

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH ~~CA~~ ~~NAGPUR~~
~~CAMP NAGPUR~~

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O.A. NO: 1087/92
T.A. NO:

199

DATE OF DECISION 9.3.1995

H.C. Deodhagale

Petitioner

Shri Y.B. Phadnis

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri R.P. Darda.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.R. Kolhatkar, Member(A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? X
3. Whether their lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? X

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH,
CAMP AT NAGPUR.

Original Application No.1087/92.

H.C.Deodhagale. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri Y.B.Phadnis.
Respondents by Shri R.P.Darda.

Oral Judgment :-

¶Per Shri M.R.Kolhatkar, Member(A)¶ Dt. 9.3.1995.

The applicant joined Telecom Department as a Clerk w.e.f. 23.7.1973 and was appointed as non-qualified DTO Accountant with special pay of Rs.20/- p.m. by orders dt. 25.8.1986. The above special pay was subsequently enhanced to Rs.40/- p.m. w.e.f. 21.4.1986. On passing the qualifying examination of DTO Accountant on 17.5.1989 the applicant was appointed as qualified DTO Accountant with special pay of Rs.90/- p.m. w.e.f. 17.5.1989. On the applicant's completing 16 years of service in the Time scale he got benefit of One Time Bound promotion w.e.f.23.7.1989 in the pay scale of Rs.1400-2300. At the stage of fixation of his pay under One Time Bound Promotion scheme, the special pay was taken into account. This was later on being not considered as in accordance with the rules and by the order dt. 25.7.1992 (at page 11) an amount of Rs.10,737/- was directed to be recovered from his salary on account of over payments taking into account the special pay

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at the stage of pay fixation. It is this which the applicant has challenged. This Tribunal by its orders dt. 23.3.1993 gave an interim stay of recovery, on which date Rs.8,300/- out of the above amount was recovered and balance remained unrecovered. It is not disputed that the case is required to be decided in terms of Government of India, Ministry of Finance O.M. No.6(1) - E III/B/(65) dt. 25.2.1965 which appears under F.R. 22(c) as Note 11 and which governs the treatment of special pay for purpose of fixation of pay on promotion. This envisages that the special pay in the lower post should have been granted in lieu of separate higher scale, secondly the special pay should have been drawn in the lower post continuously for a minimum period of three years on the date of promotion and thirdly it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post. The applicant has assailed application of these orders on several grounds. First of all, he contends that promotion under One Time Bound promotion scheme is not real promotion, but it is only an enhancement of pay scale to remove stagnation in respect of government employees who have completed 16 years of satisfactory service. According to him the special pay means an addition, of the nature of pay, to the emoluments of the post of a government servant, granted on consideration of :

"(a) the specially arduous nature of the duties;

or

(b) a specific addition to the work or responsibility."

According to him the Government have no right to

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take away the special pay in the name of pay fixation on promotion when the circumstances warranting grant of special pay have not undergone any change. Further, ^{Condition that the} counsel for the applicant contends that the ^{should have been} said special pay ^{in lieu of higher time scale} is an arbitrary administrative fiction which has no warrant in the FRs and SRs applicable to the government employees. It is further contended that if the applicant is denied the special pay after he became qualified accountant it really amounts to penalisation of a government employee for passing a departmental examination and is prima facie unfair.

2. The Respondents have contended that the applicant is not entitled to the inclusion of the special pay at the stage of pay fixation in terms of OM dt. 25.2.1965. In this connection none of the conditions enumerated in that OM are fulfilled. The ^{two} ^{that} first ^{time} ^{should} conditions viz. special pay should be in lieu of separate higher ^{scale} and that ^{it} have been drawn for three years ^{are} not fulfilled because the applicant began to draw the special pay on being qualified as an Accountant w.e.f. 17.5.1989 and his case for pay fixation fell due on 23.7.1989 and therefore he had put in only 2 months six days as against the minimum period required ^{viz.} three years. It is in particular clarified that it is only the special pay drawn by qualified accountant which is treated as ^{being} ² in lieu of special pay. It is not disputed that the applicant became qualified accountant only from 17.5.1989. In this connection, attention is invited to Rule 51(1) of the Manual of Appointment and Allowances, 1973 4th Edition of the Postal Department. At ² (Annexure S-6) an extract has been given, which

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reads as below:

"(3) Special pay of Rs.35 drawn by Accountants and Rs.25 drawn by Assistant Accountants in Post Offices, Railway Mail Service and Telegraph Offices may be treated as granted in lieu of separate higher scale of pay and may be treated as part of the pay towards fixation of pay on promotion to a higher post subject to the conditions laid down in the Ministry of Finance O.M. No.F.6(1) E-III/8/65, dated the 25th February, 1965."

