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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1474/89. DATE OF DECISION: August 31, 1990

P.C. Misra

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Applicant.
(In person).

V/s.

Administrator, Delhi through
Chief Secretary, Delhi Admin.
and Others

.....

Respondents.

Shri M.L. Sudan

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Counsel for the Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their lordships wish to see the fair copy of the judgement? *N*
4. To be circulated to all Benches of the Tribunal? *Y*

Y

(P.C. JAIN)
Member (A)

Y

(AMITAV BANERJI)
Chairman.

(10) (R)

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CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGEMENT

This application under Section 19 of the Administrative Tribunals Act, 1985 impugns order dated 11.7.1989, by which the applicant was posted to the post of Deputy Director (Transport) with effect from 17.5.89 to 21.5.89 and to the post of Under Secretary (Land & Building), Delhi Administration, with effect from 22.5.89 for pay purposes only, but asked ~~xxxxxx~~ to work as Deputy Director (Training) UTCS. The applicant seeks setting aside of the above impugned order and for a direction to the respondents to give a post commensurate with seniority of the applicant with protection of Rs.300/- special pay. As an interim measure, order for status-quo ante as on 16.5.89 and a direction to the respondents to post the applicant to a post equivalent in status of Joint Director in Delhi Administration have been prayed. During the pendency of this application, the impugned order has been partially modified by order dated 5th October, 1989 whereby the applicant has been posted against the post of Deputy Director (Transport) with effect from 17.5.89 for pay purposes only, but ~~xxxxxx~~ asked to work as Deputy Director (Training), UTCS. That order was brought on record by the applicant by means

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of Misc. Petition No. 2328/1989 and it was prayed that the Tribunal may take judicial notice of the order dated 5.10.1989.

2. The applicant belongs to the 1974 batch of Delhi and Andaman & Nicobar Islands Civil Service (for short, DANI Civil Service). Prior to 17.5.89, he was holding the post of Joint Director (Agricultural Marketing) in the pay scale of Rs.3000 - 4500 plus a special pay of Rs.300/- per month. He was transferred as Joint Director (Slum), D.D.A., vide order dated 11.5.89. This order was partially modified vide order dated 11.7.89 whereby he was posted as Deputy Director (Transport) for a period of five days and thereafter as Under Secretary (Land & Building) for pay purposes only, but was asked to work as Deputy Director (Training), UTCS. This order was again partially modified vide order dated 5.10.1989, as already indicated above.

3. The applicant, who is admittedly working in Grade I (Selection Grade) of DANI Civil Service in the pay scale of Rs.3000 - 4500, challenged the then impugned order dated 11.7.89 on the grounds that (i) he had been posted as Under Secretary (Land & Building) whereas Grade-I officers S/Shri Washynk, and T.C. Nakh were holding posts of Deputy Secretary and thus his posting amounted to not only reduction in rank but also reduction in salary and, therefore, the order was punitive and discriminatory; (ii) he had already worked as Deputy Director (Training), UTCS for six years from 1981 to 1986, while according to the policy of the Government, no officer should work in a Department on a post for more than three years, and also for more than three years in a Training Institution, and thus the respondents have shown vindictive attitude because of pendency of applications filed by him in the Tribunal; (iii) one Shri V.N. Khanna, who is junior to him, was holding the post of Joint Director (Training), UTCS and the applicant being senior to him, cannot be expected to work under a junior;

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(iv) the post of Deputy Director (Training) is an ex-cadre Class II post in the pay scale of Rs.2000 - 3500 and he cannot be expected to work in a lower post with a lower pay scale and that this violates the provisions of F.R. 15 and Rule 27/28 of DANI Civil Service Rules, 1971; and (v) transferring the applicant to work against a Grade-II ex-cadre post and drawing his salary against a Cadre post is illegal and is as a result of colourable exercise of powers under the cover of administrative reasons. In regard to the modified order dated 5.10.1989, it is stated that the applicant is still being asked to work against a Grade-II ex-cadre post of Deputy Director (Training), UTCS and to draw salary against another ex-cadre post of Deputy Director (Transport). The action of the respondents is stated to be perverse, absurd and an illegal order issued under corrupt exercise of powers which violates also the provisions of Article 311 (2) and Articles 14 and 16 of the Constitution. This order is also stated to be vitiated because of bias, prejudice and malice. The applicant has also contended that he has the right to be posted to a post in the grade of Rs.3000 - 4500 and also to draw a special pay of Rs.300 per month as S/Shri R.B.S. Tyagi, Rajinder Singh and Mrs. Asha Nayyar, who had also not been promoted with the applicant to the Junior Administrative Grade (JAG), have been allowed to draw a special pay of Rs.300 per month. It is also his contention that the special pay of Rs.300 per month is in lieu of higher scale of pay and that the scale of Rs.3000 - 4500 plus special pay of Rs.300 per month has been substituted by the scale of JAG i.e., Rs.3700 - 5000 and all the senior posts are included in the JAG.

