Rs.250/- per month, were contemplated as higher posts above the SAG of Rs.2250-2500/2500-2750, and the holders of these higher posts would actually control persons working in SAG. The creation of these posts with special pay, it was said, would "marginally improve the promotion of officers working in SAG level posts" similar posts having already been created in other Central - Services. This also indicates that the Special Pay posts were regarded as promotional avenues for officers in SAG.

7. In R.KAPUR v. UNION OF INDIA AND ANOTHER (A.T.R. 1986 - C.A.T. 31), though in a different context, the Principal Bench addressed itself specifically to the question whether the post of Director General in the scale of Rs.2,500-2,750 with a Special - Pay of Rs.250/- p.m. also created as a result of a cadre review in the Incometax Department was a higher post than one in the SAG (Rs.2500-2750) without Special Pay. There also 5 Directors of Inspection in the SAG, as in this case, were placed under the Director General. On these facts, the Principal Bench speaking through Justice Madhava Reddy, Chairman, held that, ".....it is clear that the post of Director General is a superior post to that of a Director of Inspection." In my opinion, this view squarely applies to the facts of the present case so far as the position of the Special Pay Posts and the SAG Posts in ITS-A are concerned.



8. It is also significant to note that when the Special Pay Posts were initially sanctioned in this case, they were given a separate designation as Senior General Manager, though this designation was later dropped. That also indicates that the special pay posts were higher posts meant to provide promotional avenues to officers working in SAG Rs.2250-2500/2500-2750 in ITS-A.

9. That the intention of Government in creating the special pay posts was to give promotional avenues, albeit marginally, for officers in the SAG of Rs.2250-2500/2500-2750 is further reinforced by the fact that the Fourth Pay Commission recommended a higher scale of pay for these posts, viz., Rs.7300-7600 as compared to posts without special pay which were placed in the scale of Rs.5900-6700 and these recommendations were accepted by the Government and became effective from 1-1-1986 before the applicant retired from service.

10. It would not seem to be correct to go merely by the definition of Special Pay in FR-9(25) for resolving the dispute in this case, ignoring the circumstances in which the special pay posts were brought into existence, ^{or} ~~in this case~~.

The Fundamental Rules themselves provide for relaxation of the said Rules in suitable cases by the Government (See: FR 5-A).

Essentially special pay as defined in FR-9(25) is meant to cover situations where a person continues in the same post but is called upon to perform more arduous duties or to shoulder additional responsibilities. The facts discussed earlier show

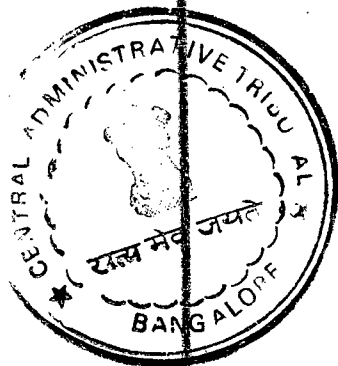


P. S. - 8

that the special pay posts with which we are here concerned, were in fact, ^{M designed} ~~designated~~ to be higher posts, the holders of which were expected to supervise and control the work of SAG officials without special pay. There is ^M ~~nothing~~ preventing Government in the exercise of its executive power from attaching special pay to posts in situations not strictly covered by the provisions of FR 9(25). After all, FR 9(25) only provides a definition of the expression "Special Pay" as used in the Fundamental Rules and that too, "unless there be something repugnant in the subject or context", it does not confer power on the Government to create Special Pay Posts, much less limit such power to the situations set out therein. Clearly the context in which the Special Pay Posts were created in the present case indicates that the special pay attached to those posts would not fall within the definition of FR 9(25).

11. In P.G. JOSHI v. DIRECTOR GENERAL, POSTS AND TELEGRAPHS, NEW DELHI (1975) SCC (L&S) 330, decided by the Supreme Court, the situation as obtaining in this case viz., (1) the posts with special pay having been created as a result of cadre review, the primary object of which was to relieve stagnation in the service and to suggest creation of posts for providing promotional avenues; (2) the functional justification for creation of the special pay posts being that the holders of those posts would supervise and control the work of officers in SAG without special pay; (3) the special pay posts being assigned a higher scale of pay with effect from 1.1.1986 compared to posts in SAG without special pay; and (4) the special pay posts being placed under "Higher G grades" above SAG in the proposal submitted to the cabinet and being initially designated as Senior General Managers when sanctioned, ^H ~~while~~ ^{M were} persons in SAG ~~being~~ called just General Managers did not exist. On the other hand, in Joshi's case, the posts carrying special pay were not higher posts and the special pay had been sanctioned specifically in terms of FR 9(25) (a) (see para 11 of judgment at para 333 of the report). The judgment in Joshi's case has, therefore in my view, no application to the present case.

P. S. Rao



12. For the reasons stated above, I hold that the Special Pay Posts were higher posts to which officers in SAS were to be promoted. That being so, the applicant was clearly entitled to be considered for such promotion when his admitted juniors viz., M/s Satyapal, U.D.N.Rao and S.G.Watwas and others were so considered and promoted.

