

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.95 of 2000

Jabalpur, this the 16th day of February, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri G.Shanthappa, Member (J)

Shri O.P. Tiwari,
Sr. Auditor, PAO(ORS)
Corps of Signals,
Jabalpur (MP) and 27 others.Applicants

(By Advocate: Shri P.S.Nair, Sr. Advocate with
Shri S.K.Nagpal)

-versus-

1. Union of India through
Secretary,
Ministry of Defence,
New Delhi.
2. The Controller General of Defence
Accounts, West Block V,
R.K.Puram, New Delhi.
3. The Controller of Defence Accounts,
Ridge Road,
Jabalpur.
4. The Controller of Defence Accounts,
Vehicle Factory,
Jabalpur (MP).
5. P.A.O. (ors.),
Corps of Signals,
Jabalpur(MP).
... Respondents

(By Advocate: Shri S.A.Dharmadhikari)

O R D E R

By G.Shanthappa, Judicial Member -

The above o.A. is filed seeking the following main reliefs:-

a) to order that the classification of SGAs into two class for the purpose of special pay of Rs. 35/- per month is artificial and unreasonable being violative of Articles 14 & 16 of the Constitution and direct the respondents to grant the benefit of special pay to applicants also as granted to similarly placed SGAs who were promoted upto 22.6.1981.

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b) order to refix the pay of the applicants also like others with the benefit of special pay under the CDS(RP) Rules 1986 on their promotion to Senior Auditor from 1.4.1987 and pay them all consequential benefits accordingly inclusive of retirement benefits to those applicants already retired from service.

c) to pay interest on the consequential arrears of pay and allowances at the rate of 12% per annum from the due date till the payment is made.

2. There are 28 applicants in the said O.A. Applicants no. 1 to 23 are working as Senior Auditors in various offices of the Defence Accounts Departments at Jabalpur under the respondents whereas applicants no. 24 to 28 were employees under the respondents in Jabalpur and presently retired from service.

2.1 Applicants are aggrieved by the order of the respondents not to grant special pay of Rs. 35/- per month to applicants when similarly situated Sr. Auditors were given this benefit and their pay was refixed after adding the special pay from 19.7.1986 as notified in Part II order No. 217 dated 19.3.1996.

2.2 The applicants were initially appointed as UDC/LDC. The post of UDC under the respondents were redesignated as Auditor in the year 1973 without any change in the scale of pay. By virtue of seniority and fitness and on the recommendation of the duly constituted D.P.C. they were appointed as Selection Grade Auditors in the scale of pay of Rs. 425-700(Pre-1986) on various dates during the period from 1982 to 1986 against the 10% quota of Auditor posts as per then policy of the respondents.

2.3 On the recommendations of IVth Pay Commission, the post of SGA was abolished and applicants were redesignated as Senior Auditor in the pay scale of Rs.1400-2600/-. Subsequently the applicants were thus re-designated

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as Senior Auditor w.e.f. 1.4.1987 as they were already holding the grade of SGA and fresh posts were filled by promotion as per the policy on the subject.

2.4 The Govt. of India, Ministry of Finance vide their OM dated 5.5.1979 further clarified that a scheme was introduced to grant special pay of Rs. 35/- to those Auditors/Sr. Auditors who were handling the work of complex nature involving deep study and competence. The criteria for granting the special pay was the suitability of the officers to handle the work of complex nature and not the seniority.

2.5 The second respondent in the year 1996 took a decision that the selection Grade Auditors who were subsequently redesignated as Senior Auditors and doing the duties of more complex nature should be granted special pay of Rs.35/- per month and their pay was accordingly fixed in the revised pay scale introduced from 1.1.1986 after adding the special pay on promoted post in 1986. The revised pay fixation was done in some cases at Jabalpur and has been published in the order dated 19.3.1996.

