

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(8)

O.A. No. 107/88; 365/90 & 560/92

Shri (Dr.) Madhu Kherdey	Applicant (OA 107/88)
Shri N. M. Karande	Applicant (OA 365/90)
Shri P. W. Smarth	Applicant (OA 560/92)

Vs.

The Director of Accounts
(Postal), Nagpur - 440 001.

Union of India, through
Director General,
Department of Post,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.

Chief Postmaster General,
Maharashtra Circle,
Bombay - 400 001.

.... Respondents

Coram : Hon'ble Shri M. R. Kolhatkar, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

Shri B. Dattamurthi,
counsel for the Applicant.

Shri P. M. Pradhan,
Counsel for the Respondents.

JUDGMENT

Dated : 17-3-98

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

All these three applications are under
section 19 of the Administrative Tribunals Act, 1985.
As the common question of law and facts are involved
the three Original Applications are being decided
together. The reasons for the order are contained in
OA 107/88.

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O.A. No. 107/88 - Madhu Kherde. (Applicant)

1. The brief facts are that the applicant originally belonged to the "Postal Superintendent Services" (PSS) Group B and during the period from 2.11.81 to 18.4.85 i.e., for three years and 5 months plus, worked as Assistant Director, Postal Services, Nagpur. The Officers belonging to PSS Group B then posted as Assistant Directors of Postal Services in Circle Offices i.e., Post Master General's Offices are granted special pay of Rs. 100 per month vide DGP&T's Memo No. PE-9. 9/50 dated 6th August 1950 vide (Annexure G.). These orders were confirmed and continued vide orders No. 1-11/76-PAP dated 29.5.78 (Annexure-H) p.19 Even after decentralisation of the work of Regional Directors of Postal Services, the special pay was continued vide DGP&T's letter No. 6-13/79/PAP, dated 19th September 1980, (Annexure-I). It is the case of the applicant that his pay ought to be fixed by taking account of special pay element when he proceeded on leave after having worked in Nagpur (18.4.85 to 29.6.86) and after he was promoted to IPS, Gr. A and took charge as Senior Supdt. of Post Offices, Dhule on 30.6.86. It is not in dispute that on the recommendations of the IVth Pay Commission, in accordance with department of

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Posts, New Delhi letter No. 6/29/86-Estt Dated 29.6.86, (Annexure-L) the amount of special pay was increased from Rs. 100 to Rs. 200/- with retrospective effect from 1.1.86.

2. The applicant's grievance is that his pay slip dated 23.4.87 (Annexure - M) as Senior Superintendent of Post Offices, Dhule did not include special pay. Therefore, the applicant made a representation on 22.5.87 to the pay fixation officer viz., Accounts Officer, office of the Director of Accounts, (Postal) Nagpur. This representation of the applicant was rejected by the Accounts Officer Postal, Nagpur by his letter No. D-MAH/1/MK dated 15.10.87 read with circular letter dated 25.6.87 vide (Annexures-P&Q).

3. The prayers of the applicant are to direct respondents to count special pay of Rs.200 per month towards refixation of his pay on promotion to higher post as per rules from 30.6.86 and fix the pay at the appropriate stage from 30.6.86 with the next increment due on 1.6.87 and to pay him arrears of pay and other allowances consequent on pay fixation along with current rate of interest till the date of actual payment.

4. The department of posts had raised a

11 preliminary objection that the Secretary Department of posts, New Delhi ought to have been impleaded as a necessary party. Accordingly M.P. No. 585/92 was filed which was decided on 8.9.92 and Secretary, Department of Posts was impleaded as Respondent No.2.

5. It is not disputed that the applicant worked as Assistant Director Postal Services, Nagpur and drew the special pay of Rs. 100 during the period indicated. According to the Respondents, however, this special pay was in addition to the duty pay & it was not in lieu of any separate higher scale for the post of Assistant Director of Postal Services. The said special pay was introduced by the orders dated 29.5.78 considering the nature of duties and specific addition to the work and responsibilities attached to the said post. The applicant's pay as Senior Superintendent of post Offices Dhule was correctly fixed under Government of India Resolution No. 13 under FR 22(c) excluding the element of special pay attached to the earlier post of Assistant Director of Postal Services. Since the applicant is not entitled to pay fixation by addition of Rs. 100/ Rs. 200 as special pay, the question of payment of any arrears does not arise.

