

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 62/91.
-T.A.No.-

Date of Decision : 9.12.1991

S.V.Subba Ramaiah

Petitioner.

Shri C.Suryanarayana

Advocate for the
petitioner (s)

Versus

Union of India, represented by the
Director-General, Posts, New Delhi & another

Respondent.

Shri N.R.Devaraj, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandrasekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? 45
2. To be referred to the Reporter or not? 45
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? 3
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS
M(A).

HTCSR
M(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.62/91.

Date of Judgment 2.12.99.

S.V.Subba Ramaiah

.. Applicant

Vs.

1. Union of India,
represented by the
Director-General, Posts,
New Delhi-110001.

2. The Postmaster-General,
Vijaywada-520002. .. Respondents

Counsel for the Applicant : Shri C.Suryanarayana

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

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

[Judgment as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Shri S.V.Subba Ramaiah under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, represented by the Director-General, Posts, New Delhi-110001 and another, seeking a direction to the respondents to refix the pay of the applicant on his promotion as L.S.G. w.e.f. 2.1.82 by taking into account the special pay drawn by him as U.D.C. till his promotion and consequently to revise his pensionary benefits such as pension, gratuity, commuted value of pension etc., w.e.f. 1.9.85 without any arrears upto 1.9.85.

2. The applicant joined the Postal Department as a Time Scale Clerk. Later, he was promoted as U.D.C. in the Postmaster-General's Office. By a memo dated 5.5.79 the Ministry of Finance granted special pay of p.m. Rs.35/- to U.D.Cs in non-Secretariat Administrative Offices

Nb

P.D.

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Later, by another order dated 1.9.87, the Government decided that the special pay of Rs.35/- p.m. paid to U.D.Cs shall be taken into account for fixation of pay on promotion. That was given effect from 1.9.85. Some aggrieved persons who were promoted earlier and did not get this benefit moved the Tribunal and in the light of some decisions of the Tribunal the Ministry of Finance issued an O.M.No.7(29)/E.III/89 dated 22.5.89. According to this circular, the pay of those U.D.Cs who were drawing special pay of Rs.35/- p.m. in terms of the Ministry of Finance O.M. dated 5.5.79 and promoted to higher posts prior to 1.9.85 and who fulfilled the conditions mentioned in the Ministry of Finance O.M. dated 1.9.87 may be refixed on notional basis from the date of their promotion by taking the special pay of Rs.35/- p.m. into account and actual benefit may be allowed to them only from 1.9.85 without payment of any arrears. The applicant who was promoted as L.S.G. on 2.1.82 retired on superannuation on 31.1.85. The applicant made a representation on 14.6.89 praying that his pay might be notionally fixed in the L.S.G. grade as on 2.1.82 i.e., the date on which he was promoted by taking into account the special pay of Rs.35/- p.m. which he was getting as U.D.C. He also sought for terminal benefits ^{based} on this pay fixation. This was turned down by the 2nd respondent vide his letter dated 30.6.89 stating that since he had retired prior to 1.9.85 no such benefit would accrue to him. The applicant represented subsequently also but with no result. Hence, this application with the prayer that he be given the benefit of the special pay for pay fixation and the resultant pensionary benefits.

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Nb

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3. The respondents have filed a counter affidavit and oppose the prayer. The facts of the case are not disputed. It is their contention that since the applicant had retired prior to 1.9.85 from which date only the benefit was to commence, his pay could not be fixed taking into account the special pay he was drawing. It is contended that according to the proviso under Note 1 below Rule 33 of the C.C.S.(Pension) Rules, 1972 any increase in pay which is not actually drawn shall not form part of the emoluments. Hence, they were not in a position to fix his pay at the time of his promotion in January, 1982 taking into account the special pay which cannot commence before 1.9.85.

4. We have examined the case and heard the learned counsel for the applicant and the respondents. The pensionary benefits depend on the emoluments actually drawn at the time of retirement (emphasis supplied). The applicant has drawn our attention to the judgment of the Bangalore Bench of this Tribunal. The memo dated 22.5.89 of the Govt. of India had been issued in the light of several court decisions including the Bangalore Bench of this Tribunal. While the order permits notional pay fixation from the date of promotion the actual benefit is permitted only from 1.9.85, thereby making it clear that any benefit of this memo is payable only from 1.9.85. That being the case, the emoluments at the time of his retirement in January, 1985 cannot take into account the special pay under consideration. Therefore, the re-fixation of pay that was not available to the applicant at the time of his retirement cannot count for pension ~~in accordance with~~ ~~according~~ not only to Note 1 below Rule 33 of the

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C.C.S.(Pension) Rules, 1972 but also to the decision of the Hon'ble Supreme Court which in the judgment dated 29.1.91 states as follows:

"The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement."

Such being the case, we find no scope to interfere in this case and we accordingly dismiss the application with no order as to costs.

R. Balasubramanian
(R.Balasubramanian)
Member(A).

T. Chandrasekhar Reddy
(T.Chandrasekhar Reddy)
Member(J).

Q15
Dated *8th* December, 1991.

L
Deputy Registrar(J)
(Q15)

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To

1. The Director General, Union of India,
Posts, New Delhi-1.
2. The Postmaster-General, vijayawada - 520 002.
3. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Addl. CGSC. CAT.Hyd.
5. Copy to All Reporters as per standard list of CAT.Hyd.
6. One spare copy.

pvm

10/12/91