2.6 The applicants are similarly situated and have been employed in the same nature of duties. Hence, they are equally entitled to get the benefit of special pay of Rs. 35/-. However, when the benefit of special pay of Rs. 35/- and subsequent pay fixation in the revised scale in 1986 after adding special pay were denied to applicants, they represented the authorities. In response to the representations made, 5th respondent vide its letter dated 18.2.1998 informed that the special pay has been granted to individuals who were promoted as SGAs upto 22.6.1981 and



whose names falling under Roster No. 3062 which has not been disclosed. The roster is prepared at headquarters level on all India basis and circulated to all CDA for action from time to time.

2.7 The representation dated 2.12.1998 is pending with the respondents. In the said representations, the applicants have reiterated that they are also working on the work of complex nature and are, therefore, entitled to get the special pay which is to be granted only on the basis of suitability of handling the work identified as complex nature and seniority-cum-fitness would not be the criteria for granting the special pay.

2.8 The respondents have discriminated the applicants in respect of grant of special pay of Rs. 35/- per month and there is no justification to fix a cut off date while granting the special pay to the Auditors/SGAs only upto 22.6.1981. There is no difference of duties performed by those SGAs who have been granted the benefit of special pay and the duties being performed by applicants who were also SGAs performed the same nature of duties but deprived the benefit of special pay. There is no justification for the classification of SGAs into two different classes when they were identically placed. Special pay should have been granted to all SGAs without discrimination as SGAs are 10% of Auditors and special pay is granted to 10% of the total strength of Auditors/Sr. Auditors. The classification of same class of employes into different class without any change in their duties, qualification etc. is unreasonable and no nexus with the objective. It is therefore unfair, unjust, discriminatory and creation of artificial classification.

2.9 In support of their claim, the applicants have cited a judgement of the Hon'ble Supreme Court rendered in the case of Chief Commissioner of Income Tax (Amdn.) Bangalore vs. V.K.Gururaj & Others, reported in (1996) 7



SCC 275. Applicants state that in view of the above judgement of the Hon'ble Supreme Court, they are entitled to the reliefs, as prayed for in the O.A.

3. Respondents have filed their reply admitting the nature of duties of the applicants and other similarly situated employees those who got the special pay of Rs. 35/- per month.

3.1 The scheme for grant of special pay of Rs. 35/- p.m. to auditors attending to work of a complex nature and more important nature contained in the Ministry of Finance, Deptt. of Expenditure OM dated 29.11.1982 was introduced in the Defence Accounts Department with effect from 1.5.1984 vide letter dated 5.5.1984. In pursuance to the instructions contained in para 2.3 of the letter dated 5.5.1984, a list of seniormost SGA's/Auditors was prepared.

3.2 After implementation of the above scheme it was observed that the total number of 2034 posts could not be filled due to various reasons viz. refusal for appointment, certain Sr. SGA's were already in receipt of higher rate of special pay and due to retirement, death, resignation etc. with a view to fill up unfilled posts out of 2034 authorised posts carrying special pay of Rs. 35/- it was decided to go down in the seniority roster of the SGAs by authorising additional 1000 numbers in the roster of SGAs.

3.3 The comprehensive instructions were, therefore, issued by the respondents vide their letter dated 31.3.1995 to consider the names of SGAs for the grant of special pay of Rs. 35/- falling between serial nos. 2041 to 3062 provided if the conditions as laid down in the circular dated 5.5.1984 are satisfied by the concerned SGAs. The respondents have denied the benefit of grant of special pay to the applicants on the ground that they are not covered as they were promoted to the SGA's grade after 22.6.1981. Therefore, the applicants have not been discriminated in the matter of grant

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special pay of Rs. 35/- per month. Since the applicants have not been discriminated in the matter of grant of special pay, they are not entitled to get the reliefs, as prayed for and the application is devoid of merit and is liable to be dismissed.

3.4 The action of the respondents is legal, just proper and in accordance with law. The applicants have not been discriminated in the matter of grant of special pay of Rs. 35/- as they were appointed after the cut off date i.e. 22.6.1981. Hence the case of the applicants does not fall within the identified post as extended vide respondent's letter dated 31.5.1995 (R/2). It is clear from para 5(v) of the said letter that the benefit of special pay of Rs. 35/- to the SGAs who are now being considered for this benefit as per item (iii) above shall take effect from 10.7.1986 or the date from which they were employed on complex nature of duties but prior to 13.9.1986, whichever is later. The applicants are neither in the zone of consideration nor they were employed on the complex nature of duties, hence applicants are not entitled to any of the reliefs, as prayed for in the O.A.

