

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

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OA No. 2357/1999

New Delhi, this the 27th day of April 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Kanhiya Lal aged about 53 years
S/o late Sh. Budhsen ,
Sr. Accounts Officer,
Controller of Accounts Office,
Min. of Power, 8th Floor
Sewa Bhawan, R K Puram,
New Delhi
R/ 1553, Lodhi Road Complex, New Delhi.

.....Applicant

(By Shri H.P. Chakravorti, Advocate)

Versus

1. Union of India through
Secretary,
Min. of Finance, Deptt. of expenditure
Govt. of India, North Block
New Delhi.
2. The Controller General of Accounts,
Min. of Finance, Deptt. of Expenditure,
Govt. of India, 7th Floor, Lok Nayak Bhawan,
Khan Market New Delhi.
3. Controller of Accounts, Govt of India,
Min. of Power, Principal Accounts Office,
8th Floor, South Wing, Sewa Bhawan,
RK Puram, New Delhi.
4. Shri N K Mandal, Deputy Controller of Accounts,
Govt. of India, Min. of Power,
Principal Accounts Office, 8th Floor,
South Wing, Sewa Bhawan, RK Puram,
New Delhi.

.....Respondents

(By: Shri Gajendar Giri, Advocate)

O R D E R

By: Shri Govindan S. Tampi, Hon'ble Member (A)

Shri Kanhiya Lal, applicant has challenged the inaction of the respondents in not rectifying the wrong fixation of his pay and denying him the benefit of Ministry of Finance OM No. 7(8)-E.III/95 dated 2.2.96.

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2. The applicant presently a Sr. Accounts Officer, had his basic pay fixed as Rs.340/- + Rs.15/- as qualification pay in the scale of Rs. 330-560/- w.e.f. 1.6.73 when his junior who passed the confirmatory test was granted the same. It got revised to Rs. 1530/- + Rs.15/- in the scale of Rs. 1200-2040/- w.e.f. 1.1.86 and to Rs. 1560/- + Rs.15/- w.e.f. 1.11.86. On his passing the Jr. Accounts Officer Examination he was granted qualification pay of Rs.20/- and was thus being paid Rs.1650/- + Rs.15/- + Rs.20/- w.e.f. October 1987. Following his promotion as Jr. Accounts Officer in the Scale of Rs.1640/- - 2900/- on 20.1.88 his pay was fixed at Rs.1820/-, carrying qualification pay of Rs.15/- and Rs.20/-. In terms of OM No. 7(80-E/III/87 dated 4.10.88, qualification pay of Rs.15/- was doubled to Rs.30/- treating it as part of pay. Earlier Special Pay of Rs.20/- had been raised to Rs.40/- to be counted for purposes of fixation. This was directed with retrospective effect from 1.4.87 by OM dated 23.4.90 but recovery of excess payment made early, was waived upto 22.3.90 in the applicant's case. He became Asstt. Accounts Officer in the scale of Rs.2000-3200/- w.e.f. 24.2.93 and Pay & Accounts Officer in the grade of Rs. 2375-3500/- w.e.f. 10.1.96, (These were revised to Rs.6000-10,000/- and Rs.7500-12000/- after adoption of Fifth Pay Commission Recommendations from 1.1.96). Subsequently, on the basis of OM No.10(8)-E/95 dated 2.2.96, Special Pay was allowed to be carried over in the event of promotion as Jr. Accounts Officer, if it was more beneficial. According to the applicant, he had received the equivalent of qualification pay only till his promotion as Jr. A.O. and he had suffered loss in emoluments on account of adoption of OMs of 4.10.88, 22.3.90 and 23.4.90 against which he had represented on 10.9.96. This was first rejected on 25.3.97/1.5.97. He had

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appealed against it on 25.6.97 and had furnished necessary details but the same has not been disposed of. According to Shri H.P. Chakarvorti, learned counsel for the applicant, as he had been put to severe financial loss in emoluments in refixation of pay it was necessary that the above injustice was obviated and his pay was correctly refixed.