13. I, therefore, direct the respondents to consider the case of the applicant for promotion to ~~xxx~~ one of the Special Pay Posts from the date his juniors were promoted and if found fit, give the applicant the benefit of Special Pay of Rs.250/- per month from such date and of the revised scale of Rs.7300-7600 applicable to those posts from 1-1-1986 till the date of his retirement and all consequential retirement benefits flowing therefrom. I do not wish to lay down - it is not the function of this Tribunal to do so - the criteria to be applied for such promotion, which is entirely upto the respondents depending on the requirements of the service and the nature of the special pay posts in question.

14. In the result, I allow the application. Parties to bear their own costs.



Sd/-
(P.SRINIVASAN)
MEMBER(A)

ORDER BY THE BENCH

In this case the applicant has claimed for the benefit of special pay, revision of his time scale of pay from 1-1-1986 and for consequential reliefs.

2. On an examination of the claim of the applicant, the Hon'ble Vice-Chairman has held that the post to which 'special pay' was attached was not a promotional post and his claim for special pay and revision of pay scales was not well founded. But, the Hon'ble Sri P.Srinivasan, Member(A) in his differing opinion has held that the post to which special pay was attached was a promotional post and that his case requires to be examined by Government on that basis.

3. On the differing opinions expressed by the Members of the Bench, the point of difference that arises for determination is 'whether the post to which a special pay of Rs.250=00 p.m. sanctioned by Government was a promotional post or not?

4. In exercise of the powers conferred by Section 26 of the Administrative Tribunals Act, 1985 ('the Act'), we refer the above point of difference to the Hon'ble Chairman to hear the said point either by himself or refer the same to such other member/members as may be decided by him under Section 26 of the Act.

5. We direct the Registrar to submit a copy of this reference along with our differing opinions to the Hon'ble Chairman for his orders under Section 26 of the Act.

6. Call on 23-5-1988 to await the orders of the Hon'ble Chairman.

TRUE COPY

Sd/-

VICE-CHAIRMAN. 27/4/88

Sd/-

MEMBER(A)

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 27TH DAY OF APRIL, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan, .. Member(A).

APPLICATION NUMBER 462 OF 1987.

B.S.G.K. Setty. .. Applicant.

(By Sri S.K. Srinivasan, Advocate)

v.

The Secretary,
Department of Telecommunications,
New Delhi.

(By Sri M.S. Padmarajaiah, SCGSC)

.. Respondent.

Justice K.S. Puttaswamy, Vice-Chairman.

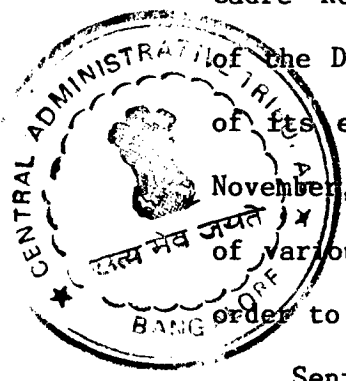
O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. On the recommendations of the Cadre Review Authority for Cadre Review of Indian Telecommunication Service Group-A Officers of the Department of Telecommunications (CRA), Government in exercise of its executive powers, in its order No. 6-17/85-TE.I dated 26/28th November, 1985 (Annexure-D) sanctioned the creation and upgradation of various posts of the Department as indicated in that order. That order to the extent which is material for this case reads thus:

Senior General Managers (Rs. 2500-2750 with Special Pay of Rs. 250/- per month).

Three (3) posts of General Manager of the Metro Telephones Districts in Bombay, Delhi and Calcutta and the post of Director of Telecom. Research Centre which are at present carried in SAG Level-I or II



(Rs.2250-2500/2500-2750) will hence forth be in SAG Level-I (Rs.2500-2750) with Special Pay of Rs.250/- per month. The posts of G.Ms will be redesignated as Senior General Managers.

This part sanctioned a special pay of Rs.250-00 per month for those holding the posts detailed therein. In pursuance of this order those who were holding the posts or posted against them appear to have drawn a special pay of Rs.250-00 per month.

3. From 28-11-1985 to 30-9-1986 the applicant was working as the Deputy Director General (DDG) in the office of the Secretary to Government, Department of Telecommunications, New Delhi. On 30-9-1986 he has retired from service on attaining superannuation.

4. In the general revision of pay scales granted to all civil servants of the Union of India, the pay of the applicant had been fixed as on 1-1-1986 in the appropriate scale and he had been allowed the retiral benefits on that basis from 1-10-1986.

5. When in service and thereafter, the applicant claimed that he should have been posted against any of the posts carrying the special pay of Rs.250-00 and consequent benefits in the revision of his pay from 1-1-1986 and retirement should be extended to him.

In its office Memorandum No.315-24/85-STG-III dated 15-1-1987 (Annexure-C) Government had rejected the same. Hence, this application reiterating his very claim made before Government.

6. This application was originally filed on 13-3-1987 before the Principal Bench as O.A.No.330 of 1987 and on an application made by the applicant, it has been transferred to this Bench and is registered as Application No.462 of 1987.

7. In its reply, the respondent had urged that the application was barred by time. On merits the respondent had urged that the applicant who had not performed the duties of any of the posts to



which special pay was attached, was not entitled for the same and that his non-posting against any one of those posts when in service was within its powers, legal and justified.

