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**Central Administrative Tribunal
Jabalpur Bench**

OA No.386/05

Jabalpur, this the 30th day of August 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

M.S.Chandel
S/o late Shri Gopi Singh Chandel
Accountant
Head Post Office
Chhindwara
Dist.Chhindwara (M.P.) Applicant

(By advocate Shri S.P.Sinha)

Versus

1. Union of India through
Secretary
Department of Posts
New Delhi.
2. The Chief Post Master General
M.P.Circle
Bhopal (M.P.)
3. The Superintendent of Post Offices
Chhindwara (M.P.)
4. The Director of Accounts (Postal)
Bhopal. Respondents.

(By advocate Shri S.A.Dharmadhikari)

ORDER

By A.K.Gaur, Judicial Member

The applicant is aggrieved against the order of stoppage of special pay/special allowance and has challenged the validity of order dated 4.4.05 (A-1) rejecting his representation. He has prayed that the order dated 4.4.05 and the order dated 21.1.04 (A-1(a)) directing recovery of Rs.13,041/- be quashed.

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2. The brief facts of the case are that the applicant was promoted and posted as Accountant in Head Post Office, Betul, vide order dated 17.10.89 and his pay was fixed at Rs.1125/- which came to be revised as Rs.4400/- plus special pay under the 4th Pay Commission. It is urged on behalf of the applicant that since the post of Accountant is of special nature, special pay of Rs.90/- was sanctioned to all Accountants as per order dated 29.9.86. This special pay was payable under Rule 22 (1)(a)(ii) F.R., order 11 of Govt. of India. It is also observed that the special pay of the applicant was doubled vide Govt. of India order dated 22.4.98 (A-4) and this special pay of Rs.180/- was paid to the applicant w.e.f. 8.9.97. According to the applicant, he was transferred to Chindwara as Accountant and is still working on the same post and was paid special allowance. According to him, looking to the special nature of work as Accountant, on promotion, this special pay was included in fixation of pay in the higher scale as per Rule 22 (a) (ii) and GOI order 11. Vide DoPT's letter dated 22.4.98 (A-4), the nomenclature of "special pay" has been changed and termed as "special allowance". As a result of this decision, this special allowance could not be merged in the pay while fixing the pay in the higher scale, resulting in pecuniary loss in DA, TA, pension etc. Although the order was issued on 22.4.98, the same was made effective from 1.8.97. It is submitted on behalf of the applicant that on completion of 16 years of service, he was granted higher scale of pay under the One Time Bound Promotion (OTBP) Scheme w.e.f. 9.12.98 (A-2). It is also submitted that in spite of up-gradation in higher grade, he is still working as Accountant at the same place where the work is of special nature and hence the special pay was merged while fixing the pay in the higher grade which has been paid to the applicant since the date of promotion under OTBP. It is urged on behalf of the applicant that all of a sudden, audit objections had been issued that on account of grant of higher scale under OTBP, the applicant was not entitled to special allowance of Rs.180/- in fixation of pay even though he is still working as Accountant. As a result, the department reduced the pay of the applicant by deducting payment of special pay

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added in fixation of pay and issued a memo for recovery of Rs.13.041/- (A-1a). On 1.5.04, coming to know of it, the applicant made a representation to respondent No.2 (A-5). After receipt of the representation of the applicant, respondent No.3 called a report from the Post Master, Chhindwara who submitted his report on 21.5.04 to respondent No.3 justifying the fixation of pay by including special allowance to the applicant. It was submitted that even after the up-gradation, the applicant was working on the same post and as per instructions, special allowance was payable to Accountants even if merger could not be done. It is to be paid separately. Copy of the Post Master's report has been filed as A-6. On enquiry, it was informed that his representation has been rejected and payment of special allowance merged in the pay has been ordered to be recovered w.e.f. July 2004.

