

Central Administrative Tribunal
Principal Bench, New Delhi

DA 1501/94

Dated this the 3rd December, 1994



Shri C.J. Roy, Hon'ble Member(J)

Shri Rakesh Chander Gupta
S/o Late Shri Prem Chander Gupta
R/o D-838, Saraswati Vihar
Delhi - 110 034

... Applicant

(By Advocate : Sh. Y.P. Anand)

Vs.

1. Chief Secretary
Govt. of National Capital Territory of Delhi
5, Sham Nath Marg
Delhi - 110 054
2. Secretary (Services)
Govt. of National Capital Territory of Delhi
5, Sham Nath Marg
Delhi - 110 054
3. The Drugs Controller
Drugs Control Department
Govt. of National Capital Territory of Delhi
15, Sham Nath Marg
Delhi - 110 054

(By Advocate : Sh. Rajinder N. Fundita)

ORDER (Oral)

(By Shri C.J. Roy)

This DA has been filed under Section 19 of the Administrative Tribunals Act by the applicant praying for the following release;

1. Special pay of the Care-taker for the period from 27.7.93 to 4.1.94 as per the legal provision and his eligibility;
2. Pay fixation - Consequential benefits on his enhanced pay and emoluments with increment etc. with retrospective date on his promotion.

2. The facts of the case are that the applicant joined the services of Delhi Administration as a Grade-IV L.D.C. w.e.f. 28th May 1980(FN), and was working as AHLMAD in Motor Accident Claim Tribunal (MACT) Tis Hazari Court, Delhi on the strength of the Transport Department of National Capital Territory of Delhi. On his promotion to the grade of U.D.C., he

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joined the Drugs Control Department by order dated 30.12.92, (Annexure-I), and was posted in the Establishment Section by order dated 19.3.93 (Annexure-III). He was specially directed to work as Care Taker in addition to his normal duties in the Establishment Section till further order by order dated 27.7.93 and 29.7.93 (Annexure/IV and V) respectively. The case of the applicant is that even though he was posted to work in the Establishment Section, he was directed to work as Care Taker also in addition to his normal duties, for which no special pay, as admissible to him @ Rs.50/- per month has not been given to him, in spite of his representations dated 15.10.93, 10.11.93 and 7.3.94 (Annexure/VI, VII and VIII). He therefore files this DA seeking payment of special pay for the period 27.7.93 to 4.1.94 and pay fixation on his promotional post of U.D.C. with consequential benefits on his enhanced pay and emoluments with increment etc. with retrospective date.

3. The respondents have filed their counter stating that in view of the delay in receipt of his service book which required some clarifications in regard to his service particulars the pay fixation in the higher grade of U.D.C, could not be fixed and as soon it was received on 6.9.94, his pay fixation was done as per the Service Rules (Annexure R-1).

4. The learned counsel for the respondents states that the rules do not permit for payment of special pay to the applicant because the applicant did not perform the said duties sincerely as he did not submit report daily in the HOD/HOD in writing for having performed the duties as Care Taker.

5. We have heard the learned counsel for both parties and perused the documents on record.

6. The short point involved in this case/for consideration is whether the applicant is entitled for payment of special pay for having performed the additional duties as Care-Taker for the period from 27.7.93 to 4.1.94 and for pay fixation in the promotional grade of U.D.C. with retrospective effect.

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7. Admittedly, the applicant is promoted to the post of Grade-III(UDC) by order dated 30.12.92 (Annexure-I) and his name is at Sl.No.4 of the order.

8. The order at Annexure-V at page 18 of the paper book dated 29.7.93 in regard to allocation of work to the applicant as Care Taker /in addition to his own duties as U.D.C. in the Establishment Section, reads as follows:-

- "1) To take the round of the Building in the morning and see that the proper cleanliness/Water pressure and electricity are in order in all respects.
- 2) To supervise the work of the i) Chowkidars, ii) Sweepers (iii) Drivers (who will work under his instructions and their OTA, if necessary, may be recommended."