8. Sri S.K.Srinivasan, learned Advocate had appeared for the applicant. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel had appeared for the respondent.

9. Sri Srinivasan had contended that the posts to which special pay of Rs.250-00 was sanctioned by Government were promotional posts and the applicant, being senior to some of the officers posted against them, must now be deemed to have been posted against any one of them and all the consequential and financial benefits flowing from the same, extended to him. In support of his contention, Sri Srinivasan has strongly relied on the ruling of this Tribunal in R.KAPUR v. UNION OF INDIA AND ANOTHER (ATR 1986 CAT 31) and the rulings of the Supreme Court which have explained the new dimension of Article 14 of the Constitution, namely arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution.

10. Sri Padmarajaiah refuting the contention of Sri Srinivasan had sought to support the action of Government.

11. The claim of the applicant for special pay and consequential benefits was rejected by Government on 5-1-1987 and this application was made before the Principal Bench on 13-3-1987 which is within one year of the order of Government. Hence, this application is in time. We see no merit in the vague and general objection of the respondent to the contrary. We, therefore, reject the same.

12. On special pay of Rs.250-00 sanctioned by Government in its order dated 28-11-1985, the CRA recommended thus:

4. Higher Grades (Rs.3000/- fixed, SAG level-I plus Special Pay of Rs.250-00 p.m)



4.1. The Telecommunications Board comprises one Chairman (Rs.3500/- p.m.) and five Members (Rs.3000/- fixed). The post of Chairman is filled up under the Central Staffing Scheme. Out of the five posts of Members, four are cadre posts of the Indian Telecommunication Service. The Cadre Controlling Authority has not proposed any change in this regard.

4.2. The cadre controlling authority has pointed out that at present only four posts are available in the grade of Rs.3,000-00 fixed to the cadre officers against a total strength of nearly 2400 Group 'A' posts. Therefore, in order to improve career prospects of the Service, the strength of higher grade posts needs to be increased. It has further pointed out that in each of the three Metropolitan Districts of Bombay, Delhi and Calcutta, there are at least 3 more SAG officers apart from the General Manager. In these proposals, 2 more SAG posts for Bombay, 2 more for Delhi and 1 for Calcutta have been proposed. Hence, each G.M in the three Metro Districts will be controlling at least 4 SAG level officers. In order to ensure effective supervision and control, the General Manager's post should be in a higher grade. Similarly the Director of the Telecom Research Centre is supervising the work of 5 Additional Directors in SAG. Hence, this post should also be in a higher grade. It has been proposed by the cadre authority that the above four posts should be operated in SAG level-I (Rs.2500-2750) and allowed a special pay of Rs.250-00 per month.

4.3. At present, the Metro Districts of Bombay, Delhi and Calcutta have 5, 4 and 4 posts in SAG (including the post of General Manager). In this 'brief', we are recommending the strengthening of these Districts by creating one more post of Additional GM in SAG in each of these three Districts. Thus, each will have at least four Additional General Managers in SAG whose work is required to be supervised and controlled by the concerned General Manager. Functionally, therefore, there is adequate justification for upgrading these 3 posts from SAG (Rs.2250-2500/2500-2750) to SAG level (Rs.2500-2750) plus a special pay of Rs.250-00 p.m. Similarly there is adequate



Justification for upgrading the post of Director, TRC from SAG to SAG level-I plus a special pay of Rs.250-00 p.m. Creation of these four special pay posts will marginally improve the promotion prospects of officers working in SAG level posts. Such posts have been created in other Central Services like IRS (Income Tax), IRS (Customs & Central Excise) IDAS etc.

The CRA summed up its recommendations on this thus:

8. Summary of Recommendations & Threshold Analysis.

8.1 Consequent to the recommendations made in this 'Brief', the existing proposed and recommended strength of the Indian Telecommunication Service is given in Table IV:-

T A B L E - 1V

The existing, proposed and recommended cadre structure of the Indian Telecommunication Service Group-A

Sl. No.	Grade/Designation	Existing strength as on 1-1-1984	Proposed strength by the C.C.A.	Recommended by DP& T
<u>1. Higher Grade</u>				
	Member (Rs.3000/-fixed)	4	4	4
	Senior General Manager (Rs.2500-2750 + Spl.Pay of Rs.250=00p.m.	-	4	4
	xx	xx	xx	

8.3 Threshold profiles as on 1-1-1985 in respect of the service based on the existing, proposed and recommended structure are given in Table VI below:-

T A B L E -VI

Threshold analysis of the Indian Telecommunication Service Group 'A'

Number of years for promotion to the grade

Grade	Existing	Proposed	Recommended
SAG level-II	22	20	21
JAG	9	9	9

8.4 To sum up, following recommendations are placed before the Cadre Review Committee for favour of consideration:



- 1) Upgradation of the 3 posts of G.M. for the Metro Districts of Bombay, Delhi, Calcutta and the post of Director, Telecom Research Centre from SAG (Rs.2250-2500/2500-2750) to SAG level I (Rs.2500-2750) plus special pay of Rs.250-00 p.m.

Accepting these recommendations, Government issued its order on 28-11-1985.