3. It has been contended on behalf of the applicant that by reducing the pay by deducting special pay and not paying special allowance separately, which is payable to Accountants, the respondents have committed a serious illegality and the order of recovery passed against him is without jurisdiction. No show cause notice was issued before resorting to the above action. The applicant filed OA No.611/04 before this Tribunal and that OA was decided by this Tribunal on 30.8.04 directing respondent No.2 to decide the representation of the applicant. The representation of the applicant has been rejected by the competent authority without considering the points raised.

4. The applicant has also claimed that one Shri C.S.Sisodia who was similarly situated was promoted as Accountant on 8.1.02 and has been granted special pay. In support of this contention, A-8 has been filed by the applicant.

5. The main ground raised on behalf of the applicant is that special pay is being paid on the basis of the recommendations of 4th & 5th Pay Commission and the same cannot be stopped in spite of applicant's promotion under the OTBP in view of the fact that he is still working as Accountant.

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6. Respondents have filed reply and stated that the OA is misconceived on the ground that after commencement of the 5th Pay Commission's recommendations effective from 1.8.97, "special pay" which was admissible was doubled and was termed as "special allowance" and was paid to the applicant subject to same condition as stipulated in FR 9 (25). According to the respondents, the allegation of the applicant that special pay which was included in fixation of pay in higher scale as per Rule 22 (a) (ii) and GOI order No.11 was rightly done after up-gradation under OTBP has been denied with the comments that the applicant was given promotion under OTBP w.e.f. 9.12.98 while the recommendations of 5th Pay Commission were accepted by the Government and the orders were made effective from 1.8.97. It is also submitted that 5th Pay Commission in its report in Para 109.5 held the view that as in case of certain other allowances, "special pay" should be sui-generis and should not be reckoned for any other benefit such as HRA,CCA, pension, gratuity etc. Further in order to avoid any confusion arising out of this element of the compensation package being termed as a kind of pay, it was suggested that the special pay should be termed as special allowance and the Government further ordered the special pay already admissible would be doubled in those cases where it was sanctioned at the current rate between 1.1.86 and 31.12.1990 and enhanced by 50% in those cases where it was revised or introduced at rates higher than current rates after 31.12.90 (A-4). The audit party correctly reduced the pay of the applicant by deducting the payment of special allowance, which was merged in fixation of pay. The audit party correctly issued the memo of recovery of Rs.13041/-.

In reply to the contention of the applicant that he was not served with any show cause notice, the respondents have submitted that under rule 86 of FHB Vol. I it has been laid down that any unauthorized amount paid to any Govt. official is liable to be recovered at any time without assigning any reasons. They have further submitted that Shri C.S.Sisodia who was postal Assistant, Betul was appointed as Assistant Accountant, Chhindwara H.P.O. and was granted "special allowance" as admissible and not "special



pay", which was erroneously written. The applicant is not entitled to get the benefit of merger of "special allowance" as well as the entitlement of "special allowance".

7. We have gone through the rival contentions advanced by the learned counsel for the parties. We may observe that in this case, an audit report under the supervision of Accounts Officer, Office of Director of Account (Postal) Bhopal was held between 17.4.04 to 1.5.04 and the internal audit under its para 14 reported that on promotion of applicant under TBOP scheme on 9.12.98 while fixing the pay in the higher scale, element of special allowance of Rs.180 has been taken into account in contravention of Govt. of India DoPT OM dated 22.4.98 incorporated as Govt. of India's orders in Appendix 8 of FR&SR, on account of which over payment of Rs.13041/- during the period from 9.12.98 to 30.4.04 was made by the respondents and orders were passed for recovering the said amount from the applicant. We have also considered the crucial aspect of recovery of Rs.13,041/- from the salary of the applicant.

