

(H8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 437/91
T.A. No.

198

DATE OF DECISION 1st MAY 1992

Sri Y. Subba Rao

Petitioner

Sri KSR Anjaneyulu

Advocate for the Petitioner(s)

Versus

Secretary to Govt., Ministry of Defence Respondent

Sri NR Devaraj, Addl. CGSC Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

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(HTCR)
M(J)

(A9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.437/91

(DATE OF ORDER:FIRST MAY, 1992)

BETWEEN

Sri Y. Subba Rao .. Applicant

A N D

1. Secretary to Govt.,
Ministry of Defence,
NEW DELHI.
2. Controller General of Defence
Accounts
New Delhi
3. Controller of Defence Accounts
South Bangalore
4. JCDA, Incharge PAO(ORs)
EME Secunderabad

Counsel for the Applicant : Sri KSR Anjaneyulu

Counsel for the Respondents: Sri N.R. Devaraj , Addl.CGSC

CORAM:

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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ORDER OF THE SINGLE MEMBER BENCH DELIVERED BY THE
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed by the applicant herein, under Section 19 of the Administrative Tribunals Act, to direct the respondents to re-fix the pay of the applicant as on 1.1.86 by taking into ~~the~~ account the special pay of Rs.35/- and grant him increments, etc., on that basis with all consequential benefits.

2. The facts giving rise to this OA in brief may be stated as follows:

3. The applicant herein was originally appointed as U.D.C. on 23.5.1959 and was later promoted to Selection Grade Auditor(SGA) w.e.f. ~~1.7.75~~ 21.7.75 and confirmed in the grade on 1.4.1978. The said post was carrying a special pay of Rs.35/- p.m. w.e.f. 1.5.1984. Hence, the applicant was also paid a special pay of Rs.35/- p.m. in the post of Selection Grade Auditor, w.e.f. 1.5.84. While so, the applicant was posted as Unit Accountant which post carries a separate pay scale. According to the applicant, the post of Unit Accountant enshrines greater responsibility dealing with complex and important nature of cases and the said post also involves superivision of the work done by the staff and Unit Accountant is also Financial Advisor to the Executive and Administrative Authorities. Considering the capabilities of the applicant, the applicant was appointed as Unit Accountant B.S.C(North) Secunderabad w.e.f. 13.8.85. The post of Unit Accountant

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also carries a duty allowance of Rs.40 p.m. which was treated as pay for all purposes, ~~except~~ including pension.

4. According to the applicant, the special pay of Rs.35/-p.m. which was paid to the applicant while he was Selection Grade Auditor is not being paid to him in the present post of Sr. Auditor, which has also got a separate pay scale. The grievance of the applicant is that all the juniors to the applicant who are working in the said post of Selection Grade Auditor are being paid Rs.35/- p.m. towards special pay and in view of this, that the applicant is also entitled to be paid Rs.35/- as special pay in the present post also and according to the applicant, the denial ~~for~~ of the benefit of Rs.35/- is unjustified, and untenable in law. Hence, the present OA for the relief as indicated above.

5. Counter is filed by the respondents opposing the OA.

6. It is maintained in the counter that the post of Selection Grade Auditor, involves a complex nature of work and so a special pay of Rs.35/- per month was being paid for the incumbents in that post. ~~and~~ as he has to ~~shoulder~~ shoulder more responsibilities. It is the case of the respondents, that once an individual ceases to hold the post of SGA the benefit of special pay of Rs.35/- cannot be claimed as of right as the special pay is attached to the post, and the ~~for the said person~~ special pay is taken away/after the said person leaves the said post.

7. Annexure I to the OA is a copy of the proceedings of CDA Bangalore. From para 1 of the said proceeding dated 26.8.84, it is quite evident that only the individuals mentioned therein will draw a special pay of Rs.35/- p.m. for attending work of more important and complex nature w.e.f. 1.5.84 for a period of one year.

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Annexure 3 to the OA is copy of another proceeding of CDA, Madras dated 27.7.89. In the said proceeding, the last para reads as follows:

"As a result of application of these orders, there may arise cases where juniors performing complex nature of functions in the pre-revised set up and consequently getting special pay of Rs.35/- may get their pay fixed in the revised scale at a higher stage than the seniors who were not performing the complex nature of functions and were therefore not getting the special pay. Such cases, if any, cannot be treated anomalous because juniors will be drawing higher pay than the seniors by virtue of having performed duties of complex nature and drawn special pay. Thus there will be no question of stepping up the pay of seniors on this account".

