

For use
Examination
High Court
Delhi

C.W. 807 of 1991

In the High Court of Delhi at New Delhi.

Date of Decision: 6.1.1993

S.C.Duggal & Othersthrough
Mr.K.C.Mittal, Advocate

Versus

National Airport Authoritythrough
Mr.Jagdeep Kishore,
Advocate.

Coram:-

The Hon'ble Mr.Justice Y.K.Sabharwal

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Y.K.Sabharwal, J. (Oral)

The petitioners were all employees of Directorate General of Civil Aviation, Government of India. In the year 1985 the Central Government constituted an authority called the National Airport Authority (for short the "Authority") by an Act of Parliament, namely, The National Air-

ports Authority Act, 1985 (No.64 of 1985) (for short 'the Act').

On the constitution of the Authority the petitioners joined the Authority on mandatory deputation with effect from 1st June, 1986 as Senior Technical Officers.

Section 13(3) of the Act, inter-alia, provides that every employee holding any office under the Directorate General of Civil Aviation before commencement of the Act solely or mainly for or in connection with such affairs of the Directorate General of Civil Aviation as are relevant to the functioning of the Authority under the Act as may be determined by the Central Government shall be treated on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held in such office if the Authority had not been constituted and shall continue to do so until the Authority duly absorbs such employees in its regular service. The First Proviso to sub section (3) of Section 13 provides that during the period of deputation of

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any such employee with the Authority, the Authority shall pay the Central Government in respect of every such employee such contribution towards leave, salary, pension and gratuity as the Central Government may by order, determine. The Second Proviso provides that any such employee, who has, in respect of the proposal of the Authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority.

On 2nd October 1989, 32 Senior Technical Officers including the petitioners were absorbed on the strength of the Authority. Later on petitioner No.1 was appointed as Assistant Director of Communication with the Authority on regular basis in terms of the orders dated 6th July 1990. Petitioners 2 to 5 were similarly appointed as Assistant Director (Communications) on regular basis in the Authority by orders dated 16th May 1990. The petitioners are aggrieved by Clause (5) of the order dated 6th July 1990 and 16th May 1990 depriving them of special pay of Rs.200/- p.m. attached to the post of Assistant Director in Communication Directorate. The impugned Clause (5) is identical in both the orders and reads as

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under:-

"Henceforth, the special pay of Rs.200/- per month attached to posts of Assistant Directors in Communication Directorate will not be admissible to fresh appointees."

The petitioners seek quashing of Clause (5). They have also prayed for issue of a writ of mandamus directing the authority to pay to them the special pay of Rs.200/- per month from the respective date of the appointment of the petitioners as Assistant Directors of Communication.

Before considering the rival contentions it would be useful to notice some provisions of the Act. Section 38 of the Act empowers the authority to make regulations not inconsistent with the Act and the Rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. The authority is empowered to make regulations to provide for the conditions of service and remuneration of officers and other employees appointed by the Authority. Sub Section (4) of Section 38, howev-

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er. provides that no regulation made by the Authority under Section 38 shall have effect until it has been approved by the Central Government and published in the official gazette.

Section 26 provides that the Authority may, by general or special order in writing, delegate to the Chairman or any other member or to any officer of the authority, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act, (except the powers under Section 38) as it may deem necessary.

It has not been disputed before me that so far the Authority has not made regulations providing for the conditions of service and remuneration of officers and other employees appointed by the Authority. The power to frame regulations providing for the conditions of service cannot be delegated to the Chairman. In any case it is also not the case of the Authority that it has delegated to the Chairman the power to determine the conditions of service and remunerations of the officers and employees of the Authority. It may further be useful to notice that the respondent has not disputed that it is continuing with the recruitment and promotion rules promulgated by the

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Director General, Civil Aviation, Government of India, since most of the employees of the Authority have been absorbed from Director General Civil Aviation/ Civil Aviation Department and that various guidelines/instructions relating to recruitments/promotions issued by the Government of India are being followed in the Authority.

In the Director General of Civil Aviation the post of Assistant Director of Communication were governed by the Recruitment Rules. The scale of pay of Assistant Director of Communication as provided in the recruitment rules is "Rs.700-40-1100-50/2-1250 plus special pay of Rs.100/- per mensem". The post of Senior Technical Officer also has the same pay except that there is no special pay attached to that post. It is not disputed that these pay scales have since been revised and also that the special pay of Rs.100/- attached to the post of Assistant Director of Communications has been increased to Rs.200/- by the Fourth Pay Commission.

