

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

Dated this Tuesday the 5th day of July, 2005

O.A. 561 of 1998

M.C Bhaviskar & another
(By Advocate Shri H.A.Sawant) - Applicant

Versus

D.R.M. Central Railway & ors.
(By Advocate Shri V.S. Masurkar) - Respondents

Coram:

Hon'ble Shri V.K.Majotra - Vice Chairman
Hon'ble Shri S.G.Deshmukh - Member (J)

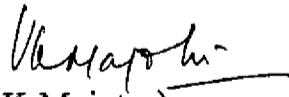
(1) To be referred to the Reporter or not?

No

(2) Whether it needs to be circulated to other Benches of the Tribunal? Yes.

(3) Library.

Yes.


(V.K.Majotra) 5.7.05
Vice Chairman

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Hon'ble Shri S.G.Deshmukh - Member (J)

O.A. 561 of 1998

M.C.Bhaviskar,
Retd. CHI/PL Western Railway,
R/o A/401 'D',
Building 'D' Wing Railwaymens
Apna Ghar Co-operative Housing
Society, Shivaji Nagar,
Jogeshwari (East), Mumbai.

Shri B.D.Kudale,
Retd.CHI/NBD Western Railway,
R/o "Pushpaban"
Ghule Vasti, Manjari Road,
At.Post Manjari, Tal. Haveli,
Pune.

(By Advocate Shri H.A.Sawant) - Applicants

Versus

The Divisional Railway Manager,
Mumbai Central Division,
Mumbai Central, Western Railway,
Mumbai.

The General Manager,
Western Railway,
HQ Office, Churchgate, Mumbai.

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Union of India,
acting through the
General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai.

(By Advocate Shri V.S.Masurkar)

- Respondents

ORDER

Per: V.K.Majotra – Vice Chairman

Applicants M.C.Bhaviskar and B.D.Kudale were working as Chief Health Inspectors and retired on superannuation on 31.5.1993. According to them while they were working as Chief Health Inspectors, they were assigned the additional duty of Food Inspector and for this additional workload, they were granted a special pay of Rs.50/- from 1.2.1981 which was later on revised to Rs.100/- from 1.1.1986. It is claimed that in terms of the recommendations of the IVth Central Pay Commission (CPC) their pay as Health Inspectors was to be fixed in the revised pay scale taking into consideration among other components the 'special pay' granted to them for the additional workload of Food Inspectors. Allegedly the respondents wrongly interpreted the term 'special pay' and as

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a result their pensionary benefits were fixed wrongly not taking into account the special pay. The present OA was earlier allowed on 13.3.2002 directing the respondents to take into account the special pay for the purpose of grant of pension and other retiral benefits. The matter was carried to the Hon'ble High Court through Writ Petition No.5592/02. The Tribunal's orders were set aside by the High Court's order dated 16.8.2004 with the following observations/directions -

“From a reading of the order of the Tribunal, it is obvious that an error apparent on the face of the record has committed and Para 1303 of the Code is not fully considered. In view of this, we set aside the impugned order and remit the matter to the Tribunal for decision in accordance with law.”

2. Thus we have heard the matter afresh on merits and in terms of the High Court's directions.

3. The learned counsel for the applicant relied on the following case law -

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(a) OA 340/93 (K.B.Meshram & ors. Vs. Union of India & ors.)

decided on 19.7.1994 in which it was held that special pay reckoned as emoluments for the purpose of pension and retiral benefits and Writ Petition filed against these orders in the Hon'ble Supreme Court was dismissed.

(b) (1993) 24 ATC 615 G.Thankamma and others Vs. Union of India & others. With reference to Rule 7 (1) © of CPC (Revised Pay) Rules, 1986. It was held that optees of the Island Special Pay would continue to be entitled to dearness allowance, retirement benefits and other service benefits on the basis of island special pay.

© (1993) 23 ATC 461 (Sunilendu Chowdhury & ors.Vs. Union of India & others). It was held that limitation does not apply for extension of benefits to similarly situated employees as otherwise action of granting benefit to some of the employees and leaving out the rest will be discriminatory under Articles 14 and 16 of the Constitution of India. Learned counsel contended that under Para 1303 of the Railway Code, the term pay among other things includes special pay and as such applicant



would be entitled to retiral benefits taking into consideration various ingredients of pay including special pay drawn by the applicant for additional duties as Food Inspector.

