

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 765/98 & 885/99.

Dated this Thursday the 14th day of February, 2002.

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

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

ORIGINAL APPLICATION NO.: 765 of 1998.

1. Raghunath V. Modak,
410, Narayanpeth,
Pune - 411 030.
2. Manohar Moreshwar Pethe,
1730, Sadashivpeth,
Pune - 411 030.
3. Chandrakant Chintaman Deshpande,
76/706, Gokhale Nagar,
Pune 411 053.
4. Raghunath Anant Joshi,
14/A, Anupam Heights Co.op.
Housing Society, Plot No. 38,
Rambaug Colony, Paud Road,
Pune - 411 038.
5. Dilip Vishwanath Bhawe,
1433, Shukrawar Peth,
Tulpule Wada,
Pune - 411 002.
6. Damodar Govind Sathe,
C/3, Eravti Alkapuri Housing
Society,
Kothrud, Pune - 411 029.
7. Shri Shewak Daulatram Advani,
Block No. 25, Connought House,
Pune - 411 001.
8. Hashu Daulatram Advani,
Flat No. 212, Bldg. No. 12,
Mira Society, Salisbury Park,
Pune - 411 037.
9. Madhusudan Vishnu Herlekar,
A-1/16, Rambagh, Navi Peth,
Pune - 411 030.
10. Sitaram Ganesh Upadhaye,
586, Narayan Peth,
Pune - 411 030.

... 2

Bnb

11. S. M. Auchare,
M-28-2320, Maharashtra
Housing Board,
Sr. No. 191-A, Yerwada,
Pune - 411 006.
12. Ratnakar Dattatraya Deo,
A/4/7, Raksha Lekha Society,
Dattawadi,
Pune - 411 030.
13. Manohar Sakharam Gijawanekar,
Raksha Lekha Society No. 2,
Gajendra Nagar, Bldg. No. 1/4,
Flat No. 23, Dattawadi,
Pune - 411 030.
14. Laxman N. Sapre,
332/A, Bhurkar Bhawan,
Shukarwar Peth,
Pune - 411 002.
15. Bhalchandra Sadashiv Walimbe,
1047, Sadashiv Peth,
Pune - 411 030.
16. Baban Narayan Nanaware,
S.No. 311, House No. 132,
Sasanenagar, Hadapsar,
Pune - 411 028.
17. Madhukar Nagesh Joshi,
Ranade Quarters Room No. 3,
At & Post Dehu Road.
18. Dattatraya Narayan Shukla,
20/A, Raksha Lekha Housing
Society, Dhankavadi,
Pune - 411 043.
19. P. D. Rajpathak,
C/o. Suyog Medical Agency,
640, Narayan Peth,
Pune - 411 030.
20. Vinayak Ramkrishna Athalye,
Khadgeswar, 14/A, Raksha
Lekha Society,
Pune - 411 043.
21. Sadanand Dnydeo Nagaonkar,
203, Kalbhor Nowas,
Bankar Colony,
Opp. A.I.R. Hadapsar,
Pune - 411 028.
22. Laxman Govind Tagade,
65, Sahakarnagar,
Ahmednagar.



23. Vinayak Chimnaji Jategaonkar,
3/11, D.A.D. Complx,
Bhawani Peth, Pune - 411 042.
24. Suresh Govind Wagh,
308, Gurukripa Shri Ganesh
Society, Sahakarnagar No. 1,
Pune - 411 009.
25. Goraksing Pandurang Pardeshi,
Profile Crescent,
Plot No. 20, Flat No. 3,
Kanchanganga Society,
Market Yard, Pune - 411 037.
26. Madhavdas Chunilal Modi,
63/B, Raksha Lekha Society,
Dhankawadi, Pune - 411 043.
27. Govind Dattatray Uchgaonkar,
Shri Mangal Co.Op Housing
Society, B/2/1, Shivshakti
Gas Agency, Building,
Dhankawadi, Pune - 411 043.
28. Pandurang T. Joshi,
1045, Sadashiv Peth,
Pune - 411 030.
29. K. M. Sreenivasan,
Ambre Chawl, Amboli,
Caesar Road, Andheri (W),
Bombay - 400 058.