6. The respondents have also drawn our attention to the fact that the IIIrd pay commission

did not make any recommendation for grant of special pay for Assistant Director Postal Services but that a Committee was appointed for review of special pay for various posts in P & T Department and the said Committee recommended grant of special pay to the PSS Class II officers posted as ADPS on the following grounds:

- (a) The ADPS in Circle Office is given special responsibilities than those attached to the PSS Class II Officer in the field, he helps in interpreting and supervising, he interprets the policies laid down by the Directorate.
- (b) He exercises certain financial powers on behalf of the Head of the circle under the internal delegation of such powers.
- (c) He also exercises certain administrative powers on behalf of the Head of the circle and issues decisions in regard to certain matters which are outside the powers of the Divisional Superintendents.

It was in accordance with these recommendations that the orders dated 29.5.78 were issued.

So far as sub-rule 13 to F.R. 22 is concerned the same is as below :-

TREATMENT OF SPECIAL PAY FOR PURPOSE OF PAY

ON PROMOTION :- When the special pay is in lieu of a separate higher scale. In cases where a Government servant is in receipt of a special pay in a post, his pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post subject to the conditions mentioned below :-

- (i) The special pay in the lower post should have been granted in lieu of separate higher scale (e.g. special pay granted to steno-typist, clerk-in-charge, etc.)
- (ii) If the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post will be fixed, under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time-scale of the higher post will be fixed, under the normal rules with reference to the basic pay drawn in the lower post (excluding the special pay) where it results in drop in emoluments the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;
- (iii) In both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post.

According to the respondents these conditions are not fulfilled in the case of the Applicant.

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The applicant has argued that it is not correct to state that the special pay was introduced only in 1978. In fact it was introduced in 1950 vide (Annexure-G) referred to earlier. At Annexure R the applicant has filed extract from compilation of FR. 22-c re:pay in which Government of India, Ministry of Finance, O.M.No. F 6(1) E II B/68 dated 8.1.1968 has been quoted. In note I, it is stated that "The Special Pay shown in the schedules to the Central Civil Services (Revised Pay) Rules 1960 will be treated as in lieu of higher pay scale. According to the Applicant, the special pay introduced in 1950 was continued by Revised Pay Rules 1960 and was in lieu of higher scale of pay. In this connection reference ^{may be} made to Annexure S. It is true that the IIIrd pay commission left the question of special pay open to be decided by the respective departments and it was in this context that the Expert group was appointed by the P&T department from which we have already quoted in the context of respondent's reply. Annexure-H, which is Government of India orders dated 29.5.1978 on the subject "Review of rates of Special Pay attached to various Posts" states that existing conditions governing the eligibility and payment of special pay to those included in Annexure A shall remain unaltered. This means that the condition that the special pay will be treated as in lieu of higher pay scale remained unaltered. The IV Pay Commission continued the Special Pay but increased the quantum to Rs.200.

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According to Applicant the conditions prescribed
in the Rule 13 of F.R. 22(c) have been fulfilled
in his case. There is no dispute at all that the
condition of three years' service has been fulfilled
by the applicant. The main issue, therefore, is
whether the special pay attached to the post was
in lieu of separate higher scale. In this
connection, the applicant has relied on the Division
Bench judgment of the Jabalpur Bench of the Tribunal
in TR. A, 2/86 dated 8th October 1986 between V.K.
Dhir Vs. Union of India vide (Annexure-W). In this
judgment the contention of the respondents that
Government of India orders re: special pay being
in lieu of high scale were no more effective were
repelled by the Tribunal in following words:-

One of the arguments advanced by learned
Shri Tare for the respondents is that the
Government of India's order cited by the
petitioner were no more effective when
applicant got promotion as they got
superseded consequent to 3rd Pay Commission's
recommendations which had recommended that
basic pay itself should include 'Special
Pay'. In the counter affidavit dated 30.6.86
filed on behalf of respondents (Para 2) it
has, however, been stated that "In the
instant case, the special pay is attached
to the 'revised Scale' and is not in lieu
of higher scale" (*italics for emphasis*). It
is significant to note that in this extract
it has not been stated that the special pay
was 'attached to the post' but it has been
stated that it was 'attached to the revised
scale'. The distinction between a special pay

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being attached to a revised scale, and not being in lieu of higher scale is not understood and this fiction seems to have been introduced as an argument by the respondents, not supported by the provisions of para (13) under FR 22(c). The learned counsel has not shown us any circular or Government's instructions in support of his various contentions.

On the other hand apart from notes 1 & 2, note 4 under FR 22(c) refers to G.I. MF's OM No.6(1) E III/B/68 dated 12.12.74 which relates to cases where a special pay is enhanced during the preceding 3 years of the date of promotions. It appears that even after revision of pay scales had come into force, on 1.1.73 the above orders also remained in force. Again letter No. 1-11/76-PAP/Pt dated 29.5.78 from D.G. P & T (Annexure H) (Page 2-8) shows that these special pays continued to remain in force. Hence we do not agree with the arguments advanced on behalf of respondents by learned Shri Tare.

On the other hand, the respondents have relied on the judgment of the Hyderabad Bench of the Tribunal in OA 354/89 delivered by Single Bench on 14.3.1990 available in OA 560/92 in which it was held that the Applicant was not drawn and paid special pay in lieu of separate higher scale and therefore the same cannot be taken into consideration for fixing up the pay of the applicant in the higher post. The judgment of the Jabalpur Bench was distinguished as below :-

Bench

The Jabalpur has held that the Special Pay of Rs. 100/- was in lieu of a separate scale of pay and was not attached

to the post. For counting Special pay for fixation of pay one of the three conditions to be fulfilled is that the Special Pay in the lower post should have been granted in lieu of separate higher scale. There is vast difference between "SEPARATE SCALE OF PAY AND WAS NOT ATTACHED TO THE POST" and "IN LIEU OF SEPARATE HIGHER SCALE". In the instant case the applicant was not drawn and paid special pay in the lower post in lieu of separate higher scale. The Jabalpur Bench might have missed to notice the wording that it is in lieu of higher scale of pay. The special pay was not in lieu of higher scale of pay. The applicant is not entitled for the benefit of Rs. 200/- to be taken into consideration for fixing his pay in the higher post. The decision of Jabalpur Bench clearly in my view cannot be applicable to the case of the Applicant.

It is not disputed that the Assistant PMG who belongs to the Indian Postal Service draws 2200-4000 the pay scale of Rs. 4 whereas the Assistant Director postal Service who is drawn from Group B services is in the pay scale of Rs. 2000 - 3200. The special pay is given only to the Group B officers and not to Group A officers. It is, therefore, evident that the special pay is not in consideration of special responsibilities but it is in lieu of higher pay scale. If the special pay was on account of special responsibilities the same would be admissible to Group A officers also who are designated as Assistant PMG's and who do the same work in the circle offices

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It is also clear that the special pay was not sanctioned for the first time in 1978 but was in vogue since 1950 and conditions attaching thereto have not been withdrawn.

We, therefore, respectfully agree with the judgment of the Hon'ble Central Administrative Tribunal, Jabalpur. We also note that the judgment of the Jabalpur Bench was by a Division Bench delivered on 1986 whereas the judgment of the Hyderabad Bench is by a Single Bench delivered subsequently. We consider the former to be more

We have also given our own reasons authoritative. We therefore, dispose of OA 107/88

by the following order :

O R D E R

1. The impugned letter dated 15.10.87 is quashed and set aside. Respondents are directed to fix the pay of the applicant at the appropriate stage from 30.6.86 after taking into account element the special pay of Rs. 200/- in the lower post and pay to him arrears of pay and other allowances as due and admissible consequent on re-fixation within three months of the receipt of the order. If the respondents fail to make payment to the applicant as directed above, they would be liable to pay interest @ 12% on the amount outstanding as at the end of the three months from the date of order.

2. There is no order as to cost.

OA. No. 560/92 - Shri P. W. Smarth (Applicant)

The memorandum dated 3.6.91 at page 11 is hereby quashed and set aside. Respondents are directed to refix the pay of the applicant in Class I SSP taking into consideration the element of special pay of Rs. 200. The arrears of pay & allowances may also be paid to him. If the pension is required to be recalculated the same may be done. The revised pension payment order may be issued and the arrears of pension may also be paid to him. Action may be taken within 3 months of the receipt of the order. He would be entitled to 12% of interest on the amount outstanding at the end of 3 months.

No order as to costs.

O.A. 365/90 : KARANDE

Annexure A, letter dated 13.6.89 is quashed and set aside. The respondents are directed to refix the pay of the Applicant after taking account ~~of~~ the element of special pay of Rs. 200. He should be paid arrears of pay and allowances. The refixation and the payment of arrears should be done within three months of ^{receipt} of the order. He would be entitled to 12% of interest if the order is not complied with within three months from the receipt of this order on the amount outstanding at the end of 3 months. No order as to costs.

(Lakshmi Swaminathan)
Member (J)

(M.R. Kolhatkar)
Member (A)