8. On a careful perusal of the records, we find that the applicant started getting the special pay of Rs.90/- from the date of joining as Accountant at Betul from 1.11.89 and thereafter this amount was revised and he started getting the revised amount Rs.180/- as special allowance from 8.9.97 in view of the arduous nature of work he was doing as Accountant. The fact that the applicant has been doing arduous nature of work as Accountant has not been denied by the respondents. Respondents have stated that vide DoPT OM dated 22.4.98 (A-4), "Special Pay" would be termed as "Special Allowance" and same would be granted subject to same condition as are stipulated in FR 9 (25). FR 9(25) reads as follows:

"(25) Special Pay means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of –

- (a) the specially arduous nature of the duties;
- or
- (b) a specific addition to the work or responsibility.

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For orders regarding grant of special pay to various categories of Government servants and treatment thereof for the purpose of fixation of pay on promotion, see Appendix-8 in the compilation.

Appendix-8 has been filed as Annexure A-4 to the OA.

9. In this office memo filed as A-4 (Appendix-8), it is stated that special pay already admissible would be doubled in those cases where it was sanctioned at the current rate between January 1, 1986 and December 31, 1990 and enhanced by 50% in those cases where it was revised or introduced at rates higher than current rates after December 31, 1990. Clearly in the applicant's case, the revised special allowance of Rs.180/- was being paid to him with effect from 8.9.97, well after December 31, 1990. It is nowhere stated that the special allowance of Rs.180/- is not admissible to an employee on his promotion. In this case, it is an admitted fact that the applicant though promoted under OTBP is still continuing as Accountant and doing the arduous nature of work. On page 17 FRSR Part-1 below Rule FR 9 (25) under the heading "Government of India's Orders, it is mentioned – "(a) protection of special pay drawn in a post on promotion to another postxxxxxx; "(b) continuation of special pay originally sanctioned with the concurrence of the Ministry of Finance – full power in cases where special pays are granted on the basis of well-defined yardsticks or are granted at a specified rate to a category of officials in general, provided it is certified the consideration for which the special pays are sanctioned continues to exist".

10. According to the respondents, the consideration for which the special pay was granted to the applicant continues to exist as he is still doing the arduous nature of duties as Accountant. The nomenclature "special allowance" itself denotes that it has to be given separately. It may be for this purpose the change has been effected so that the special allowance cannot be merged in the pay. In view of the above rule position, the contention of the respondents that the applicant is not entitled to special allowance of Rs.180/- separately is devoid of merit. We are of the considered view that the applicant is entitled to

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get special allowance of Rs.180/- separately. However, the applicant cannot claim merger of this special allowance with his pay. As regards the recovery of Rs.13,041/-, the respondents are to blame for the mistake of merging the special allowance with the pay of the applicant. This mistake is not attributable to the applicant. In view of the Apex Court decision in 1994 (2) SCC 521 - Shyam Babu Verma Vs. Union of India; 2000 2 SLR 694 - P.H.Reddy's case, any over payment made wrongly cannot be recovered.

11. In view of the aforesaid discussion, the OA is partly allowed and the order dated 4.4.05 to the extent it proposes recovery of Rs.13041/- from the pay of the applicant is quashed. The respondents are directed not to recover the amount of Rs.13,041/- from the salary of the applicant. If the amount has already been recovered, the same be refunded to him. The applicant is entitled to get special allowance at the rate of Rs.180/- separately so long as he continues to do arduous nature of duties as Accountant. Parties are to bear their own costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Gaurav
(Dr.G.C.Srivastava)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जवलपुर, दि.....
परिविधि अधे दितः—
(1) राजिन, राज उद्यानद्वय बास दुर्गोलिष्ठान, जवलपुर
(2) अदेशक श्री/महिला/वृ.....के काउंसल
(3) अद्यार्थी श्री/महिला/वृ.....के काउंसल
(4) अंगराज, टेपाना, जवलपुर ज्यापीड
सूरजा एवं अवरपत्र कार्यालयी हेनु
संस्कृत दिनांक
11.9.06

S.P.Ji, hq
11.9.06
S.A. Dharma Shikhar
11.9.06
Subhajit Gaur
11.9.06

Delivered
on 11/9/06

By