So, as the applicant ceased to work as SGA as and when he was appointed as Unit Accountant w.e.f. 13.8.85, the applicant was not entitled for the special pay benefit of Rs.35/- as the post of SGA was carrying a special pay of Rs.35/- and as the applicant ceased to hold the post of SGA, the applicant did not have a right to claim the said sum of Rs.35/- that the applicant was drawing towards special pay when he was serving as SGA

In this connection, it will be worthy to

note the decision reported in 1987(1)-SLJ 647- Shri Teja Singh (Applicant) Vs General Manager (NF) Railway Guahati (Respondents) wherein it is ~~xx~~ laid down that the applicant therein ^{who} was drawing a special pay of Rs.35/- when he was working as Driver and later when he was absorbed in the alternate job as caretaker and as the new post carried no special pay that the applicant therein could not claim special pay as of right as he was attached to the post of driver. The observations made therein equally apply to the facts of this case.

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9. At Page 5, in para 3 of the counter filed by the respondents, it is pleaded as follows:

"There is no discrimination in not giving the benefit of Rs.35/- to the applicant as he was not available for drawing the same. The Tribunals directions were to afford the benefit of pay in fixation of pay under CCS (RP) Rules 1986 only to those who were actually drawing special pay of Rs.35/- on the date of election of revised scale of pay under CCS(RP) Rules, 1986. As regard variation in pay of the applicant, in comparison to his juniors, whose pay were fixed after inclusion of special pay of Rs.35/- being paid for doing complex nature of duties, para 3 of Govt. of India, Min. of Finance(Dept. of Expenditure) OM No. F1(9)E.III/89 dated 8.5.89 clearly states that such cases are not treated anomalous because the juniors were drawing higher pay than seniors by virtue of having performed duties of complex nature and drawn special pay."

In view of the said pleading, we directed Standing Counsel for the respondents, Sri NR Devaraj to produce the required material before us to show on what grounds, the special pay of Rs.35/- had been taken into consideration for fixing the pay of the SGAs after the applicant had ceased to work as SGA. In pursuance ~~to~~ of our directions, the learned Counsel ~~had~~ produced before us a copy of Ministry of Finance Deptt. of Expenditure OM No.F1(9)/E.III/89 dated 8.5.89 reproduced in CDA(ORs)South, Bangalore Pt.I OO 76 dt.19.6.89. From the said OM, it is clear that the benefit of adding special pay of Rs.35/- to some of the persons working as SGA was extended, as the said persons had approached the Cen Administrative Tribunal for consideration of the special pay as part of their pay for pay fixation in the revised scale of 1986 and said persons had obtained favourable orders from the said

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Tribunal. As could be seen from the OM, the President had been pleased to decide that the benefit of the said Judgement of CAT for taking into consideration, the special pay of Rs.35/- drawn by them in pre-revised scale may also be extended to similarly placed persons in the organised Accounts cadre by treating the special pay of Rs.35/- drawn by them in pre-revised scale as part of the existing emoluments.

When this OA was filed, the applicant was working as Sr.Auditor in the office of the PAO ORs, EME Secunderabad. The applicant had ceased to work in the post of SGA prior to 1.1.1986. So, as the applicant, on the date of filing this OA, was not working as Selection Grade Auditor, it is not open for the applicant to seek the benefit of the CAT Judgement to him also for taking into consideration the special pay which he was drawing prior to 1.1.1986 as SGA and before his promotion as Unit Accountant. So, that being the position, it is not open for the applicant to get his pay refixed by taking into consideration the special pay of Rs.35/- which he was drawing as SGA prior to 1.1.1986 as at present, the applicant is working as Sr.Auditor and as the applicant belongs to higher category than that of SGA and UA. Because some benefit is given to SGAs and Unit Accountants by the judgement of CAT, the same cannot be extended to the persons working in the higher category even though they had worked in the lower categories for some time. We make it clear that the benefit of the said CAT judgement has to be restricted only to the persons working as SGAs as on 1.1.1986 and not to others who were working as SGAs and promoted before 1.1.1986 to a higher post.

The applicant, in support of his case, had filed a copy of the Judgement in OA No.1026/88(F) of the Central Administrative Tribunal, Bangalore Bench, that he is entitled for special of pay of Rs.35/- in the post of Unit Accountant and also in the present post of Sr.Auditor. We have gone through the said decision and the said decision

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does not apply to the facts of this case for the reasons mentioned above. Hence, we see no merits in this OA and this OA is liable to be dismissed and is accordingly dismissed. In the circumstances of the case, we make no order as to costs.

T. Chandrasekhar Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: The First May, 1992

(Dictated in the Open Court)

SS/1692
Deputy Registrar(J)

To

1. The Secretary to Govt.,
Ministry of Defence, New Delhi.
2. The Controller General of Defence,
Accounts, New Delhi.
3. The Controller of Defence Accounts, South Bangalore.
4. The JCDA, Incharge PAO (ORs)
EME Secunderabad.
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5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Addl.CGSC.CAT.Hyd.
7. One spare copy.

pvm.

*Malay Dev
2/6/92*