

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A. 305/89.

Date of Judgment: 1.11.89.

Between:

D.Krishna Rao, S/o Dr.Venkat Rao,
Section Supervisor, Office of the
Chief General Manager, Tele-
communications, Andhra Pradesh
Circle, Hyderabad and 8 others. Applicants.

Vs.

Union of India represented by the
Secretary to the Government and
Director General, Telecommuni-
cations Department, New Delhi
and another. Respondents.

Shri K.S.R.Anjaneyulu, counsel for the Applicants.

Shri E.Madhan Mohan Rao, Additional Central
Government Standing Counsel for respondents.

CORAM:

Hon'ble Shri J.Narasimhamurthy (Member, Judl.)

JUDGMENT:

This Application is filed by the applicants
for the relief to declare the clarification issued
by the DG., Telecom, ND in his letter No.12-3/87-PAT
dated 14--12--1988 as arbitrary, illegal and untenable
and to direct the respondents to take into account
the special pay of Rs.35/- drawn by the applicants
prior to their promotion for the purpose of fixation
of their pay in SS(0)/LSG and to give them the
arrears of pay from the date of their promotion with
all consequential benefits.

The averments in the application briefly stated as follows:

All the applicants were promoted from the post of Upper Division Clerk earlier held by them to the Lower Selection Grade, now redesignated as Section Supervisor(Operative) on different dates during 1--5--1982 to 14--12--1984. Prior to their promotion all the applicants were drawing a special pay of Rs.35/- in the grade of Upper Division Clerk. The special pay was attached to the post where the posts were identified as carrying discernible duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks as per Ministry of Finance OM No.F-7(52)EIII/78 dated 5-5-1979 communicated under D.G.P&T(PAP Section), New Delhi letter No.6/8/79/PAP dated 17--5--1979. All the applicants were shouldering higher responsibilities and as such they were allowed special pay un-interruptedly till the date of their promotion to Lower Selection Grade.

While so their initial pay on promotion to lower Selection Grade i.e., Section Supervisor(O) was fixed without taking into account the special pay of Rs.35/- being drawn by them. However, Ministry of Finance vide their O.M.No.7(35)-E-III/87 dated 1--9--1987 communicated under D.G., Telecom letter No.12/3/87-PAT dated 16--11--1987 and in G.M. Telecom Letter No.TA/EST/1-2/Rlgs/III dated 24--11--1987 decided that special pay of Rs.35/- being allowed to Upper Division Clerks in non-Secretariat Administrative Offices for attending to the work of more complex and important nature would be taken into account in fixing their initial pay in the

next higher post to which they were promoted subject to certain conditions and these orders were to take effect from 1-9-1985.


On the basis of these orders the applicants who were promoted as Section Supervisor (0) LSG Grade prior to that date is 1--9--1985 were denied the benefit of counting of special pay for the purpose of fixing their initial pay in SS(0)/LSG. It is indeed an act of hostile discrimination on the ground that because they were promoted as SS(0)(LSG) prior to 1--9--1985 while those promoted on or after 1--9--1985 were being granted the benefit.

All the applicants fulfilled the conditions laid down i.e., they were the substantive holders of the posts to which the special pay was attached and as such they cannot be discriminated and denied the benefit of counting the special pay of Rs.35/- for the purpose of fixation of their pay in the promotional post of SS(0)(LSG).

Respondents have not filed their counter.

Shri K.S.R. Anjaneyulu, learned counsel for the applicants and Sri E. Madhan Mohan Rao, ^{learned} Additional Standing Counsel for the respondents argued the matter.

Mr. Madan Mohan Rao, learned standing counsel for the respondents stated that it is a fact that the special pay of Rs.35/- was given to the U.D.Cs., as they are discharging ordious duties. After they were promoted to the higher post, it was also considered and decided to take into account the special pay of Rs.35/- for fixation of their pay from 1--9--1985.



Learned Counsel for the applicants Sri K.S.R. Anjaayulu argued that from the date of their promotion, the applicants are entitled to the special pay and so they are entitled to the difference of pay from the date of their promotion.

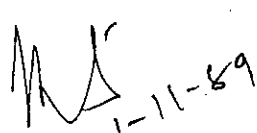
Sri Madan Mohan Rao, learned standing counsel for the respondents drew my attention to Ministry's OM.No.7(32)/E.III/87 dated 3--9--1987 wherein it is mentioned that "The President is now pleaded to decide that pay of those U.D.Cs., who were drawing special pay of Rs.35/- in terms of this Ministry's OM.No.7(52)/E.III/78 dated 5--5--1979 and promoted to higher posts prior to 1--9--1985 and who fulfil the conditions mentioned in this Ministry's OM.No.7(35)/E.III/87 dated 1-9--1987 may be refixed on notional basis from the date of their promotion by taking special pay of Rs.35/- into account and actual benefit may be allowed to them only from 1--9--1985 without payment of any arrears."

Central Administrative Tribunal delivered judgments that pay of the U.D.Cs., drawing special pay of Rs.35/- and promoted to higher posts prior to 1-9-1985 may be refixed on notional basis from the date of their promotion by taking into account special pay of Rs.35/- and actual benefit be given from 1--9--1985 without payment of any arrears subject to fulfilment of the conditions mentioned in Ministry of Finance OM No.7(35)/E.III/87 dated 1-9--1987.

Basing on the judgments of the Tribunal, the O.M.No.7(35)E.III/87 dated 1-9-1987 was issued.

In view of the decision of the Central Administrative Tribunal and O.M.No.7(35)/E.III/87 dated 1-9-1987 the applicants are entitled for fixation of their pay on notional basis from the date of their promotion by taking into account the special pay of Rs.35/- and actual benefit be given from 1--9--1985 without payment of any arrears subject to fulfilment of the conditions mentioned in Ministry of Finance OM No.7(35)/E.III/87 dated 1--9--1987.

With these directions, the application is disposed of. No order as to costs.


(J. NARASIMHAMURTHY)
Member (Judl.)


Deputy Registrar (A)

SSS.

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3/11/89

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IN THE CENTRAL ADMINISTRATIVE TRIBU

HYDERABAD BENCH

HON'BLE MR. B. N. JAYASIMHA: V.C.

AND

HON'BLE MR. D. SURYARAO: MEMBER (J)

AND

HON'BLE MR. D. K. SHAKRAVORTY: M(A.)

AND

HON'BLE MR. J. NARASIMHAMURTHY: M(J)

DATED :

1/11/89

~~ORDER~~ / JUDGMENT

~~T.A. NO.~~ /

~~(W.P. No.)~~ /

CO.A. No. 305/89

~~Allowed~~

~~Dismissed~~

~~Disposed of~~

~~Ordered~~

No order as to costs.

PSR