4. We have heard the learned counsel for the parties and have perused the pleadings and other relevant documents available on record apart from the judgement referred to.

5. The admitted facts of the case are that the applicants are (1 to 28) working as Senior Auditors in the office of the Defence Accounts Department but applicants no. 24 to 28 are retired employees of the said department. The nature of work and responsibilities of the applicants are similar to that of the Auditors working in the Income Tax Department. The respondents have also granted the special pay of Rs. 35/- p.m. to the Auditors attending to the work of complex and more important nature working in the Defence Accounts Deptt. w.e.f. 1.5.1984. The applicants are also working in the same department but they were not granted the said benefit

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and as such they have been discriminated in the matter of grant to special pay of Rs. 35/- p.m.

5.1 In a similar circumstance, the Hon'ble Supreme Court has held in the matter of Chief Commissioner of Income Tax (Admn.), Bangalore (supra) regarding the special pay to the effect that UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay. The facts of the said case are that special grant of pay of Rs. 35/- per month to the UDCs in the non-secretariat administrative officers was provided. Out of the UDCs carrying the scale of Rs. 330-560, 10% of the posts were earmarked with special grant of pay Rs. 35/- in the Secretariat and other places and they were directed to handle cases of complex nature involving deep study and competence. For dealing with such cases certain officers have been promoted to that 10% posts specified among the UDCs in the Secretariat as well non-Secretariat administrative officers. They were being paid @ Rs. 35/- per month as compensation for discharge of special duties. The respondents were not actually discharging those duties but being UDCs they claimed special pay of Rs. 35/-. The Tribunal in the impugned order following its earlier decision dated 9.10.1991 made in OA 394 of 1990 allowed the petition and directed payment.

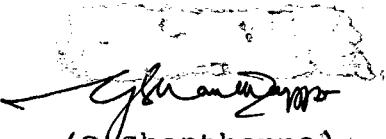
5.2 The respondents preferred an appeal against the said order before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the payment of Rs. 35/- per month to UDCs discharging special duties of onerous nature, is personal pay so long as they discharge the same. Therefore other UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay.

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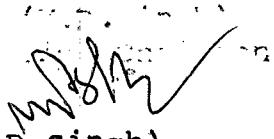
Under these circumstances the Hon'ble Supreme Court was of the view that the Tribunal was wholly incorrect in directing the payment to all the persons who did not discharge such duties assigned to the 10% special posts of UDCs carrying special pay of Rs. 35/- p.m.

6. After careful consideration of the facts of the case and the nature of work on the basis of representation dated 2.12.1998 and also in view of the judgement of Hon'ble Supreme Court, referred to above, we are of the opinion that ends of justice will be met if we direct the respondents to consider the case of the applicants as per Annexure A/4 i.e. representation dated 2.12.1998 and take a decision on the nature of work performed by the applicants applying the principles laid down by the Hon'ble Supreme Court and in accordance with the Office Memorandum issued by the Ministry of Finance in respect of grant of special pay of Rs. 35/- to the Auditors attending to work of complex nature and more important nature. We, therefore, dispose of the O.A. with directions to the respondents to consider the case of the applicants on the basis of the above observation within a period of three months from the date of receipt of a copy of this order. If the applicants are found entitled for the benefit of special pay, the respondents are directed to refix their pay by adding special pay of Rs. 35/- as per CDS(RP) Rules, 1986 on their promotion to the Senior Auditors from 1.4.1987 with all other consequential benefits within the stipulated period of three months under intimation to the applicants. No costs.

The Registry is directed to supply a copy of the Memo of Parties while issuing the certified copy of this order.


(G. Shanthappa)
Judicial Member

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(M.P. Singh)
Vice Chairman