

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 226/95 & 1151/95

Transfer Application No.

Date of Decision 30-05-96

1. Gupta Narendra & 48 Ors.

Petitioner/s

2. G.K.Sarkar & 17 Ors.

Shri S.P.Saxena

Advocate for
the Petitioners

Versus

Union of India & 3 Ors.

Respondent/s

Union of India & 4 Ors.

Shri M.I.Sethna

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6,PRESCOT ROAD, 4TH FLOOR.,
MUMBAI - 400 001.

ORIGINAL APPLICATION NOS.226/95 and 1151/95.

DATED THIS 30th DAY OF MAY, 1996.

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

ORIGINAL APPLICATION No.226/95

Gupta Narendra & 48 Ors.
(Advocate by Shri S.P.Saxena)

... Applicant.

v/s.

1. The Union of India
through the Secretary,
Ministry of Defence,
DHQ PO,
New Delhi - 110 011.
2. The Scientific Advisor to
Raksha Mantri & Director
General, Research & Development,
D.R.D.O., 'B' Wing,
Sena Bhavan, DHQ PO,
New Delhi - 110 011.
3. The Director & Dean,
Institute of Armament,
Technology,
Girinagar,
Pune - 411 025.
4. The Secretary,
Ministry of Personnel,
Public Grievance & Pension,
Dept. of Personnel & Training,
(Training Division),
Block No.11, 2nd Floor,
C.G.O. Complex, Lodi Road,
New Delhi - 110 003.
(Advocate by Shri M.I.Sethna)

... Respondents

ORIGINAL APPLICATION NO.1151/95

G.K.Sarkar & 17 Ors.
(Advocate by Shri S.P.Saxena)

... Applicant.

v/s.

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Director General,
Defence Research & Development
Organisation,
Ministry of Defence, 'B' Wing,
Sena Bhavan,
New Delhi - 110 011.
3. The Chief of Naval Staff,
Naval Headquarters,
New Delhi - 110 011.

4. Commanding Officer,
I.N.S. Shivaji,
Lonawala.

5. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public
Grievances and Training,
Government of India,
C.G.O. Complex, Lodi Road,
New Delhi - 110 003.

... Respondents.

(Advocate by Shri V.S. Masurkar)

ORDER

[Per Shri M.R. Kolhatkar, Member(A)]

1. As these two OAs raise an identical issue, they are being disposed of by a common judgement. It may be noted that OA-226/95 relates to Scientists of Institute of Armament Technology in Pune which is an institution under the control of Scientific Advisor to Defence Ministry and D.R.D.O.

2. The applicants in OA.No. 1151/95 are scientists controlled by D.G.R.D.O. but they work in Naval College of Engineering under Chief of Naval Staff, who is therefore an additional respondent in that O.A. In the judgement facts of O.A. 226/95 are taken as illustrative, but where necessary reference is made to the other OA separately.

3. The applicants are Civilian employees belonging to the Defence Research and Development Services (D.R.D.S.). They are aggrieved by the fact they are not paid training allowance @ 30% of emoluments w.e.f. 1/1/86 and @ 15% of emoluments w.e.f. 9/7/92 in as much as they are employees in the I.A.T. as Scientists but are detailed as Faculty members for training other Government Officials. The training allowance is stated to be admissible to them as part of an incentive scheme of the Government of India set out in Department

of Personnel, O.M. dated 31/3/87.

4. O.M. dated 31/3/87 in para 2(i) states as below:-

"2(i) When an employee of Government joins a training institution meant for training government officials, as a faculty member other than as a permanent faculty member, he will be given a "training allowance" at the rate of 30 per cent of his basic pay drawn from time to time in the revised scales of pay."

