

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1461/1989.

DATE OF DECISION: March 12, 1990.

Amar Singh	Applicant.
Shri M.R. Bhardwaj	Advocate for the Applicant.
		V/s.
Union of India	Respondent.
Shri N.S. Mehta	Senior Standing Counsel for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether his lordship wishes to see the fair copy of the Judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

(P.C. JAIN)
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Member(A)

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JUDGEMENT

The applicant herein joined as L.D.C. in the Ministry of Home Affairs on 28.11.1955. He was shown on the strength of the Department of Personnel & Administrative Reforms in 1970-71. He was promoted as U.D. in July, 1974. In addition to his normal duties and functions of U.D.C., he was entrusted with the work relating to the maintenance and handling of the Confidential Roll Dossiers (for short, C.R.s) of the members of the Indian Economic Service and the Indian Statistical Service (IES and ISS). The applicant contends that he was designated as Confidential Assistant to the Under Secretary, dealing with the above two Services and he was granted a special pay of Rs.30 per month with effect from 6.4.1978, even though he had been performing these duties in addition to his duties as U.D.C. since July, 1974. He was promoted as Assistant with effect from 2.7.1981 when he also ceased to draw the special pay of Rs.30/- per month. His grievance is that on his promotion as Assistant, the special pay of Rs.30/- drawn by him as U.D.C. was not taken into account while fixing his pay in the post of Assistant. He has, therefore, prayed that the respondent be directed to re-fix his pay in the post of Assistant with effect from 2.7.1981 after taking into account the special pay of Rs.30/- per month granted to him in the post of U.D.C. and to pay him the arrears

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of pay and allowances accruing as a result of refixation of pay as prayed for. In the alternative, he has prayed that the Tribunal may pass such orders as it deems fit and proper in the facts and circumstances of the case.

2. The applicant's case, in brief, is that his pay on promotion to the post of Assistant was fixed, vide order dated 6.10.1981 (Annexure A-3) by ignoring the special pay of Rs.30/- per month, but the difference in pay drawn by him as U.D.C. and the pay fixed as Assistant was allowed as personal pay to be absorbed in future increments while his pay should have been fixed in accordance with the provisions of the Ministry of Finance C.M. No.F.6(I).E.III(E)/65, dated 25.2.1965 (Annexure A-5), and "on the analogy of precedent cases". He has referred to the cases of one Shri Shadi Ram Gupta, who has been given the benefit of special pays of Rs.20/- and Rs.30/- per month granted to him in the posts of L.D.C. and U.D.C. for the maintenance and handling of the C.R.s of the non-gazetted staff of the Department of Personnel & Administrative Reforms, in fixation of his pay on promotion as Assistant, in compliance with the judgement of the Central Administrative Tribunal delivered on 8.12.88 in O.A. 1223 of 1987 (copy at Annexure A-8), and the case of one Shri B.B. Aggarwal, U.D.C., in the Ministry of Home Affairs for doing similar work for which he was paid a special pay of Rs.20/- per month, which was taken into account while fixing his pay on his promotion as Assistant vide orders dated 12.12.1975 (Annexure A-10). In his rejoinder affidavit, he has also referred to another case of one Shri N.L. Duggal, who was given the benefit of special pay drawn by him as Section Officer for similar work. He made a representation on 17.8.1982 (Annexure A-4), which was rejected vide Memorandum dated 7.10.1982 (Annexure A-6). However, it was also mentioned in the reply that another case, which is more or less similar to that of the applicant, was under reference to Estts.(Pay) Section and that in case a favourable decision is taken in that

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case, the case of the applicant will be examined thereafter. He then represented on 30.3.1989, wherein he referred to the decision of the Tribunal in the case of Shri Shadi Ram Gupta. His representation was rejected vide Memorandum dated 12.5.1989 (Annexure A-1) on the ground that the special pay granted for maintaining C.R. dossiers is not in lieu of a higher pay scale but for addition to work and responsibilities, and, as such, it cannot be taken into account for fixation of his pay on promotion as Assistant. The applicant has pleaded that the decision of the respondent is mala-fide, arbitrary, discriminatory and in violation of the rules and instructions on the subject.

3. The respondent's case, in brief, is that the special pay granted to the applicant was not in lieu of a higher scale of pay and as such his case is not covered by the Ministry of Finance O.M. dated 25.2.1965. They have further pleaded that the case of the applicant is not on all fours with the case of Shri Shadi Ram Gupta and the answering respondent does not have relevant information about the case of Shri B.B. Aggarwal. The learned counsel for the respondent also stated at the bar that in the absence of necessary details about the case of Shri N.L. Duggal, which has been referred to by the applicant for the first time in his rejoinder, the respondent cannot offer any useful comments in that regard. In his reply, the respondent has also stated that apart from the case of Shri S.R. Gupta where the Tribunal's orders have been implemented, in no other case has the special pay sanctioned for maintaining ACRs been taken into account for pay fixation on promotion.