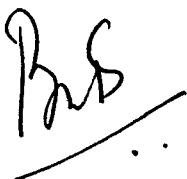
... Applicants.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Secretary,
Ministry of Finance,
Government of India,
(Deptt. of Expenditure),
New Delhi - 110 011.
3. The Controller General of
Defence Accounts,
West Block V, R. K. Puram,
New Delhi - 110 066.
4. The Controller of Defence
Accounts, Southern Command,
Pune - 411 001.

... 4



5. The Controller of Defence
Accounts (O),
Golibar Maidan,
Pune - 411 001.
6. The Controller,
C.D.A. (Navy),
Colaba, Mumbai.
7. The Controller,
C.D.A.,
Bangalore. ... Respondents.

(By Advocate Shri R. K. Shetty)

ORIGINAL APPLICATION NO.: 885 of 1999.

Shri Yashavant A. Inamdar,
Plot No. 43, Mangalmurthy Housing
Society, Valvali Section,
'B' Cabin Road,
Near Pathare Park,
Ambernath - 421 501. ... Applicant

(By Advocate Shri R. P. Saxena)

VERSUS

1. Union of India through
The Controller General of
Defence Accounts,
West Block-V,
R. K. Puram,
New Delhi - 110 066.
2. The Chief Controller of
Accounts (Factories),
10-A, Auckland Road,
Calcutta - 700 001.
3. The Controller of Defence
Accounts (Navy),
No. 1, Cooperage Road,
Mumbai - 400 039. ... Respondents.

(By Advocate - Shri R. K. Shetty)

ORDER

PER : Shri B. N. Bahadur, Member (A).

We have considered these two O.As. together, namely -
O.A. No. 765/98 and 885/99 as the issues therein are similar.

...5

Bab

They are heard together with consent of Learned Counsel on both sides. We will take up the facts in the first O.A. namely O.A. No. 765/98 for convenience. This O.A. is filed by some 29 Applicants, of which some 13 were initially recruited as L.D.Cs. and others as U.D.C./ Auditors as per details provided in para 4.2. Most of them have retired as Selection grade Auditors on different dates. It is stated that those Auditors who were given the work of important/complex nature were sanctioned a Special Pay of Rs. 35/- w.e.f. 01.05.1984 and it is stated that all the applicants were sanctioned this amount when they became eligible. Details are provided in para 4.3

2. It is further stated in the O.A. that as per Government O.M. dated 08.05.1989 (Exhibit A-3) this Special Pay of Rs. 35/- was treated as part of existing emolument of fixation of pay and it had been clarified by a later O.M. dated 08.08.1990 (Exhibit A-4) that Rs. 35/- being paid for complex nature of work be taken into consideration for pay fixation. Further communications are then described and it is also stated that the Respondents had misunderstood the request of the Applicants for counting of Rs. 35/- / Rs. 40/- for pay fixation from 01.01.1986 as being a request for grant and counting it for pay fixation per se. The date of 01.01.1986 is specially commented upon. It is also stated that the Special Duty Allowance of Rs. 40/- being received prior to 01.01.1986 was not taken into consideration while fixing basic pay of Applicants in the revised pay scale on 01.01.1986. One M.P. Thomas, who had approached the Ernakulam Bench of this Tribunal in O.A. No. 885/95 was allowed the benefit. A copy of

...6



this judgement is provided at exhibit A-10. With these grievances, the Applicants are before us praying for the following reliefs :

- “(a) to direct the Respondents to refix the pay of the Applicants taking into account the special pay of Rs. 35/- per month with effect from 01.01.1986 or from the date of eligibility onwards,
- (b) to direct the Respondents to calculate and pay the arrears of pay consequent to the refixation of pay and for the consequential revision of pensionary benefits,
- (c) to direct the Respondents to pay the arrears of pensionary benefits and pay arrears.”