9. As regards the relief No.1, special pay for additional duty as Caretaker is concerned, the respondents at page-3 of their counter have stated as follows:-

"The office is housed in a rented building and the above work was also of not such standard which takes hours together. Even though the official did not perform the said duties sincerely as he did not submit report daily to the HOD/HOD in writing. The official applied for granting him Special pay for the additional work of Care Taker w.e.f. 27.7.93 vide his application dated 15.10.1993, 18.11.1993. Having considered his work as unsatisfactory, he was transferred from the Estt. Section to GA/Enforcement Sectt. and his case for Special pay was sent to the M&PH Deptt. for consideration and seeking concurrence of the Finance Deptt. in March, 1994. The M & PH Department being the Administrative Department while considering the case asked for the detail of work load from the Asstt. Diery for getting an average quantum per month during the year 1993-94. The official was, accordingly, directed to submit the same vide letter dated 29.4.1994, and its reminder dated 10.8.1994. Reply to this submitted by this official on 23.8.1994 did not have the required information and before it is considered the official has come to this Hon'ble Tribunal."

respondents states

10. The learned counsel for the / that the applicant has not performed his duties sincerely and was transferred back from that position to another post. In spite of that, the respondents have taken steps to get some sanction, but was rejected by the Finance Department.

11. The learned counsel for the applicant draws my attention to the F.R.9, page-43, para-18, sub-para.3 in regard to the Special Pay to Caretakers of Government

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buildings hired or owned by Government, wherein, it is stated that:

- "(iii) If caretaking duties can be discharged on a part-time basis by an existing official belonging to the establishment, a consolidated special pay of Rs.25/- p.m. may be given to the incumbent in addition to his grade pay." (G.I.M.F., O.M.No.F.9(7)-E.III/79, dated the 27th February, 1980).

11. This clearly shows that the applicant belongs to the same establishment and he has discharged the additional functions of a Care-Taker by the order of the respondents dated 29.7.93 (Annexure-V) in addition to his own duties. The contention of the respondents that the applicant has not performed his duties sincerely is a different matter for consideration. If he has not properly discharged his services as directed, the respondents should have taken suitable action in accordance with rules, against him. The counter also states that they have taken steps to get financial concurrence, which abundantly establishes that the applicant was entrusted with the said work and that they have tried to get payment for the applicant in addition to what is in Annexure-V at page-18 of the paper book and referred to above on page-3 of this order.

12. From the Annexure-V order dated 29.7.93, it is urged that the applicant after performing his duties, should give the performance report for one month. The giving of the report for one month may be a part of the duty but, it is not the only function. His duty is not only to submit his reports but also do the extra duties of a Care-Taker. That means, sincerely or not, the applicant has performed his duties.

13. In the circumstances, the contention of the respondents in regard to relief No.1 of the applicant that he is not entitled for Special Pay for the additional duty performed by him as Care Taker for the period from 27.7.93 to 4.1.94 is negatived.

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14. As regards the relief No.2, non-fixation of his pay in the higher grade of U.D.C. with retrospective date, the learned counsel for the respondents placed before me across the bar, the periodic payment and increments and the actual receipt containing 3 sheets, in which the name of the applicant is at Sl.No.4. The above document is taken on record. He also draws my attention to the Annexure R-1 order dated 30-9-94 in regard to the fixation of pay scale in the promotional grade. From the above document produced across the bar, it is seen that the payment of Rs.3846/- has been made on 20.10.94. Even in the rejoinder, filed by the applicant, this information has not been brought out. In fact the applicant has denied he has received the payment. Therefore, I hold that the applicant is not entitled to the relief No.2 claimed by him, in the OA.

15. In the circumstances, the respondents are directed to reconsider the case of the applicant in regard to relief No.1 for payment of Special pay for the additional duties performed by him as Care-Taker from 27.7.93 to 4.1.94, even if he has not performed sincerely, a proportionate pay, if not, exactly Rs.25/- per month should be considered and be paid to the applicant within a period of three months from the date of receipt of a copy of this order.

With this direction, the OA is disposed of. No costs.

/kam/

(C.J. ROY)
MEMBER (J)