4. On the other hand learned counsel for the respondents contended that Para 1303 of the Code excludes the component 'special pay'.
→ ^{1/6} From 'pay' he stated that expression 'special pay' in Para 1303 (ii) relates to 'overseas pay' and has nothing to do with the express^{ion} "pay" which is dealt with in sub para (i). Learned counsel further stated that while direction made in OA 340/93 was fully implemented by the respondents, respondents had filed SLP against the said judgment but SLP was dismissed solely on the ground of delay and not on merit and as such the applicants who were not a party in the said OA would not be able to derive any benefit therefrom. Learned counsel relied upon 1997 Sc (L&S) 1587 (Government of Andhra Pradesh & others Vs. Syed Yousuddin Ahmed) stating that
- advance increments granted as ^{an} incentive award for meritorious work could be treated as personal pay yet it could not be treated on facts as part of emoluments for determination of amount of pension. Learned counsel

contended that similarly the 'special pay' granted to the applicant in lieu of
— the additional duty of Food Inspector ^{lh} ~~can~~ not be reckoned as part of pay
for purposes of pensionary benefits.

5. We have considered the respective contentions of both sides as
also the records before us.

6. It is useful to reproduce para 1303 of Indian Railway
Establishment Code which is as under :-

"1303.-Pay. Pay means the amount drawn monthly by a
Government servant as:-

- (i) the pay other than special pay or pay granted in
view of his personal qualifications, which has
been sanctioned for a post held by him substan-
tively or in an officiating capacity or to which
he is entitled by reason of his position in a cadre.
- (ii) Overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specifically
classified as pay by the President."

7. In our view the expression 'special pay' used in sub para (ii)
— above is relevant for our purpose. We are not ^{lh} ~~in~~ agreement with the
learned counsel for the respondents that 'special pay' mentioned in sub para

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(ii) is related to 'overseas pay'. In sub para (i) special pay has been related to 'personal qualifications'. Here in sub para (ii) the expression 'special pay' does not relate to the personal qualifications but 'special pay' on account of any other reason than 'personal qualification'. Sub para (ii) in our view lays down that 'special pay' granted for ^{'any other reason than the} 'personal qualifications' means that it is part of pay. In this light it forms a part of emoluments for purposes of pensionary benefits as well. Respondents have admitted to have implemented the directions of this Court ^{contained in} ~~imposed~~ in the case of K.B.Meshram (supra) which had become final; SLP thereagainst having been dismissed. In terms of the decision in the case of Sunilendu Chowdhury (supra) benefit of this case has to be extended to the applicant who is similarly situated employee as K.B.Meshram. The case of Syed Yousuddin Ahmed (supra) is distinguishable on facts as that related to advance increments granted as incentive award for meritorious work. The meritorious work in that case related to original basic duties which is not the case here. Applicants had been asked to perform additional duties of the post of Food Inspector which were not their basic duties as Chief Health

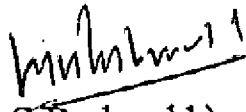
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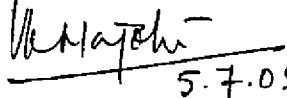
Inspectors. The ratio in the case of G.Thankamma (supra) shall also be applicable therein and 'special pay' granted to the applicants for performing additional duties as Food Inspector should be reckoned for purposes of pensionary benefits.

8. In the case of K.B.Meshram (supra) it was held "the applicants were entitled to have 'special pay' ^{be} reckoned as emoluments for the purposes of their pension and retiral benefits."

9. In the facts and circumstances of this case and also in view of the reasons stated above, similar direction as in the case of K.B.Meshram (supra) is made and respondents are directed to accord to the applicant consequential benefits within a period of three months from the date of communication of these orders.

10. The OA is disposed of in the above terms. No order as to costs.


(S.G. Deshmukh)
Member(J)


5.7.05
(V.K. Majotra)
Vice Chairman