13. The CRA in its recommendations or Government in its order, had not defined the term 'special pay'. But, the concept of 'special pay' or that term are not an unknown concept or term evolved for the first time by the CRA or by Government on 28-11-1985.

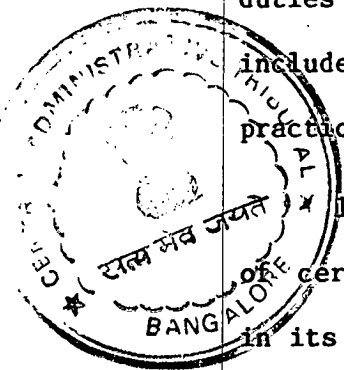
14) Rule 9(25) of the Fundamental Rules ('FR') which are in force from 1-1-1922 and are statutory defines that term thus:

(25) Special Pay 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, and includes non-practising allowance granted to doctors in lieu of private practice.

Under this provision, special pay is an additional pay granted to an incumbent of a post which involves specially arduous nature of duties or a specific addition to the work or responsibility, and includes practising allowance granted to doctors in lieu of private practice.

15. When the CRA recommended for grant of special pay to holders of certain posts and Government accepted and sanctioned the same in its order dated 28-11-1985 both of them, without an iota of doubt, had used that term only as defined in Rule 9(25) FR and had not given or contemplated any other meaning to that term at all. I have, therefore, no hesitation in holding that the CRA and Government had sanctioned 'special pay' only for the purposes and object of FR 9(25) and no other. From this it necessarily follows that what is



adumbarated in this Rule must be decisive in deciding the question.

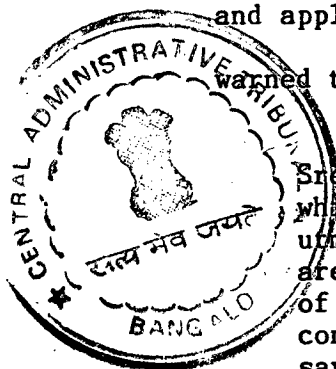
16. In deciding the scope and ambit of Rule 9(25) Rule 5A FR which confers power on Government to relax the operation of any of the Rules in individual cases has no application at all. Rule 5A does not control Rule 9(25) of the Rules.

17. In para 4 of its recommendations, the CRA had expressed that the posts to which special pay, was attached, had to be treated as promotional posts. The CRA in its final recommendations or Government in its order do not expressly say so. But, notwithstanding of what is stated by the CRA, we cannot treat the posts to which 'special pay' is attached as promotional posts or that one posted against them as promoted from a lower post to a higher post. Undoubtedly an officer posted to a post with 'special pay', gets certain additional benefits. But, by reason of that only, it is not possible to hold that they are promotional posts.

18. Before considering the cases relied on by counsel for the applicant, it is apt to recall the pregnant observations of Chinnappa Reddy, J. in AMAR NATH OM PRAKASH AND OTHERS v. STATE OF PUNJAB AND OTHERS (AIR 1985 SC 218) on the law of precedents. On precedents and applying the ratio decidendi of a decided case, the learned Judge

warned thus:

11. There is one other significant sentence in Sreenivasa General Traders v. State of A.P (supra) with which we must express our agreement. It was said, "with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as Statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co.Ltd. v. Horton, 1951 AC 737 at p.761 Lord Mac Dermot observed:

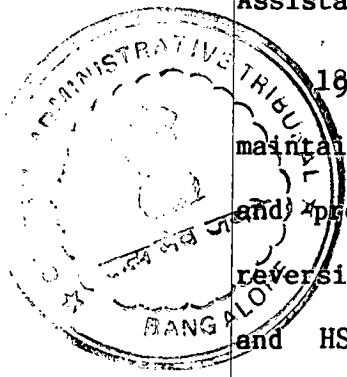


"The matter cannot of course be settled merely by treating the ip sissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge". In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294, Lord Reid said "Lord Atkin's speech..... is not to be treated as if it was a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J., as if it were an Act of Parliament". And, in *Herrington v. British Railways Board* (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

Also see the passage under the caption "Judgments must be read in the light of the facts of the cases in which they are delivered" on pp.42 to 45 in "Precedents in English Law" by Rupert Cross (III Edition). Bearing the above, I will now examine the cases relied on for the applicant.

19-1. In *PADMANABHAN AND OTHERS v. DIRECTOR OF PUBLIC INSTRUCTION AND OTHERS* (AIR 1981 SC 64) the Supreme Court was dealing with the legality of posting of Padmanabhan and others from the posts of Assistant Educational Officers (AEOs) to the posts of High School Assistants (HSAs) in the State of Kerala.



19-2. While Padmanabhan and others, who were the appellants maintained that the posts of AEOs which they were holding, were higher and promotional posts and their postings as HSAs were in truth reversions, the State of Kerala maintained that the posts of AEOs and HSAs were equivalent posts and were inter-changable and, therefore, there were no reversions to lower posts. The Kerala High Court accepted the case of the State of Kerala and dismissed the writ petitions filed by Padmanabhan and others.