5. The other O.M. dated 17/4/86 is in pursuance of earlier O.M. dt. 7/2/86, it is not necessary to refer to the contents therein. It is the contention of the applicant that they fulfill the conditions as laid down in this O.M. In fact they fulfill the conditions laid down in the earlier O.M. dated 7/2/86 as well which stated that incentive scheme would initially cover training allowance meant for Group-A Officers. They were not permanent faculty members, and yet the incentive scheme has not been implemented in relation to them.

6. Respondents had stated at page-33 vide letter dated 21/10/86 that proposal for 30% additional emoluments and other facilities for faculty members of IAT has been accepted in principle by Scientific Adviser to Defence Minister. It is seen that subsequently a reference was made on 8/12/89 (at page-34) enquiring whether the implementation of Flexible Complimenting Scheme has any effect on the training incentive scheme and the reply was sent by Training Division of Department of Personnel on 22/2/90 (at page-36) stating that they see no correlation between training scheme and Flexible Complimenting Scheme and that Flexible Complimenting Scheme cannot be a bar to implementation of the

training incentive. The applicants state that they had made a detailed representation (at page-38), (the date of this representation is not clear) but there was no reply. It appears that the matter was under consideration of the Scientific Adviser to Defence Minister as is seen from the letter dated 25/5/92 addressed to respondent No.3. The relevant portion of this letters reads as below:-

"In principle, the request cannot be faulted. On the other hand the Department has to consider various other issues as under:-

a. The existing teaching staff in DRDO training institutions have not been specially selected for teaching profession only but for DRDO as a whole. Some of the staff not posted to these units in the normal course and they can be posted out also.

b. The present teaching staff have got a number of promotions in the past (and still do) along with other on the same rules, being applied to the other and not for teaching institutes only. This denotes that these teaching staff are treated as on par with other personnel of DRDS.

c. Unlike the training institutes of other Govt departments, we have equal measures of Service Officers viz. who perform teaching assignments. Their claim for higher allowance also can follow, which will be difficult to resist. Also there will be a request from other DRDO employees to be posted to these training institutes to avail of the higher allowance, perhaps to the detachment of important project commitments.

d. Once allowances are authorised, we may also have to devise an appropriate mechanism to define recruitment and promotion policy afresh. Possibility of some or all of the existing staff being posted out back to DRDO cannot be ruled out. Therefore, granting of allowances may not be automatic. I wonder whether the existing staff will welcome this step.

In order to implement the scheme as desired by Govt. in spirit, one suggestion is to aggregate the training institutes and make them autonomous i.e. independent of DRDO, with the personnel making their options. The funding of these institutes can be from Ministry of Defence, ie from non-DRDO sources. Also a uniform policy, within the Ministry of Defence has to be evolved as other training institutes are also involved.

We have not yet come to an agreed decision.

7. The applicants have therefore claimed the relief of directing the respondent No.1 to 3 to implement the scheme relating to 30% training allowance, as the applicants are entitled to the same and to direct the respondents to make payment of arrears of training allowance and consequential benefits with interest.

8. Respondents have opposed the OA. It is their contention that the applicants were posted against cadre posts of DRDS on a permanent basis. They were not posted either on deputation or on tenure basis as there is no fixed tenure. On the other hand as the 'Flexible Complementing' system is applicable, the applicants are eligible for promotion in situ which means they need not be shifted or transferred even on promotion. The applicants are permanent faculty members holding cadre posts included in the DRDS and they are not entitled to training allowance. Infact, para-12 of the written statement states that the proposal was still under consideration of Government and no decision was taken. However, it is not clear, whether the decision to reject the proposal has been taken nor is any such communication attached by the applicants. The fact that the matter is still under consideration is to be seen from communication dated 20/2/96 produced in the Court at the time of Final Hearing which shows that DRDO is in correspondence with various training institutions whose faculty are stated to be beneficiaries of implementation of the scheme of training allowance, and it is stated that in none of the institutions training allowance is being paid to permanent members of the faculty. This does not support the stand of the respondents because the respondents have not shown any document pinpointing employees of the IAT who are holding permanent faculty positions. On the other hand so far as 46 applicants are concerned, it is seen from Exhibit-I of the Written

Statement that 23 of them are transferred from other institutes and the rest have joined IAT directly but they have joined directly from a long range of dates namely 18/1/63(Sr.No.3) to 3/10/94(Sr.No.43). The contentions of the respondents that because of the Flexible Complementing Scheme, the applicants are not entitled to training allowance is not borne out by the reply of the Nodal department namely Ministry of Personnel & Training which has been referred to above.