3. It is contended that so far as special pay of Rs.20/- subsequently increased to Rs.40/- p.m. in terms of orders of appointment dt. 25.8.1986 is concerned viz. the special pay drawn by non-qualified Accountant it is governed by Note - I below 51(7) of the Manual which reads as below:-

"A time-scale clerk who has not passed the Accountants' Examination, but who due to non-availability of qualified Accountant had to be appointed to work as Accountant or Assistant Accountant, shall be entitled to a special pay of Rs.15 p.m. while working as Accountant and Rs.10/- p.m. as Assistant Accountant".

These instructions are dated 10.1.1952.

4. It is not the amount of Rs.15/- p.m. referred to in this particular memo subsequently was raised to Rs.20/- and was further raised to Rs.40/-. The main contention of the Respondents is that this special pay of Rs.20/- ~~was~~ raised subsequently to Rs.40/- which was drawn by the applicant between 25.8.1986 and 17.5.1989 was not the special pay which ^{was} in lieu of higher time scale. According to the Respondents, if it were in lieu of higher time scale there would have been a specific provision accordingly and since no provision had been made the special pay drawn by non-qualified accountants has to be treated as not being in lieu of higher time scale.

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5. ^{We have} considered the question as to whether the mere fact that there is no reference to special pay drawn by non-qualified accountants being in lieu of higher time scale should operate to deprive the applicant to the counting of the special pay at the stage of fixation of the pay on promotion. We, however, note that even if we tried to interpret the rule the period involved in the particular case at the stage of pay fixation continues to remain less than three years viz. 25.8.1986 to 23.7.1989. A plain reading of the rules shows that all the three conditions are required to be fulfilled simultaneously.

6. We have considered the arguments advanced by the learned counsel for the applicant on the ground of unfairness. In the matter of pay fixation, however, we are required to proceed strictly in terms of the relevant rules and Government decisions which are not inconsistent with the rules. We find that the applicant was not entitled to the counting of the special pay either as unqualified accountant or as qualified accountant for pay fixation in terms of Instruction No.11 below F.R. 22(C).

7. The applicant has contended that if it is held that decision 11(a) under F.R. 22(C) does not apply to him, in that case the question of applicability of 11(b) to his case should be considered. Decision 11(b) states that:

"In cases where the special pay drawn by a Government servant in the lower post is not in lieu of a separate higher scale, the provisions of Government of India Order (2) below F.R. 9 (23) will continue to apply."

This refers to treatment of such special pay as personal pay to be absorbed in future increments. But it appears to us that this is exactly what the Respondents have done as is seen from the

the letter dt. 19.10.1992 annexed at Ex. S-4 to the written statement of the respondents, which states as below:-

"In such cases the pay fixation of DTBP promotion is to be done with reference to the basic pay drawn in the lower post excluding the special pay. If this results in drop in emolument the difference between the pay so fixed and the pay plus special pay drawn as qualifying DTO Accountant in the lower post has to be allowed in the form of personal pay to be absorbed in future increases of pay."

Therefore, decision 11 (b) does not help the applicant.

8. We note, however, that the applicant's is a marginal case. If we calculate the total period for which he drew special pay ~~as~~ as non-qualified accountant plus as qualified accountant, the same comes to 2 years, 10 months and 28 days. We have already noted that there is an arguable case for treating the period of special pay as a non-qualified accountant to be counted as in lieu of higher time scale in case other conditions are fulfilled viz. completion of three years of service. We, therefore, direct the department to refrain from recovering the balance amount of recovery viz. Rs.10,737/- minus Rs.8,300/-.

9. We are, therefore, required to dismiss this D.A., which is accordingly dismissed except to the extent of limited relief of balance recovery. There will be no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER(A)

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