19-3. On appeals, the Supreme Court examining the nature of

the duties and powers of AEOs and HSAs and all the statutory and other provisions bearing thereto, disagreeing with the Kerala High Court ruled that the posts of AEOs carrying a special pay of Rs.50/- per month were promotional posts and allowed their appeals. In reaching its conclusions, the Supreme Court relied on Rule 12(31) of the Kerala Service Rules (KS Rules) which defined the special pay thus:

12. (31) Special Pay means an addition of the nature of pay to the emoluments of a post or of an officer granted in consideration of the following:

- (a) Where a post would call for a higher scale of pay in view of the additional and/or higher responsibilities attached to it; or
- (b) Where the nature of work is specially arduous; or
- (c) Where an officer has to attend to work in addition to normal duties attached to his post.

Clause (a) of this rule provides for reckoning the higher scale of pay attached to the post as also special pay under Rule 12(31) of the KS Rules. On this, the Court also distinguished the earlier ruling of the Court in P.G.JOSHI v. DIRECTOR GENERAL, POSTS AND TELEGRAPHS, NEW DELHI [(1975) 4 SCC (L & S) 330: (1975) 2 SCR 115] which interpreted Rule 9(25) FR.

19.4. The fact situations and the Rules that came up for consideration and more so the questions that arose for determination in Padmanabhan's case are entirely different to the fact/situations, the Rules and the questions that arise for determination in the present case. Every one of the observations made in Padmanabhan's case must be read in the context of the fact situations, the Rules that came up for consideration. I am of the view that the principles enunciated in Padmanabhan's case are distinguishable and do not bear on the precise point that arises for our determination in this case. On the other hand, the principles enunciated in Joshi's case



which has not been departed in Padmanabhan's case governs the question.

20. In Kapur's case this Tribunal was dealing with the transfer of Kapur from the post of Director General (Special Investigation) and Director of Inspection, New Delhi which carried a special pay of Rs.250-00 p.m. to the post of the Director of Inspection (P and P), New Delhi, which did not carry any special pay. The transfer was assailed by Kapur on the ground that the same had been done as a measure of punishment. In sustaining that case, this Tribunal also relied on the fact that the later post to which he had been transferred and posted did not carry a special pay of Rs.250-00 which the former carried. But, that is not the position in the present case. In Kapur's case, the Tribunal had not held that the post carrying a special pay was a promotional post and a senior officer was entitled to be posted as of right and if not so posted, the senior officer must be deemed to have been posted to that post as of right as urged by the applicant. The observations of the Bench on 'special pay' should only be read as made in the context of deciding whether the transfer was as a measure of punishment or not and as not supporting the very broad proposition urged for the applicant. I am, therefore, of the view that the ratio in Kapur's case does not really bear on the point.

21. On the true meaning of the term 'special pay' defined in Rule 9(25) FR, only a person who has been posted and had actually worked shouldering additional responsibilities was entitled for 'special pay'. The entitlement for special pay arises only when a person had been posted to a post which carries a special pay and that person had actually discharged the additional duties of that post and not otherwise. An officer who is not posted and had not worked for whatever reason that be, whether he is a senior or junior,



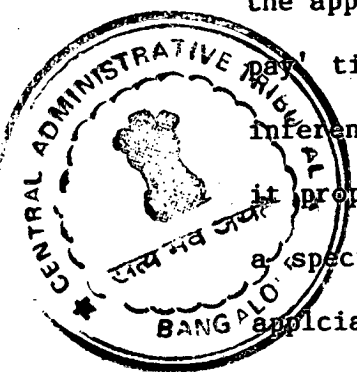
cannot claim 'special pay' if he had not been posted and had not actually discharged the onerous duties of that post.

22. On facts, there is no dispute that from 28-11-1985 to 30-9-1986 on which day the applicant retired from service, he had not been posted to any of the posts which carried a special pay of Rs.250-00 p.m. and had not discharged the duties of any one of those posts. If that is so, then the claim of the applicant for the same cannot be upheld.

23. As to who should be posted to man a post which carries a special pay is primarily for the appointing authority to examine and decide. In my view courts and Tribunals which are illequipped to decide on the same should not trench on the same, except in exceptional cases on well settled grounds only. The fact that a person posted against a post carrying a special pay derives some advantageous immediately as also on his retirement, does not in any way alter the character of the post or the power of the appointing authority to post a person against such a post. For whatever reason that be, the applicant was not posted to any one of the posts carrying 'special pay' till he retired from service. In these circumstances, the only inference to be drawn is that the appointing authority did not find it proper to post the applicant to man any of the posts which carried a special pay. From this also, I cannot uphold the claim of the applicant.

24. In my view, the claim of the applicant either directly or indirectly does not attract the vice of arbitrariness to invoke the new dimension of Article 14 of the Constitution. I see no merit in this contention of the applicant.

25. I have so far examined the merits and found against the applicant. As noticed earlier, Government accorded its sanction



to grant special pay on 28-11-1985. From that date to 22-9-1986 on which day only he made his very first written representation, the applicant did not claim for posting him to any of the posts which carried a special pay and was content to work as DDG which did not carry any special pay. The time available for Government was so short to examine and post the applicant to any one of the posts and it is now idle to contend that notwithstanding the same, he should be deemed to have been so posted and the benefits attached to the same notionally extended to him. In my view, these facts themselves justify me to decline to interfere, even if there is any merit in the claim of the applicant.

