

Central Administrative Tribunal
Principal Bench

O.A. No. 524 of 1998

New Delhi, dated this the 1.6., 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri I.C. Sharma,
S/o late Shri R.C. Sharma,
R/o E-329, East of Kailash,
New Delhi-110065.

... Applicant

(By Advocate: Shri S.C. Luthra)

~~Versus~~

1. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
 2. Controller General of Defence Accounts,
West Block No. 5,
R.K. Puram,
New Delhi-110066.
 3. Controller of Defence Accounts (WC),
Chandigarh, U.T.
 4. Controller of Defence Accounts (Army),
Meerut Cantt.,
U.P. 250001.
- ... Respondents

(By Advocate: Shri Mohar Singh)

ORDER

S.R. ADIGE, VC (A)

In this O.A. filed on 6.3.98 applicant impugns respondents' letter dated 8.4.97 (Annexure A-1) and dated 12.9.97 (Annexure A-2). He seeks a direction to respondents to grant him special pay of Rs.35/- p.m. from 10.7.86 in terms of circular dated 31.5.95 (Annexure A-11) with all consequential benefits including arrears of pay of allowances and revision of pensionary benefits upon applicant's retirement on superannuation w.e.f. 31.1.95.

2. By Finance Ministry's O.M. dated 5.5.79 a scheme was introduced for grant of special pay of Rs.35/- p.m. to auditors attending to work of complex nature, certain clarifications to that scheme were issued by Finance Ministry vide O.M. dated 29.11.82. Subsequently by C.G.D.A's circular dated 5.5.84 (Annexure R-11 to respondents' reply), the aforesaid scheme was introduced in Defence Accounts Dept. w.e.f. 1.5.84. The guidelines for implementation of the scheme were contained in that letter according to which inter alia the number of authorised posts carrying special pay was not to exceed 10% of the posts in each office/sub-office, the posts carrying discernible duties and responsibilities of complex nature were to be identified; the criteria of suitability and seniority was to be kept in view; and in offices where the number of qualifying posts was not equal to the number of eligible persons, necessary adjustment by transfer was to be made, after obtaining willingness of those persons in writing. The position was to be reviewed each year.

3. Admittedly on 1.5.84 applicant was working as Selection Grade Auditor and was posted in the office of UAB SO (N) AF, Palam, New Delhi under Defence Accounts Dept. As that office had a strength of less than 10, and it is not respondent's case that applicant was not senior enough for grant of special pay, applicant was to be transferred to a qualifying post in another office/sub-office under Defence

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Accounts where the strength was greater than 10, and after obtaining his consent in writing, vide guidelines contained in letter dated 5.5.84.

4. In respondents' impugned letter dated 8.4.97 it is contended that applicant had refused the transfer offer in 1986 entitling him to grant of special pay, but applicant has filed a copy of his letter dated 21.9.84 (Annexure A-5) conveying his willingness for transfer to make him eligible for grant of special pay, and the evidentiary value of that document has not been successfully rebutted by respondents.

5. That apart, in respondents' reply to the O.A. it is not applicant's refusal to be transferred which is cited as the reason why respondents did not grant him special pay. Respondents have stated in their reply to the O.A. that applicant was denied the benefit of special pay w.e.f. 1.5.84 because the prescribed strength was less than 10, and during 1985-86 he was again adjudicated for his fitness or otherwise, but was found unfit by the Board of officers convened in January 1986, since his ACR grading for 1984 was adverse, and there was a complaint case pending against him, Details of that case have, however, not been furnished.

6. Clearly the reasons for rejecting applicant's claim for grant of special pay contained in the impugned letter dated 8.4.97, i.e. refusal of

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transfer offer in 1986, is at variance with the reasons contained in respondents' reply affidavit as to why they denied applicant the special pay.

7. During hearing it was asserted that applicant's claims for special pay w.e.f 1984 could not be rejected on the ground of adverse remarks for 1984 as the same would not have been recorded in that year itself, but we note that applicant has himself sought special pay only w.e.f. 10.7.86 and not before, in which case adverse remarks recorded for the year 1984 would not be irrelevant.

8. Be that as it may, this O.A. succeeds and is allowed to the extent that the impugned letters dated 8.4.97 and dated 12.9.97 are quashed and set aside. Respondents shall reconsider applicant's claim for grant of special pay by a detailed, speaking and reasoned order in accordance with rules and instructions on the subject, and under intimation to applicant. However, as applicant has filed this O.A. only on 6.3.98 after his representation was rejected on 12.9.97 (Annexure A-2) and had meanwhile superannuated on 31.1.95, it is further directed that if upon such reconsideration respondents conclude that the applicant was entitled to the special pay of Rs.35/- p.m. he shall be paid the arrears of special pay so becoming due and the consequential benefits therefrom will be restricted only to the revision of the pensionary benefits with

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arrears, consequent on such revision of his pay, as

per the applicable rules w.e.f. 31.1.95 i.e. from the date of superannuation. These directions should be implemented as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

karthik