

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.227/95.

P.D.Bansode

.Applicant

Mr. S.P.Saxena

.Advocate for
Applicant.

Versus

Union of India & Anr.

.Respondent(s)

Mr.R.K.Shetty

.Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairma,

Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? NO

(2) Whether it needs to be circulated to
other Benches of the Tribunal? NO

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.227/95.

Tuesday, this the 27th day of July, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A),

1. P.D.Bansode,
6, Manish Society,
Ganesh Nagar,
Poona - 29.
2. V.S.Sane,
248, Narayan Peth,
Pune - 30.
(By Advocate Mr.S.P.Saxena)

...Applicant.

Vs.

1. The Union of India,
Through the Secretary,
Ministry of Defence,
DHQ P.O.,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Kashmir House,
D.H.Q. P.O.,
New Delhi - 110 011.
(By Advocate Mr.R.K.Shetty).

...Respondents.

: O R D E R : (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by two applicants under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing the application. We have heard Mr.S.P.Saxena, the learned counsel for the applicant and Mr.R.K.Shetty, learned counsel for the respondents.

2. It is not necessary to consider the pleadings in detail since the point involved is a short point.

Admittedly, both the applicants were Superintending Engineers (Senior Grade) and came to be promoted as Additional Chief Engineer (for short, A.C.E.) in the M.E.S. and then they they retired from service on attaining superannuation. On promotion as A.C.E. the applicants were in the pay scale of Rs.4,500-5,700 with a Special Pay of Rs.400/- p.m. According to the applicants this special pay of Rs.400/- p.m. should be taken into consideration while fixing the pension of the applicants.

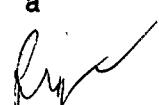
The respondents contention is that the Special Pay of Rs.400/- is not a part of basic pay and it cannot be included within the meaning of "Pay" as per rules and therefore it cannot be taken into consideration for fixing the pension and pensionary benefits.

3. It is therefore seen that the point at issue lies in a very narrow compass. The question is whether the Special Pay of Rs.400/- should or should not be taken into consideration for fixing the pension of the applicants.

4. Though some arguments were addressed on merits, we find that the question is no longer res integra and is covered by number of judgments of different Benches of this Tribunal where consistent view is taken that the Special Pay of Rs.400/- attached to the post of A.C.E. as per the Recruitment Rules should be taken into consideration while fixing the pension of the officials.

Though there are number of Judgments of different Benches of this Tribunal, the learned counsel for the applicants' has placed before us Judgments of three Benches of the Tribunal.

The first case is of the Bangalore Bench of this Tribunal in O.A. 1355/94 and 1581/94, where by order dt. 23.1.1995 a



Division Bench of the Bangalore Bench has ruled that in case of A.C.E. of M.E.S. the Special Pay of Rs.400/- should be taken into consideration while fixing the pension and consequential benefits.

The second case before us is a Judgment reported in 1997 (1) SLJ 152 (O.N.Razdan Vs. Union of India & Ors.), where a Single Member of the Principal Bench of this Tribunal following the above case of H.K.Nagaraja & Another Vs. Union of India & Ors. has also held that the Special Pay of Rs.400/- in case of A.C.E. of M.E.S. should be taken into consideration for fixing Pension.

Again, we have before us one more decision of a Single Member of the Principal Bench of this Tribunal dt. 30.5.1997 O.A. 2139/96 in the case of R.S.Gahlewat & Ors. Vs. Union of India & Anr., where again following the above decisions, a view is taken that the special pay of Rs.400/- should be taken into consideration for fixing Pension.

We are also told that the above Judgments have been implemented by the Administration by granting Pension and Pensionary benefits to the applicants in those cases.

5. In view of the fact that the question is covered by number of Judgments of this Tribunal including the above three Judgments, we hold that the present two applicants in this case are also entitled to higher pension and pensionary benefits on the basis of taking into consideration Rs.400/- as Special Pay for fixing Pension. We therefore, feel that the present O.A. should be allowed.

6. In the result, the application is allowed. The respondents are hereby directed to take into consideration the

Special Pay of Rs.400/- drawn by the applicants while they were working as A.C.E. for the purpose of fixing pension and after fixing the pension, the applicants must be given higher pension and consequential pensionary benefits as per rules. In the circumstances, the respondents are directed to comply with this order of the Tribunal within four months from the date of receipt of copy of this order. No order as to costs.

B.N.Bahadur

(B.N.BAHADUR)

MEMBER (A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)

VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO.: 35/2000 IN O.A.NO.: 227/95.

Dated this Monday, the 11th day of September, 2000.

CORAM : Hon'ble Shri B.N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, member (J).

1. P. D. Bansode,
6, Manish Society,
Ganesh Nagar, Poona - 29.
2. V. G. Sane,
248, Manayan Peth,
Pune - 30.

Applicants.

(By Advocate Ms. Neelima Gohad
for Shri S. P. Saxena).

VERSUS

1. Mr. T.R.S. Prasad,
Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi - 110 011.
2. Lt. Gen. A. N. Sinha,
Engineer-in-Chief,
Kashmir House,
D.H.Q. P.O.,
New Delhi - 110 011.

Respondents
Contemnners.

(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty).

TRIBUNAL'S ORDER :

Shri R. R. Shetty for Shri R. K. Shetty, the Learned Counsel for respondents, produces for our information two letters, both dated 05.09.2000. The first one is addressed to the Chief Engineer, Southern Command, Pune, by the Engineer-in-Chief and the second is addressed by the Deputy Secretary to the Government of India to the Chief of the Army Staff, New Delhi. Both are taken on record. These letters relate to the implementation of the orders of this Bench in O.A.

B.N.B

... 2

No. 227/95. It is seen that the orders of the Bench has been complied with through the aforesaid communication, although admittedly after delay. Since no intention is seen behind the delay, no contempt can be said to have occurred. Hence, the contempt petition stands rejected and the notices issued are discharged.

Bench

2. The Learned Counsel for Applicant has prayed that the payment should also be made within a time frame, as early as possible. It is ordered that the payments due shall be made within a period of two months from today.

Babu Bahadur

S.L.JAIN
(S.L. JAIN)
MEMBER (J).

(B. N. BAHADUR)
MEMBER (A).

os*