26. I have carefully read the dissenting opinion proposed to be delivered by the Hon'ble Sri P.Srinivasan, Member(A). For the very reasons stated in my opinion, I regret my inability to subscribe to his view that a post to which a 'special pay' is attached is a promotional post. But, if that view of Sri P.Srinivasan is held to be correct view, then I concur with his other view that the case of the applicant requires to be considered by Government as directed by him in his opinion.

27. Before parting with this case, I deem it proper to observe that to remove heart burns and needless claims, it is desirable for Government to evolve a criteria for posting officers to posts carrying a special pay urgently, publish the same and scrupulously follow the same. Such a course is in the interest of sound public administration and the public servants also. I do hope and trust Government will earnestly examine this and evolve the criteria.

28. As all the grounds urged for the applicant fail, this application is liable to be dismissed. I, therefore, dismiss this application. But, in the circumstances of the case, I direct the parties to bear their own costs.



[Signature]
VICE-CHAIRMAN
27/9/1986

Shri P. Srinivasan, Member (A)

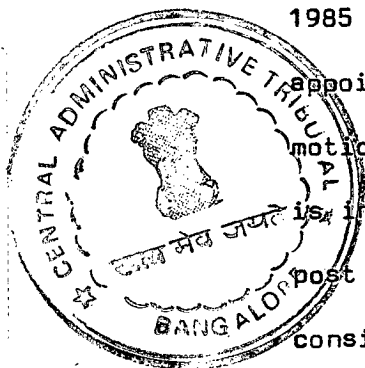
ORDER

I have had the benefit of reading the judgment ⁱⁿ ~~or~~ draft prepared by the Hon'ble Vice-Chairman in this case. With utmost respect, for reasons to be stated presently, I am obliged to disagree with the conclusions reached by him.

2. The applicant, who retired as Deputy Director General, Department of Telecommunications, a post in the Senior Administrative Grade ('SAG' for short) in the scale of Rs.2,500-2750 belonging to the Indian Telecom Service Group A (ITSA) complains that he was wrongly denied promotion to a post in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250/- per month ('Special Pay Post' for short), when four such posts were created in September 1985, though persons Junior to him in SAG were so promoted.

3. The main question for determination in this application is whether the aforesaid Special Pay Posts created in September 1985 were higher than those in SAG without Special Pay, so that appointment to one of the Special Pay posts constituted a promotion to officers in SAG without Special Pay. If the answer is in the affirmative, then the applicant who was holding a post in SAG in September, 1985 was surely entitled to be considered for promotion to one of the Special Pay Posts in accordance with his seniority in SAG and if found fit to be promoted to one of them when they were first filled in.

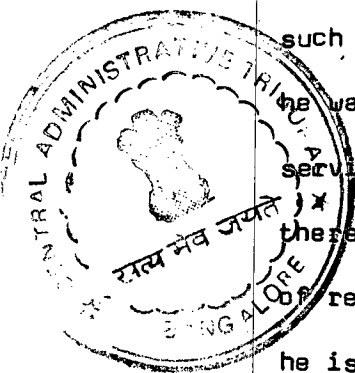
The approach of the learned Vice-Chairman to



P. Srinivasan

to the problem is also the same. But, he has recorded a finding that the aforesaid Special Pay Posts were not higher than the posts in SAG and that therefore, appointment to one of the Special Pay Posts did not constitute a promotion of an officer in SAG. On that finding, he has further held that it was upto the authorities concerned to decide who should man the Special ^{Pay} Posts and not for this Tribunal to determine such appointment\$. On the other hand, as I will attempt to show in the following paragraphs, I am of the view that the Special Pay posts in question were indeed higher and promotional posts and as such, the applicant was entitled to be considered for promotion to one of them on the basis of his seniority and to be so promoted if found fit when his juniors in SAG were promoted to those posts. On the view I am taking, it would be begging the question to say that since the applicant did not actually hold one of the Special Pay Posts prior to his retirement, he cannot be given the benefit of Special Pay while in service and consequential additional retirement benefits such as pension, gratuity etc., on his retirement. If, in fact, he was wrongly kept out of one of the Special Pay Posts while in service and was thereby denied the financial benefits flowing therefrom, it would not be right to say by a circular process of reasoning that because he did not in fact hold such a post he is not entitled to the financial benefits attached to them either during his Service or after retirement. I now proceed to give the reasons which have led me to the view that I have indicated above.

