

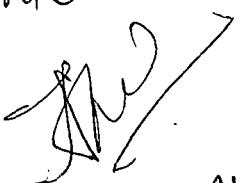
06/05/2014

DA NO. 226/2011

MR. C.B. Sharma, Counsel for applicant.
MR. Mukesh Agarwal, Counsel for respondents.

Heard learned Counsel for the parties.

Order is reserved.


[Smt. Jasmine Ahmed]

Anil Kumar

[Anil Kumar]

Member (A)

Member (J)

DA - 09-5-2014

Order pronounced today in the
Open Court by the aforesaid Bench.


Anil Kumar
09/05/14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 226/2011

ORDER RESERVED ON 06.05.2014

DATE OF ORDER : 06.05.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MRS. JASMINE AHMED, JUDICIAL MEMBER**

Jagpat Singh Meena son of Shri Vijay Singh Meena, aged about 49 years, resident of 36, Shiv Nagar, Bharatpur and presently working as Accountant, Bharatpur, Head Post Office, Bharatpur.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Superintendent of Post Offics, Bharatpur Postal Division, Bharatpur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

"(i) That the respondents be directed to continue payment of special allowance of Rs.360 till the applicant hold the post of Accountant and refund Rs.9000/- recovered from the applicant alongwith interest by quashing letter dated 22.10.2010 (Annexure A/1) with the letter dated 11.01.2011 (Annexure A/10) with all consequential benefits.

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- (ii) That the respondents be further directed to include special allowance of Rs.360 per month for the purpose of fixation of pay on placement in higher scale under MACP Scheme with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was working as Accountant with the respondent department since 25.04.2001 (Annexure A/2). The post of Accountant was allowed Special Pay of Rs.45/- and further Rs.90/- till 1998. This Special Pay was also accountable towards fixation at the time of promotion/placement in the higher scale under Time Bound Promotion Scheme as per order dated 05.04.1988 (Annexure A/3).

3. That after recommendation of the 5th Pay Commission, Special Pay was termed as Special Allowance w.e.f. 01.08.1997 and enhanced the Rs.180/- (Annexure A/4).

4. The applicant was in receipt of Special Allowance of Rs.180/- since 2001 and thereafter @ Rs.360/- as enhanced by the 6th Pay Commission.

5. The Government of India introduced MACP Scheme. The respondents allowed first financial upgradation to the applicant w.e.f. 01.09.2008 vide order dated 18.03.2010 (Annexure A/5).

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6. That the respondent no. 3 without due consideration of the nature of work and the facts & circumstances issued letter dated 22.10.2010 (Annexure A/1) stating therein that on first financial upgradation, Special Allowance to Accountants is not admissible and if any such payment has been made, the same be recovered with effect from 01.09.2008. Consequently an amount of Rs.9000/- has been recovered from the pay & allowances of the applicant and further payment of Special Allowance of Rs.360/- has also been stopped.

7. That the applicant was not allowed fixation of pay including Special Allowance of Rs.360/- and nor this allowance is being paid to the applicant.

8. The learned counsel for the applicant argued that the applicant is still working as Accountant and mere grant of financial upgradation has not changed the nature of work. Therefore, the respondents cannot stop Special Allowance given to the Accountants and the action of the respondent of recovering Rs.9000/- from the applicant's pay is illegal. Therefore, the OA be allowed.

9. On the other hand, the respondents have submitted their reply. The respondents have admitted that the applicant has worked as Accountant in Bharatpur HO. That on completion of 20

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years satisfactory service from entry grade, the applicant was due for second financial upgradation under MACP Scheme with effect from 01.09.2008 but the applicant was erroneously given first financial upgradation under MACP, which was subsequently rectified by the Review Screening Committee on 26.07.2011 by granting MACP II with grade pay of Rs.2800/- with effect from 01.09.2008.

10. There is no order/provision to count the Special Allowance for fixation of pay at the time of promotion/financial upgradation and, therefore, its continuity of Special Allowance after placement in higher grade. After recommendation of 5th Pay Commission, only the nomenclature of Special Pay was changed to Special Allowance and it was to be granted subject to conditions as are stipulated in FR 9 (25).

11. The applicant continued to draw Special Allowance though he knew that Special Allowance was not payable to him on his placement in the MACP with effect from 01.09.2008. The applicant was not allowed to draw Special Allowance at the rate of Rs.360/-. Hence, the recovery made from the applicant is according to the rules. Therefore, the recovery of payment of irregular Special Allowance and stoppage of payment of Special Allowance to the applicant is as per the rules and the action of the respondents is correct according to the rules. Therefore, the OA has no merit and it should be dismissed with costs.

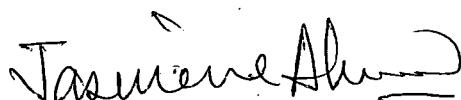


12. Heard the learned counsel for the parties and perused the documents on record. The short controversy in the present OA is whether the applicant is entitled for Special Allowance attached with the post of Accountant after he has been granted second MACP. It is not disputed by the respondents that the post of Accountant had earlier a Special Pay attached to it. Vide order dated 22.04.1998 (Annexure R/1), the Special Pay was to be termed as Special Allowance as recommended by the 5th Pay Commission. This shows that only the nomenclature of the Special Pay was changed from Special Pay to Special Allowance and this Special Allowance was given to Accountants. The respondents have not denied in their written reply nor during the arguments that the Accountants are not entitled to the Special Allowance of Rs.360/- after the implementation of the 6th Pay Commission. Their sole emphasis is that since the applicant as been granted the benefit of second MACP with effect from 01.09.2008, therefore, the applicant is not entitled to draw Special Allowance of Rs.360/-. However, the respondents have not placed reliance of any particular provision of the MACP Scheme which prohibits the sanction of Special Allowance to the Accountants on being granted the benefit of second MACP. When the employee is given the benefit of MACP Scheme, he continues to work at his original post, his designation and the nature of duties do not change. He is merely given the next grade as per the Scheme of MACP. It does not entitled him for seniority in the next grade nor any higher responsibility.

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13. The respondents have not denied that the applicant is still working as Accountant. Since the Special Allowance is attached to the post of Accountant, therefore, we are of the opinion that the applicant is entitled for the Special Allowance at prevalent rate (i.e. Rs.360/- per month at present). Any recovery made on account of stoppage of Special Allowance to the applicant be refunded to the applicant. The respondents shall also pay the arrears of the Special Allowance from the date it was stopped. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

14. With these directions, the OA is disposed of with no order as to costs.



(JASMINE AHMED)
MEMBER (J)



(ANIL KUMAR)
MEMBER (A)

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