

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A.No. 1066/94.

Date of decision: 9.3.1995

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

Shiv Dayal,  
S/o Late Ganesh Das,  
R/o 2/145, Subhash Nagar,  
New Delhi-110 027.

.. Applicant

(By Advocate Rajan Dwivedi)

versus:

1. Director General of Inspection,  
Customs & Central Excise,  
D-Block, I.P. Estate,  
New Delhi-110 002.
2. Union of India  
through the Secretary (Revenues),  
CBESG, Ministry of Finance,  
North Block, New Delhi. .. Respondents

(By Advocate Shri VSR. Krishna)

ORDER (ORAL)

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]

The applicant has filed this application under  
Section 19 of the Administrative Tribunals Act, 1985  
regarding refixation of his pay as an Assistant in the  
Central Government.

2. The ~~facts~~ facts of the case are not disputed. *They are as follows:-*

The applicant was posted as an Assistant from 1.6.1983.

Prior to that date, he had been deputed to the post of  
Deputy Office Superintendent in the scale of Rs.1400-2500  
in the Office of Narcotics Central Bureau under the same  
Ministry. His pay was fixed as DOS at Rs. 1640/- u.s.f.  
2.1.1987 after taking into account the special pay of  
Rs. 70/-. On his promotion to the post of Assistant in  
the same Ministry in the payscale of Rs. 1400-2600 on  
1.6.1987, his basic pay was fixed at Rs. 1650/- without

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taking into account the special pay of Rs. 70/-. The applicant relies on para 4(a)(ii) of the O.M. dated 25th February, 1965 (Annexure I to the rejoinder) read with the O.M. dated 10.10.1990 for claiming benefit of special pay while fixing his pay as Assistant (Annexure A-2).

3. The applicant had made a representation dated 6.12.1993 (Annexure 4) in respect of his refixation of pay on promotion to the post of Assistant taking into account special pay of Rs. 70/- on the basis of the judgment in a similar case, B.K. Jain v. UOI (JA No. 2804/92 decided on 3.8.1993). The learned counsel for the applicant has referred to the letters dated 21.12.1989 (Appendix VI) and 21.6.1991 (Annexure A1 to the Rejoinder) in which the respondents had recommended his case to the Ministry of Finance for including his special pay of Rs. 70/- for fixation of his basic pay as Assistant after his promotion to that post.

4. A copy of the reply received from the Ministry of Finance dated 23.5.1994 is placed at Appendix X. This reply reads as follows :-

" I am directed to refer to your letter F.No.1076/1/91, dated 27.12.93 on the subject mentioned above and to say that this Department has filed in SLP on identical case of Shri B.K. Jain against the CAT, New Delhi Judgment's order dated 5.8.1993 (sic) Decision on the above referred case may be awaited and incumbent may be informed accordingly. "

5. Subsequently, Shri Dwivedi has stated at Bar that the SLP filed by the respondents against the judgment of the Tribunal in B.K. Jain's case has been dismissed

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by the Hon'ble Supreme Court. He has submitted a letter from the Ministry of Finance dated 22.2.1995 with a copy to the learned counsel for the respondents which has been taken on record. This letter reads as follows :-

" I am directed to refer to your letter F.No. A.590011/13/92-Estt. dated 22.2.95, on the subject mentioned above and to say that the S.L.P. filed by the Department in the Supreme Court against CAT's Judgement dated 3.8.93, has since been dismissed. Accordingly, it has been decided to implement CAT's judgement dated 3.8.93. You may therefore take necessary action to implement the CAT's judgement dated 3.8.93 immediately latest by 3.3.95, under intimation to the Board."

6. The applicant has not filed any representation to the Department subsequent to the decision of the Hon'ble Supreme Court in the aforesaid case, since the matter was pending in this Tribunal.

7. In view of the position taken by the Union of India in the letters dated 23.5.94 and 22.2.95 (Supra), this O.A. is disposed of with the following directions.

ORDER

" The Respondents shall consider the claim of the applicant for fixation of his pay on his promotion to the post of Assistant w.e.f. 1.6.1989 in terms of their averments in the letters referred to above and the judgment of the Hon'ble Supreme Court in B.K. Jain v. UOI and their subsequent implementation of the judgment of this Tribunal dated 3.8.93 and pass a speaking order within

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a period of 3 months from the date of receipt of  
a certified copy of this order. There will be no  
order as to costs.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)