P. S. *[Signature]*



4. The Special Pay Posts in question, were created in September, 1985, as a result of the cadre review undertaken by Government in respect of the ITSA to which the applicant belonged. On the basis of the recommendations of the III Pay Commission accepted by the Central Government, review of cadre prospects once every 3 years was to be undertaken and proposals for creation of posts submitted for the approval of the Central Government to relieve stagnation with adequate functional justification. The Note submitted to the Cabinet along with the proposals of the Cadre Review Committee for the ITS-A, one of which was to create 4 posts in the grade of Rs.2,500-2,750 plus Special Pay of Rs.250 per month may be ~~referred~~ ^{referred to} usefully in this connection: H

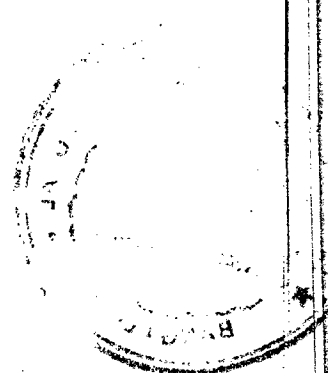
"The career advancement prospects of these officers"

the Note says, referring to officers of the ITS-A:

"have been somewhat bleak for the last few years. There has been stagnation especially at Senior Administrative Grade level for periods considered too long and timely corrective action is deemed necessary to boost the morale of the officers

The recommendations of the Third Pay Commission accepted by the Central Government provide, in such situations, for a review of the cadre prospects once every three years and the Departments concerned have to put forward proposals for creation of posts in various cadres keeping in view the functional needs of the organisation and the promotional prospects of the officers for consideration by the Cabinet."

The Note for the Cabinet then goes on to set out the proposals of the Cadre Review Committee. The proposal with which we are



P. S. - 10

concerned, reads as follows:

"Upgradation of 3 posts of General Manager.....
from SAG (2250-2500/2500-2750) to SAG level-I
(2500-2750) plus special pay of Rs.250/- per
month and their upgradation as Senior General
Manager"

(Emphasis supplied)

5. The proposals contained in a "Brief" prepared
in the Department of Personnel and Training for the Cadre
Review Committee which ^{of initiated} ~~made~~ the aforesaid proposal, include
the following:

"TABLE-I

Sl. No.	Grade/Designation	Existing Strength as on 1-1-1984.	Proposed strength.	Variation (+ or -) (4 - 3)
1	2	3	4	5
1.	<u>Higher Grades:</u>			
	Member(Rs.3000 fixed)	4	4	Nil
	Senior General Manager (Rs.2500-2750+Spl.Pay Rs.250/-p.m.)	-	4	+4
	<u>Senior Administrative Grade</u> (Rs.2250-2500/2500-2750).	83	136	+53 "

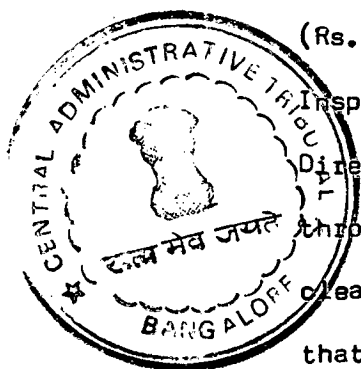
It will be seen that the newly created posts in the grade of Rs.2,500-2,750 plus Special Pay are placed separately in Higher Grades above SAG.

6. The "Brief" goes on to explain that in order to "improve Career prospects of the Service, the strength of higher grade posts needs to be increased." The General Manager at Bombay, Delhi and Calcutta, it was pointed out, would be controlling 4 SAG level officers (2250-2500/2500-2750) and similarly, the Director of



the Telecom Research Centre, was supervising 5 Additional Directors in SAG. It was proposed, therefore, that these four posts "be operated on SAG level-I(Rs.2,500-2,750) and allowed a special pay of Rs.250/- p.m." In this way, it would appear that the newly created posts with Special Pay of Rs.250/- per month, were contemplated as higher posts above the SAG of Rs.2250-2500/2500-2750, and the holders of these higher posts would actually control persons working in SAG. The creation of these posts with special pay, it was said, would "marginally improve the promotion of officers working in SAG level posts" similar posts having already been created in other Central - Services. This also indicates that the Special Pay posts were regarded as promotional avenues for officers in SAG.

7. In R.KAPUR v. UNION OF INDIA AND ANOTHER (A.T.R. 1986 - C.A.T. 31), though in a different context, the Principal Bench addressed itself specifically to the question whether the post of Director General in the scale of Rs.2,500-2,750 with a Special - Pay of Rs.250/- p.m. also created as a result of a cadre review in the Incometax Department was a higher post than one in the SAG (Rs.2500-2750) without Special Pay. There also 5 Directors of Inspection in the SAG, as in this case, were placed under the Director General. On these facts, the Principal Bench speaking through Justice Madhava Reddy, Chairman, held that, ".....it is clear that the post of Director General is a superior post to that of a Director of Inspection." In my opinion, this view squarely applies to the facts of the present case so far as the position of the Special Pay Posts and the SAG Posts in ITS-A are concerned.



8. It is also significant to note that when the Special Pay Posts were initially sanctioned in this case, they were given a separate designation as Senior General Manager, though this designation was later dropped. That also indicates that the special pay posts were higher posts meant to provide promotional avenues to officers working in SAG Rs.2250-2500/2500-2750 in ITS-A.

9. That the intention of Government in creating the special pay posts was to give promotional avenues, albeit marginally, for officers in the SAG of Rs.2250-2500/2500-2750 is further reinforced by the fact that the Fourth Pay Commission recommended a higher scale of pay for these posts, viz., Rs.7300-7600 as compared to posts without special pay which were placed in the scale of Rs.5900-6700 and these recommendations were accepted by the Government and became effective from 1-1-1986 before the applicant retired from service.