3. Contesting the above, Shri Gajendra Giri, learned counsel for the respondents points out that there was no qualification pay in November 1971, which was introduced w.e.f. 1.6.81, in terms of CGA's order dated 18.10.82. In terms of the above OM those Accountants like the applicant who were given advance increments while working with Indian Audit & Accounts Deptt. were not entitled to qualification pay. Still his pay was stepped up with reference to that of his junior and he was granted Rs.15/- purely as personal pay to be absorbed in future increases, in terms of Finance Ministry OM dated 17.4.85. Later Ministry directed in their OM dated 2.2.96, that in cases where qualification pay was carried over in the event of promotion as Sr. Accountant, may be allowed to be carried over upto the promotion of Jr. Acctts. Officer. This was strictly not the case with the applicant and his representation for getting the benefit of the OM was correctly rejected. It was reiterated that the concept of qualification pay was not available in 1973, as claimed by the applicant and the grant of Rs. 15/- to him was only as personal pay to be absorbed in future increases, a fact which he had not clarified in his application. He had been given only the special pay and no qualification pay and the same was taken as a part of pay for fixation purposes. As the applicant was neither entitled to nor granted any qualification pay, counting the same for fixation on promotion either as Sr. Accountant or Jr. A.O. did not arise. All averments to the

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contrary are wrong and deserved to be rejected. As the applicant had been given advance increments in IA&A Deptt, no qualification pay was paid to him. Still as he was persisting with the request a reference was made to the Ministry and the same has been negatived by the Ministry in their OM dated 1.8.2000. In view of the above the applicant's case did not at all merit acceptance, is what the respondents urge.

4. We have carefully considered the matter and examined the rival contentions with reference to the papers placed before us. The applicant has prayed for the extension of the benefit of the Ministry of Finance OM No.F.10(8) E.III/95 dated 2.2.96, which was, according to him, relevant in his case. The OM reads as below .

"The undersigned is directed to invite a reference to this Ministry's OM No. F.7(8)E.III/87 dated 22nd March 1990 on the subject mentioned above and to say that in accordance with the instructions contained therein the qualification pay of Rs.30 is required to be taken into account for fixation of pay in the event of promotion/appointment to the post of Sr. Auditors/Sr. Accountants . It further provides that the cases pertaining to pre 1.4.1987 period , where qualification pay has already been taken into account on promotion as Section Officer (Audit) wrongly need not be re-opened and that in all post - 1.4.1987 cases the pay may be fixed by taking into account qualification pay at the time of promotion as Sr. Auditors/Sr. Accountants. Again in cases where re-fixation of pay in terms of these orders have resulted in recoveries , the recovery upto the period 22.3.90 have been waived.

2. The Staff Side raised a demand in the National Council of JCM that while in those cases where the employees have been benefited on account of aforesaid instructions may be allowed to avail of the benefit, these instructions may not be enforced where retrospective re-fixation of pay after taking into account the qualification pay of Rs.30 on promotion as Sr. Auditors/Sr. Accountants would result in drop in emoluments and recoveries to be effected. The matter has been re-considered in the light of this demand of the Staff Side and in partial modification of the earlier orders, it has been decided that (in all cases where the qualification pay was carried over in the event of promotion as Sr. Auditors/Sr. Accountants prior to issue of the orders (viz. 22.3.1990). The special pay may be allowed to be continued to be

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carried over and taken into account in the event of promotion as Section Officer (Audit/Accounts) or Junior Accounts Officers if this is more beneficial."

It emerges from a perusal of the above that in the case of an employee, qualification pay which has been granted to him, could be permitted to be carried over to the stage of promotion as Section Officer (audit /Accounts) or Jr. Accounts Officer, and that the same and even if has been wrongly granted the same need not be reopened. This would have clearly covered the case of the applicant, if he was in fact receiving qualification pay. However, he had not been given any qualification pay but had been given only advance increments, which were to be absorbed in future increases. As the element of qualification pay which came on ^{much later a} ~~an~~ later day was never a component of his emoluments, drop in the same on re-fixation cannot be related to the exclusion of qualification pay. Benefit of OM dated 2.2.96 would have been available only in the case where qualification pay was paid earlier and not in the case of the applicant who had only been given advance increments, which did not constitute the qualification pay. Therefore, the respondents were correct while rejecting vide the impugned order dated 25.3.97. This has been clarified by Ministry of Finance OM dated 1.8.2000 to whom a reference was made by the respondents in view of the applicant's representation. Evidently therefore the applicant has not made out any case for our interference.

5. Application in the result fails and is accordingly dismissed.

No costs.

(Govindan S. Tampi)
Member (A)

Parwal/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)