3. The Respondents have filed a Written Statement in reply to O.A. They have stated that Applicants were drawing Special Duty Allowance of Rs. 40/- while working as U.D.C. and have now retired as Selection Grade Auditors. It is recapitulated that Applicants are praying for adding of Rs. 35/- to their pay w.e.f. 01.01.1986 on the ground of their drawing Rs. 40/- as Special Duty Allowance. Respondents submit that the Applicants are basing this claim on the ground that the persons who were carrying out complex nature of duty/onorous duty and were drawing a Special Pay of Rs. 35/- were allowed to merge this Special Pay w.e.f. 01.01.1986. To the above, the Respondents have submitted in Written Statement that there are three classes of individuals, which are as follows :

(A) Those who were enjoying Special Duty Allowance of Rs. 40/- prior to 01.01.1986 but have retired on or before

...7

Bud

01.12.1994. They are not entitled, according to the Respondents, to this benefit.

(B) Those U.D.Cs. who were drawing Special Duty Allowance of Rs. 40/- on 01.01.1986 and thereafter and have retired after 01.12.1994 but are given the stepping up of pay on par with their juniors. Hence, this category will get the benefit.

(C) The third class of individual among the Applicants are those who have already been given stepping up of pay on par with their juniors by virtue of which they have got the very benefit of Rs. 35/- added to their emoluments and they are persons who are applicants at Sl.No. 13, 18 and 20. They have got the benefit w.e.f. 08.10.1996 by virtue of orders at Exhibit R-1 and R-2.

4. It is further stated in the Written Statement that Applicants at Sl. No. 5, 13, 14, 17, 18, 20, 21, 23, 24, 25 and 26 are given the benefits which they are seeking and that the only persons who will continue to remain allegedly aggrieved are persons at Sl. No. 1 to 4, 6 to 10, 12, 15, 16, 19, 22, 27, 28 and 29. It is envisaged in respect of these persons in the policy decision taken by the Government of India dated 01.12.1994 that benefits is to be given to those persons only who retired after 01.12.1994. Hence, the claim of these Applicants is resisted. Further details are set out in the Written Statement. The point is made that the Special Pay of Rs. 35/- and Special Duty Allowance of Rs. 40/- was introduced prior to 01.01.1986 and that these two allowances are separate and independent allowances payable for different nature of jobs in offices of the



department. Special pay was declared as part of monthly emoluments but Special Duty Allowance is not part of monthly emoluments. This allowance is payable only to employees after completion of certain period i.e. 31 days. A stand is further taken by Respondents that the judgement in M.P. Thomas' case cannot be automatically applied to others as there are no Government orders in this regard.

5. We have seen all papers in the case and have heard the arguments on behalf of Learned Counsel, Shri S. P. Saxena for the Applicants in O.A. No. 765/98 and Shri R. P. Saxena for Applicants in O.A. No. 885/99 and Shri R. R. Shetty for Shri R. K. Shetty for Respondents in both O.As.

6. Arguing the case on behalf of Applicants, Shri S. P. Saxena first took us over the facts, and made the point that all Applicants had been granted the allowance of Rs. 35/-. They had become senior Auditors later on in selection grade and were provided supervisory duties for which they were paid allowance of Rs. 40/- instead of Rs. 35/-. While on the one hand the persons who were drawing Rs. 35/- as allowance were allowed the benefit of taking this benefit into account for pay fixation, those who were drawing the special allowance of Rs. 40/- per month for supervisory work were not allowed this benefit. Learned Counsel made the above point very strenuously as one of the main plank of argument and stated that this was a odd kind of discrimination and that it was no fault of theirs that they were getting a higher allowance. Learned Counsel then took us over the instructions contained in Exhibit A-3, A-4 and A-9 to make his point by highlighting certain instructions contained therein. It

...9



was also stated by Shri Saxena that there was no option available to the employees as to whether they can select allowance of Rs. 35/- or Rs. 40/-. It was also argued by Shri Saxena that in view of O.M. at page 35 it would not mean that those who retired cannot get the benefit. He also argued the case with reference to the judgement in Ernakulam Bench referred to above and made it one of his planks of support. It was argued that the Applicants were similar to M. P. Thomas.

7. Learned Counsel, Shri R. P. Saxena, also depended on the facts in the case in O.A. No. 885/98 for which he had provided a synopsis and based his argument on the points contained therein. He also argued on the same lines as Learned Counsel, Shri S. P. Saxena in the other O.A. and hence these arguments are not being repeated.