10. It would not seem to be correct to go merely by the definition of Special Pay in FR-9(25) for resolving the dispute in this case, ignoring the circumstances in which the special pay posts were brought into existence, ^{or} ~~in this case~~. The Fundamental Rules themselves provide for relaxation of the said Rules in suitable cases by the Government (See: FR 5-A). Essentially special pay as defined in FR-9(25) is meant to cover situations where a person continues in the same post but is called upon to perform more arduous duties or to shoulder additional responsibilities. The facts discussed earlier show



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that the special pay posts with which we are here concerned, were in fact, ^{M designed} ~~designated~~ to be higher posts, the holders of which were expected to supervise and control the work of SAG officials without special pay. There is ^M ~~nothing~~ preventing Government in the exercise of its executive power from attaching special pay to posts in situations not strictly covered by the provisions of FR 9(25). After all, FR 9(25) only provides a definition of the expression "Special Pay" as used in the Fundamental Rules and that too, "unless there be something repugnant in the subject or context", it does not confer power on the Government to create Special Pay Posts, much less limit such power to the situations set out therein. Clearly the context in which the Special Pay Posts were created in the present case indicates that the special pay attached to those posts would not fall within the definition of FR 9(25).

11. In P.G. JOSHI v. DIRECTOR GENERAL, POSTS AND TELEGRAPHS, NEW DELHI (1975) SCC (L&S) 330, decided by the Supreme Court, the situation as obtaining in this case viz., (1) the posts with special pay having been created as a result of cadre review, the primary object of which was to relieve stagnation in the service and to suggest creation of posts for providing promotional avenues; (2) the functional justification for creation of the special pay posts being that the holders of those posts would supervise and control the work of officers in SAG without special pay; (3) the special pay posts being assigned a higher scale of pay with effect from 1.1.1986 compared to posts in SAG without special pay; and (4) the special pay posts being placed under "Higher G grades" above SAG in the proposal submitted to the cabinet and being initially designated as Senior General Managers when sanctioned, while ^{M were} ~~being~~ persons in SAG called just General Managers did not exist. On the other hand, in Joshi's case, the posts carrying special pay were not higher posts and the special pay had been sanctioned specifically in terms of FR 9(25) (a) (see para 11 of judgment at para 333 of the report). The judgment in Joshi's case has, therefore in my view, no application to the present case.

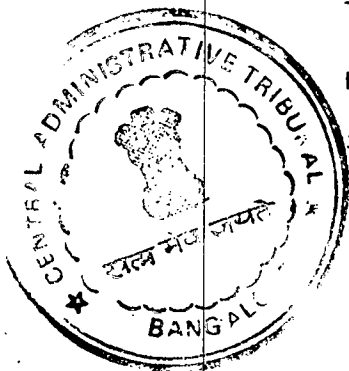
P. S. B.



12. For the reasons stated above, I hold that the Special Pay Posts were higher posts to which officers in SAG were to be promoted. That being so, the applicant was clearly entitled to be considered for such promotion when his admitted juniors viz., M/s Satyapal, U.D.N.Rao and S.G.Watwas and others were so considered and promoted.

13. I, therefore, direct the respondents to consider the case of the applicant for promotion to ~~xxx~~ one of the Special Pay Posts from the date his juniors were promoted and if found fit, give the applicant the benefit of Special Pay of Rs.250/- per month from such date and of the revised scale of Rs.7300-7600 applicable to those posts from 1-1-1986 till the date of his retirement and all consequential retirement benefits flowing therefrom. I do not wish to lay down - it is not the function of this Tribunal to do so - the criteria to be applied for such promotion, which is entirely upto the respondents depending on the requirements of the service and the nature of the special pay posts in question.

14. In the result, I allow the application. Parties to bear their own costs.



sd/-
(P.SRINIVASAN)
MEMBER(A)

ORDER BY THE BENCH

In this case the applicant has claimed for the benefit of special pay, revision of his time scale of pay from 1-1-1986 and for consequential reliefs.

2. On an examination of the claim of the applicant, the Hon'ble Vice-Chairman has held that the post to which 'special pay' was attached was not a promotional post and his claim for special pay and revision of pay scales was not well founded. But, the Hon'ble Sri P.Srinivasan, Member(A) in his differing opinion has held that the post to which special pay was attached was a promotional post and that his case requires to be examined by Government on that basis.

3. On the differing opinions expressed by the Members of the Bench, the point of difference that arises for determination is 'whether the post to which a special pay of Rs.250=00 p.m. sanctioned by Government was a promotional post or not?

4. In exercise of the powers conferred by Section 26 of the Administrative Tribunals Act, 1985 ('the Act'), we refer the above point of difference to the Hon'ble Chairman to hear the said point either by himself or refer the same to such other member/members as may be decided by him under Section 26 of the Act.

5. We direct the Registrar to submit a copy of this reference along with our differing opinions to the Hon'ble Chairman for his orders under Section 26 of the Act.

6. Call on 23-5-1988 to await the orders of the Hon'ble Chairman.

TRUE COPY

Sd/-

VICE-CHAIRMAN. 27/5/1988

Sd/-

MEMBER(A)

27/4/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE