

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 340/93

Transfer Application No: --

DATE OF DECISION: 19-7-94

K.B. Meshram & Ors. Petitioner

Mr. D. B. Dave Advocate for the Petitioners

Versus

U.O.I. & Ors. Respondent

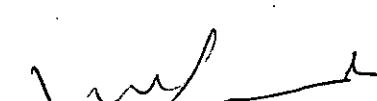
Mr. A. L. Kasturey Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, V.C.

The Hon'ble Shri --

1. To be referred to the Reporter or not? M'
2. Whether it needs to be circulated to other Benches of the Tribunal? M'

  
(M.S. DESHPANDE)  
VC

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOBBAY BENCH

O.A.340/93

K.B.Meshram & Ors. .. Applicants

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande  
Vice-Chairman

Appearances:

1. Mr.D.B.Dave  
Counsel for the  
Applicants.
2. Mr.A.L.Kasturey  
Counsel for the  
Respondents.

ORAL JUDGMENT: Date: 19-7-94  
(Per M.S.Deshpande, V.C.)

By this application the six applicants question the Railway Board's letter dated 8-12-81 by which special pay was not to be counted for pay fixation or protection purposes and for a declaration that special pay is part of emoluments for all the purposes and for a direction to the respondents to fix the revised pay of the applicants by including the special pay of Rs.50/- . They also pray for the fixation of pay on that basis. The applicants were working as Health Inspectors and were granted Rs.50/- p.m. special pay by letter dated 8-12-81 as they were performing additional duties of Food Inspectors under Food Adulteration Act in addition to their normal duties. However, the Railway administration refused to include this special pay for fixation of their salary under the recommendation of IVth pay Commission

and for reckoning of emoluments for pension and pensionary benefits and reduced the pension of the applicants without notice to them after the pensions were finally fixed.

2. According to the respondents the applicants special pay was not attached to their tenure post and could not therefore be taken into consideration for considering their total emoluments and pensionary benefits.

3. It is apparent from the letter dated 28-12-81 which circulated copy of the letter dated 8-12-81 that the Ministry of Railways have decided to grant a special pay of Rs.50/- per month to the Health Inspectors in the various grades on Railways who have been entrusted with the additional duties of Food Inspectors under the Prevention of Food Adulteration Act, 1954, in addition to their normal duties, but the special pay is not ~~to be~~ counted as pay for fixation or protection purposes. The applicants continued to get this special pay. By letter dated 31-10-89 one of the applicants viz. K.B.Meshram ~~xxx~~ was granted original pension Rs.1436/- less Rs.478/- commuted and it came to be reduced without notice to the applicant by letter dated 9-4-90 to Rs.1388/- This was as a sequel to letter dated 21-10-92 in which it was stated that the special pay will not be counted as pay for fixation or for pensionary benefits and letter dated 16-12-92 by which this position was confirmed.

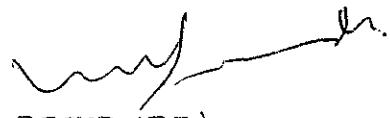
4. On behalf of respondents reliance was placed on letter dated 24-4-87 which circulated letter dated 15-4-87 in which the term Emoluments was explained. Para 4.1 of that letter says that the term 'Emoluments' for purposes of calculating various retirement and death benefits shall mean basic pay as defined in Rule 2003(21)(a)(i) F.R.9(21)(a)(i) R-II which the Railway servant was receiving immediately before his retirement or on the date of his death. Similarly, the term 'Average Emoluments' shall be determined with reference to emoluments drawn by a Railway servant during the last ten months of his service. The revised provisions as per these orders shall apply to all Railway servants who retire/ die in harness on or after 1-1-1986. Since the present applicant-s retired in 89-90, according to the respondents they were also covered by this order. Under para 2003(21) Pay means the amount drawn monthly by a Railway servant as (i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for the post by him substantively or in an officiating capacity to which he is entitled by reason of his position in a cadre and (ii) overseas pay, special pay and personal pay and (iii) any other emoluments which may be specially classes as pay by the President. Special pay under para 2003(26) means an addition of the nature of pay to the emoluments of a post or of a railway servant granted in

consideration of (a) the specially arduous nature of duties; or (b) a specific addition to the work or responsibility and includes non-practising allowance granted to doctors in lieu of private practice. The submission of Shri Kasturey, counsel for the respondents is that ~~new~~ in view of clarification in the letter dated 14-5-1987 emoluments would not include the special pay and it must be a tenure pay. It is apparent that all the Health Inspectors were required to discharge the function of Food Inspectors and this function they have been discharging throughout and ~~even~~ even the applicants discharged those functions ~~entitled after~~ <sup>until their</sup> retirement. The extract of the recommendation of the IVth Pay Commission, Ex.'M', shows that in the case of officials drawing special pay where the scale of pay has been replaced by a scale of pay without special pay the method of fixation is the same as above, but in this case, the existing emoluments include the special pay and DA/ADA/adhoc DA appropriate to the basic pay plus special pay. Calculation in respect of existing scale with special pay has been replaced by a revised scale with special pay would be on the same pattern as above. Special pay in the revised scale as recommended will be admissible in addition. In the present case the existing scale was with special pay ~~xxx~~ and therefore as stated ~~in para 2~~ in the illustration at para 2 the special pay ~~xxx~~ <sup>has</sup> to be added to the existing basic pay. It is

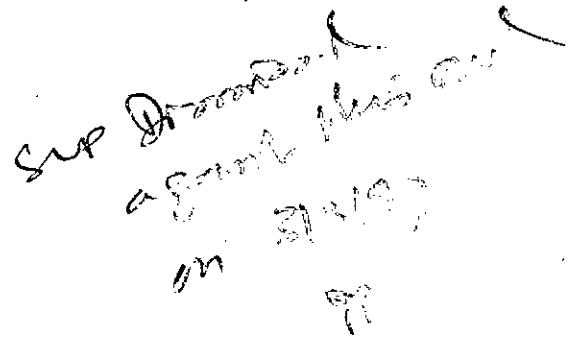
difficult to see how benefit of special pay which the applicants had on account of additional duties they were performing could have been withdrawn merely by replacement of revised scale which required special pay to be taken into consideration irrespective of whatever might have been said in the letter dated 28-12-1981(Ex. 'A'). A similar view was taken by a Division Bench of this Tribunal in G.Thankamma and Ors. vs. Union of India & ors.(1993)24 ATC 615, wherein it was held that the optees of the island special pay, would continue to be entitled dearness allowance, retirement benefits and other service benefits on the basis of the island special pay. No distinction in principle can be drawn in view of the definition of special pay on the basis of the special pay being attached to the tenure or given any consideration of the additional duties performed.

5. I, therefore, hold that the applicants were entitled to have the special pay reckoned as emoluments for the purpose of their pension and retiral benefits. The respondents action in depriving the applicants of this special pay by commuting the emoluments cannot be supported and is quashed. The respondents are directed to restore the benefit to the applicants and pay the recoveries which have already been affected

from them within three months from the date of receipt of a copy of this order together with interest @ 10% p.a.

  
(M.S.DESHPANDE)  
Vice-Chairman

M

  
M.S. Deshpande  
Vice-Chairman  
31/10/87  
M

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

C.P. 94/95 in  
Original Application No. 340/93

Tribunal's order

Dated: 2.12.96

Heard Shri A. Ansari for Shri D.V. Dave, counsel for the applicant. Shri V.S. Masurkar, counsel for the respondents.

The Tribunal vide its order dated 19.7.94, directed the respondents that the applicants were entitled to have the special pay reckoned as emoluments for the purpose of their pension and retiral benefits. The respondents action in depriving the applicants of this special pay by commuting the emoluments cannot be supported and is quashed. The respondents were directed to restore the benefit to the applicants and pay the recoveries which have already been affected from them within three months from the date of receipt of a copy of this order together with interest @ 10% p.a.

The learned counsel for the applicant has drawn our attention to the letter issued by the respondents dated 28.9.95 wherein it is stated that the SLP has been filed in the Supreme Court is yet to be decided and they are unable to obtain a stay order from the Supreme Court against the operation of the judgement and the Competent Authority has now decided to provisionally implement the judgement. So far nothing has been done.

: 2 :

In the circumstances the respondents are given last opportunity to file reply to C.P. subject to the cost award of Rs. 500/- to the applicant.

Adjourned to 20.12.96.

Copy of the order be given to both the parties.

(P.P. Srivastava)  
Member (A)

(B.S. Hegde)  
Member (J)

NS

dd 21/12/96  
order/Judgement despatched  
to Appellant Respondent (s)  
on 4/12/96

(S)  
21/12/96