The petitioners have placed on record the office memorandum dated 5th July, 1989 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions with a view to

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regulate the terms and conditions of employees transferred to Public Sector Undertakings/autonomous bodies. The said office memorandum, inter-alia, provides that the Public Sector Undertakings/autonomous body will formulate the terms and conditions of service in the new body at the earliest possible date. As noticed above, the power to frame regulations to provide for terms and conditions of its employees vests in the authority by virtue of Section 38 of the Act. The aforesaid office memorandum also provides that the employee will, however, have an option to retain the government pay scale till their promotion or retirement (whichever is earlier) or to give consent to the service conditions of PSU/autonomous body and until the exercise of the option, the employees will continue to be governed by the pay scales, leave entitlement and terminal benefits under the Government. There is no dispute that this office memorandum is applicable to the government servants who have been absorbed in the Authority. The Authority has also issued circular dated 15th September 1989 on the lines of the office memorandum dated 5th July 1989. That circular, inter-alia, states that the Authority will formulate the terms and conditions of service in the new body at the earliest possible date. It also provides that the employees will, however,

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have the option to retain the government pay scales till their promotion or recruitment, whichever is earlier, or to go over to service conditions of National Airport Authority. The circular also states that until the exercise of this option the employees will continue to be governed by the pay scale, leave entitlement and terminal benefits of the Government. Another circular issued on the same date by the Authority, inter-alia, provided that the employees are being absorbed in the existing pay and allowances. The circular also says that while the Authority formulates any pay scales/allowances it would be ensured that nothing inferior to what the employees are enjoying in the Government service would ever be contemplated.

It is evident that the stage for the employees to exercise the option to either retain the government pay scales or not has still not reached as admittedly the Authority has not formulated the terms and conditions of service and has not framed any regulations though the authority stated that such regulations will be framed at the earliest possible date. The authority has not yet fixed any new pay scales.

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The authority had informed the employees

and, in my opinion, rightly that nothing inferior to what they were enjoying in the government service would be contemplated. In these circumstances the petitioners' submission is that they cannot be deprived of special pay.

The petitioners on being appointed as Assistant Directors of Communication in the year 1970, on account of Clause (5) of the orders of appointments, were deprived of the special pay. That special pay, however, was part of scale provided in the statutory recruitment rules of Directorate of Aviation. In view of various provisions of the Act, the office memorandum and circulars as noticed earlier, the petitioners could not be deprived of the special pay. The Chairman had no power to make regulations under Section 38. Those regulations could be framed only by the authority. Till the regulations were framed the Authority was bound to act upon the statutory recruitment rules by which the petitioners were governed while they were working in the Directorate of Civil Aviation, Government of India. In the circumstances of this case it is not possible to accept the contention of the respondent that as a matter of policy it could do away with special pay attached to each post. Had it been not a case of statutory provision for

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special pay the position may have been different. After the filing of the counter affidavit the Authority had placed on record the affidavit of Sh.M.M.Sharma, its Personnel Officer, inter-alia, stating that with a view to improve promotional avenues for the officers who had been absorbed in the Authority, the Authority has increased the number of posts which existed in Civil Aviation Department and that it provides greater opportunity for Assistant Directors of Communications to be promoted to the next senior position. That may be so but has no relevance for considering the question whether the Authority could provide for lesser pay than what was provided in the recruitment rules of Civil Aviation without framing regulations and giving opportunity to the employees to exercise the option. It may be noticed that the additional affidavit admits that the same pay scales which existed in Director General of Civil Aviation as revised by the Fourth Pay Commission have been retained in the National Airport Authority. In that view also, I fail to understand how the pay attached to the post of Assistant Director in Communication could be curtailed. The insertion of impugned clause (5) in the appointment orders has the effect of amending the recruitment regulations by the Chairman and apply-

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ing the amended regulations to the Assistant Directors of Communications. The Chairman has no such power. The additional affidavit further states that further perquisites are also being given to the employees and the said perquisites were not being given when the employees were working with the Director General of Civil Aviation and as such no prejudice has been caused by depriving the petitioners of the special pay. The details of such perquisites have been mentioned in Para 4 of the additional affidavit. It is, however, not disputed that those perquisites are given to all the employees and officers of the Authority and not only Assistant Directors of Communication.

Learned counsel for the Authority also made a feeble attempt to contend that the special pay is not protected by the circulars referred to above. I do not agree. The circulars make it clear that the pay and other benefits attached to it as provided in the government regulations cannot be changed to the detriment of the employees and thus it is not possible to accept the plea that the protection of special pay would not be covered by the said circulars. The use of the words 'other benefits' in the circular is comprehensive and would also cover the special pay as well.

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Lastly it is contended that the protection was only of the initial pay the petitioners were drawing at the time of absorption and not the pay provided for the other posts to which they may be appointed after being absorbed in the Authority. The protection of the initial pay of the employee on deputation is even protected in the Act (See Section 13(3)). The effect of office Memorandum and Circulars noticed above was to protect the pay and other benefits as provided in the Rules of Directorate of Civil Aviation in respect of various posts till such time that regulations were framed under the Act and at that stage the employees could exercise the option. The Act has been in force for nearly six years. For the reasons best known to the Authority ^{it} has not framed regulations in regard to terms and conditions of service of its employees. The circulars make it clear that the petitioners will not be asked to accept a lesser or inferior conditions as they would have been entitled while in Government service and the effect of depriving them of special pay amounts to asking them to accept lesser pay.

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For the aforesaid reasons, I quash the

impugned clause (5) in the orders of appointments as it deprives the petitioners of special pay of Rs.200/- per month attached to the post of Assistant Director of Communications. The Authority is directed to pay to the Petitioners the special pay of Rs.200/- per month with effect from the respective dates of appointment of the petitioners as Assistant Director of Communications. The payment shall be made within a period of two months. The writ petition is thus allowed in the above terms. The parties shall bear their own costs.

Sd/-
Y. K. Subhakar
Judge

6.1.1993.

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