4. I have perused the documents on record and have also heard the learned counsel for the parties. The only question which falls for determination in this case is whether the special pay of Rs.30/- per month granted to the applicant while he was U.D.C., in connection with the work of C.R.s of the

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officers of IES and ISS, was sanctioned in lieu of a higher pay scale. The order dated 6.4.1978 sanctioning the above said special pay to the applicant does not say that it had been sanctioned in lieu of a higher scale of pay. It also does not show that it was sanctioned to him as a Confidential Assistant, which he claims he was, while handling the C.R.s in respect of the two Services. In the sanctioning order, he is shown as an Upper Division Clerk. The sanctioning order also says that the special pay granted to him will be reviewed after one year from the date of issue of the order. If it were a special pay in lieu of a higher scale of pay, there was no occasion for provision of review in the sanctioning order. If the special pay is claimed to have been sanctioned in lieu of a higher scale of pay, it must be shown that there is a higher post for which instead of prescribing a separate higher scale of pay, special pay is attached with the pay in the lower scale. The existence of any sanctioned post of a Confidential Assistant or Confidential Personal Assistant and the appointment of the applicant thereto has not been shown. Again, if the special pay had been sanctioned for such work in lieu of a higher scale of pay, then the applicant would have been allowed the same in 1974 itself when, according to him, he was entrusted with these extra duties. Further, it should have been mentioned in the Schedule to the Central Civil Services (Revised Pay) Rules, 1960, if the special pay shown therein were to be treated as in lieu of a higher scale of pay. The applicant has not furnished any information in this regard. The Third Central Pay Commission, while dealing with the subject of special pay, has in para 34, chapter 8 of Volume I of their Report stated as below: -

"We are of the view that the device of special pay should be used as sparingly as possible.

Thus our approach generally has been to suggest a higher scale of pay for posts which are held on a non-tenure basis and where the special pay

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has been granted at present in lieu of a higher scale for the post itself. "

This also gives an indication that if the special pay granted for handling C.R.s had been in lieu of a higher scale of pay, then another scale of pay would have been recommended by the Commission.

5. According to F.R. 9(25), Special Pay means an addition of nature of pay, to the emoluments of a post or of a Government Servant, granted in consideration of: -

- (a) the specially arduous nature of duties; or
- (b) a specific addition to the work of responsibility.

The applicant himself, in his pleadings, has stated at more than one place that the work of handling of C.R.s was in addition to his normal duties and functions as U.D.C. The special pay, therefore, appears to have been sanctioned for addition to duties and is thus covered by the provisions of F.R. 9(25). The provisions of the Ministry of Finance O.M. dated 25.2.1965 are applicable only where the special pay in the lower post has been granted in lieu of a separate higher pay scale. The other conditions^{mentioned} therein about having drawn the special pay in the lower post continuously for a minimum period of three years is also clearly applicable only in those cases where the special pay is granted in lieu of a separate higher scale. The applicant has not been able to show by resort to any document where the special pay granted to him was in lieu of a higher scale of pay. His emphasis is on the argument advanced by him to the effect that if there had been a separate scale of pay for a U.D.C. for working as Confidential Assistant or Confidential P.A. for the maintenance and handling of C.R.s of the officers of the two Services, then the appointment would have been made on the basis of seniority-cum-fitness and the U.D.C. so appointed would have drawn pay in that separate scale of pay. In the absence of a separate scale of pay, he contends that it is logical and rational that the special pay granted to

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the Applicant, for working as Confidential Assistant / P.A. to then Under Secretary (Admn.), for the maintenance and handling of C.R.s, in addition to his normal duties as U.D.C., was in lieu of a separate higher scale of pay". No conclusion can be logically drawn in the absence of sanction of a separate post of Confidential Assistant / Confidential P.A., as already discussed above.

6. As regards the case of Shri Shadi Ram Gupta, as pointed out by the respondents in their reply, the order sanctioning the special pay specifically mentioned that it was sanctioned in lieu of a higher scale of pay. It was on that basis that the special pay granted to him had been taken into account by fixing his pay on promotion first as U.D.C. and then as Assistant. When the respondents in that case modified that order whereby the special pay was sought to be excluded while fixing the pay on promotion, it was challenged by him in O.A. 1223/87.

A perusal of the judgement in that case shows that the sanction order and the fact of the special pay having been taken into account while fixing the pay on promotion weighed heavily in that case. The facts of that case are ^{significantly} ~~absolutely~~ different from the facts of the case before me. As such, the judgement in that case cannot be made the basis of granting relief to the applicant in this case. It is also seen that while re-fixing the pay of Shri Shadi Ram Gupta in pursuance of the orders of the Tribunal, vide order dated 7.3.1989, in the column of the 'Name of the post' held by him, he is shown as LDC (Confdl. PA to US (Ad.) and ^{as} ~~marked as~~ as U.D.C. (Confdl. PA to US (Ad)). In the case before me, the applicant has not filed a single document to show that he was appointed to the post of Confidential Assistant or Confidential P.A.

7. The applicant has claimed relief with effect from 2.7.1981 in his application filed on 21.7.1989. His representation dated 17.8.1982 was rejected vide Memorandum dated 7.10.1982. Thereafter he represented only on ^{on}

30.3.1989, i.e., after a gap of nearly seven years. If he was relying on the case of Shri B.B. Aggarwal, in which orders were issued in 1975, and on the case of Shri N.L. Duggal, which also apparently took place quite a few years back as he is stated to have retired as Joint Secretary, he should have pursued his grievance in an appropriate forum at the appropriate time. However, in view of the fact that he again represented in view of the judgement of the Tribunal delivered in December, 1988 in the case of Shri Shadi Ram Gupta, I have treated this application as having been filed within the limitation, under Section 21 of the Administrative Tribunals Act, 1985.

8. In view of the above discussion, the applicant is not entitled to the relief prayed for. The application is accordingly dismissed. Parties to bear their own costs.

(P.C. JAIN)
MEMBER(A)

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