8. Shri R. R. Shetty, Learned Counsel for Respondents, took us over para 2 of the circular at page 30 which is the copy of O.M. dated 01.12.1994 referred to above. He made the point that the category of eligibility are clearly stipulated therein and benefit could accrue according to these instructions only. He reiterated the points about different classes of persons, as contained in the Written Statement and reproduced above, and made the point that the benefit was not provided only to those persons who drew the special allowance of Rs. 40/- and retired prior to 01.12.1994. Learned Counsel drew support from the judgement of The Chief Commissioner of Income-Tax (Administration) Bangalore V/s. V. K. Gururaj & Others reported at JT 1996 (1) SC 709. He made the point that the O.M. dated 01.12.1994 had not been challenged and there were no prayers of discrimination nor any grievance against this O.M.



9. Rearguing the case briefly, Learned Counsel, Shri Saxena stated that the Applicants were found fit for the grant of allowance of Rs. 35/- also, as indeed was M.P. Thomas, namely the Applicant before Ernakulam Bench. He countered the argument that he had not alleged discrimination and stated that this had been done in rejoinder. It was argued by Shri Saxena that the benefit could not be prospective with reference to date of O.M. and the phrase of "notional basis" used in the O.M. implied retrospective effect. He made the point that Gururaj's case cited above did not go against the present Applicants, as they were selectees for eligibility for Rs. 35/- allowance also.

10. The first point that was strenuously brought out was that Applicants had been receiving Rs. 40/- per month as Special Allowance and that, once it was accepted that others getting allowance of Rs. 35/- was to be taken into consideration for pay fixation, it amounted to discrimination if the amount of Rs. 40/- was not allowed to be taken into consideration for Applicants. The issue is whether this amounts to discrimination on the part of Applicants. We are not convinced that it is a case of discrimination. It has been clearly stated by the Respondents that these are separate allowances given for different reasons. In the case of the people getting Rs. 35/- it is for arduous nature of work. It also may transpire that some of these people who get the higher allowance may be senior and indeed, it was argued that these people had also qualified for the allowance of Rs. 35/- earlier. Here also, it is not seniority that will hold the field and parity would not be allowed. In this regard, we draw guidance from the case of V. K. Gururaj (supra) cited by the

...11



Learned Counsel for Respondents. The other important point that comes into consideration in this case is that some of the employees are admittedly covered for benefit in view of the O.M. that is cited, namely - O.M. of 01.12.1994. The point that was debated between the rival parties was the prospectivity of the instructions of Government. It was strenuously argued by the Learned Counsel for Respondents that the instructions will only operate prospectively. The basic principle is that anything that comes by way of clarification only can act retrospectively. Any concession or additionality by way of privileges, etc. can certainly take prospective effect. In this regard also, the Applicants cannot be granted any benefit by judicial determination.

11. The second O.A., namely - 885/99 is similar and hence whatever applies to the discussions made above in respect of the first O.A. will apply to the second also.

12. While we have arrived at the above conclusions we are nevertheless, constrained in making any orders in these OAs because of the view taken by the collateral Bench which has decided the same issue in the matter of M.P.Thomas Vs. Controller of Defence Accounts & others. This judgment, rendered by Ernakulam Bench of this Tribunal in OA 885 of 1995 was cited for support by Shri Saxena; a copy has been annexed (Annexure-A-10) and has been perused by us. In view of detailed discussions made by us we however cannot agree with the aforesaid orders made in the case of Shri Thomas (supra).




13. In view of the above disagreement, we refer this case to Hon'ble Chairman, Central Administrative Tribunal with a request to constitute a Larger Bench to decide the issue and if thought proper the instant two O.As. may also be decided by the said Larger Bench. The issue framed for consideration of the Larger Bench would be as follows :

- 1) Whether the applicants who were in receipt of Supervisory Duty Allowance at the rate of Rs.40/- per month and not Rs.35/- in terms of O.M.No.7(75)-E,III/94 dated 1.12.1994 of Government of India, Ministry of Finance (Department of Expenditure) are entitled to count Rs.35/-, at least, as part of the existing emoluments for the purpose of fixation of their pay in terms of Rule 7 (1) (B) of C.C.S.(R.P.) Rules, 1986.

14. The Registry may take action accordingly to submit the matter to the Hon'ble Chairman of the Tribunal.


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

OS*


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

7