9. Applicants have also contented that there is a discrimination against the applicants in as much as there is an institution called Ordnance Factory College, Ambajhari, Nagpur in which the scheme of training allowance has been implemented vide letter dated 11/3/88 at Exhibit-2 of the Written Statement.

10. In OA No.1151/95, while rejecting the request of applicant for training allowance, it is stated that no training allowance is paid to DRDS Officers in institutions like DIWS, IAT, DIPR, etc.

11. A reference to the original circular dated 13/9/85 at page-24 of the OA shows the background of the inception of the scheme, namely review by the Prime Minister of DOP where he emphasised the need for improving the quality of training imparted and directed that requisite facilities should be extended to faculty members so as to attract the best trainer talent.

12. Thus the grant of training allowance to faculty members other than permanent faculty members of a training institution is a matter of policy of the Government taken at the highest level and it is not clear as to why DRDO has not implemented the scheme in relation to training institutions, although the same has been implemented in a training institution in production wing of Defence Ministry namely Ordnance Factory, Ambajhari.

13. The Tribunal ~~does~~ understand that when a matter is identified as a policy matter, the pros and cons are required to be considered and then a decision is to be taken. The facts which are to be kept in view have been listed in the letter of the Scientific Adviser to Defence Minister which has been quoted in extenso by me.

14. Since this is a policy matter I am not inclined to make a declaration that applicants are entitled to training allowance. It is for the Scientific Adviser to Defence Minister to evolve a proper training allowance scheme applicable to the training institution under his control keeping in view guidelines of the Nodal Department (namely Department of Personnel & Training). Since the Scientific Adviser has failed in his duty to do so, I feel that the Tribunal is required to intervene by issue of a direction to him to perform his duty to frame a scheme in terms of guidelines in O.M. of Ministry of Personnel and Training dated 31/3/87 (at page-18). The matter should not have remained pending for more than 10 years as is apparent from the records. I, therefore dispose of this OA by passing the following order:-

I ORDER

Respondent No.1 and 2 are directed to frame and issue a scheme in terms of department of personnel and Training O.M. dated 31/3/87 in relation to Institute of Armament Technology after identifying permanent faculty members of the same and extend the scheme of training allowance to the non-permanent faculty members. Orders in this regard should be issued within 4 months of the communication of this order. There will be no orders as to costs.

O.A.1151/95.

In this OA, as has been pointed out vide letter dated 9/10/91, the request of the Scientists of the NCE for grant of

training allowance has been turned down, mainly on the ground of prevalence of Flexible Complementing Scheme. This is not in order especially in view of the clarification of the Department of Personnel that there is no correlation between TAS (Training Allowance Scheme) and FCS (Flexible Complementing Scheme) and also the separate communication of SA to DM noted in the other OA-226/95 dt. 25/5/92 where need for training allowance has been accepted in Principle and the modalities are stated to be under formulation.

I am therefore inclined to grant relief in terms of the OA-226/95 and also the additional reliefs of quashing and setting aside the letter dated 9/10/91 reject^{ing} the request of the applicants. In this OA, the direction will also go to Chief of Naval Staff in addition to Defence Secretary and Scientific Adviser to Defence Minister.

abp:

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

24 30/5/96
Order/Judgement despatched
to Applicant/Respondent (s)
on 17/6/96

19/6/96
Corrected dt. 30/5/96
Order/Judgement despatched
to Applicant/Respondent (s)
on 24/7/96

2
30/7/96