4. In the counter-affidavit, the respondents have, inter-alia, stated that the issue regarding providing the applicant a posting equivalent to his grade is under

consideration of the Administration. This is stated to have been done by order dated 5.10.1989 whereby the applicant has been posted to the post of Deputy Director (Transport) retrospectively with effect from 17.5.89. This post is in the scale of Rs.3000 - 4500, the grade in which the applicant is drawing his pay. It is also stated that the service rendered by the applicant under Delhi Administration shall be verified and counted towards qualifying service on the post of Deputy Director (Transport) and the direction to the applicant to work on the post of Deputy Director (Training), UTCS, is purely an arrangement in the interest of Administration and exigency of public services and entails no loss of his grade. As regards the special pay of Rs.300 per month claimed by the applicant, it is stated that the posting against a post carrying special pay is neither a matter of right, nor is it conditional to the appointment of the officer to the grade of DANI Civil Service. The matter of special pay and posting is stated to be discretionary and such a posting is generally done on the basis of suitability and seniority in the cadre, and that no special pay is attached with any grade of the DANI Civil Service, but the same is attached with a particular post and thus the applicant has no right to claim the special pay as a matter of right. It is further stated that Rule 27 of the DANI Civil Service Rules, 1971 does not debar the Administration from posting a Service officer to an ex-cadre post.

5. We have perused the documents on record and have also heard the applicant in person and the learned counsel for the respondents. We have also considered the various rulings and orders cited by the applicant.

6. It is not in dispute that the applicant has been working in Grade-I (Selection Grade) in the pay scale of Rs.3000 - 4500 with effect from 16.7.1984. Further,

the reply of the respondents shows that the post of Deputy Director (Transport) to which the applicant has since been appointed and the post of Deputy Director (Training), UTCS, against which the applicant has been asked to work are both ex-cadre posts. This in itself does not make the posting order illegal, because, as held by a Division Bench of the C.A.T. in O.A. 463/1989 (P.C. Misra - the applicant herein - Vs. Delhi Administration) decided on 27.9.1989, under Rule 27 of the DANI Civil Service Rules, 1971 a Service officer can be posted to an ex-cadre post. Though the post of Deputy Director (Transport) to which the applicant has been posted for pay purposes only is in the grade of Rs.3000 - 4500 and as such the applicant has been posted to a post which carries the grade in which the applicant is entitled to draw his pay, yet he has been asked to work against the post of Deputy Director (Training), UTCS, which post is in Grade-II in the scale of Rs.2000 - 3500. Thus, the applicant has been asked to work in a post which is lower in status and also carries a lower scale of pay. As such, the impugned order dated 5th October, 1989 is to this extent punitive in nature and cannot be sustained in law as it has to be held arbitrary and thus violative of Articles 14 and 16 of the Constitution.

7. The contention of the applicant that the special pay of Rs.300 per month is in lieu of higher scale of pay or that the scale of Rs.3000 - 4500 plus special pay of Rs.300 per month has been substituted by the Junior Administrative Grade of Rs.3700 - 5000, is not tenable. DANI Civil Service now comprises three grades, e.g., Grade-II, Grade-I (Selection Grade) and Junior Administrative Grade, carrying the pay-scales of Rs.2000 - 3500, Rs.3000 - 4500 and Rs.3700 - 5000 respectively. No special pay is attached to any of these grades and, as such, it cannot be stated that the special pay is a part of the pay scale.

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There are a number of posts in the Service which do not bear special pay, but some of them do. Officers of the Service in various grades posted to posts which bear special pay, draw special pay in addition to the pay in the grade. Thus, special pay cannot be said to be in lieu of higher scale of pay. Similarly, the scale of Rs.3000 - 4500 plus special pay of Rs.300 cannot be said to have been substituted by the Junior Administrative Grade of Rs.3700 - 5000, firstly because both the grades exist in the Service and, secondly, even after addition of special pay of Rs.300 to the minimum and maximum of the grade of Rs.3000 - 4500, it does not touch the minimum and maximum of the Junior Administrative Grade of Rs.3700 - 5000.

8. The applicant has also taken the plea of discrimination in regard to the drawal of special pay of Rs.300, and has, thus, alleged violation of articles 14 and 16 of the Constitution. The case set up by him is that while considering promotion to the Junior Administrative Grade, the applicant and S/Shri R.B.S. Tyagi, Rajinder Singh, M.N. Mathur and Mrs. Asha Nayyar have not been promoted, but in O.A. No.1033/89 (Mrs. Asha Nayyar Vs. Union of India and Others), the Tribunal has ordered for maintaining status-quo, as a result of which, her special pay of Rs.300 per month has been protected. Shri R.B.S. Tyagi is holding the post of Joint Director (Employment) and Shri Rajinder Singh, who was holding the post of Joint Director (Health Services) has been posted as Director in DDA on transfer on deputation and as such has been given proper status. Similarly, in O.A. 1202/89 (Shri M.N. Mathur Vs. Union of India & others), the Tribunal directed the respondents to maintain status-quo and to give an equivalent post which he was holding before he was relieved on 14.6.89. The interim order passed in the cases of Mrs. Asha Nayyar and Shri M.N. Mathur
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cannot be made the basis of a final order in this case, as the order in the above two cases was passed as an interim measure without prejudice to the contentions of ~~xxxxx~~ parties to the case. Action taken by the respondents in implementing the interim order of the Tribunal cannot be legally made the basis of alleged discrimination. Further, as already discussed above, a member of the DANI Civil Service has no legal right to claim his posting to a post which carries the special pay. It was held by a Division Bench of the C.A.T. in O.A. 502/87 (P.C. Misra, the applicant herein also, Vs. Lt. Governor, Delhi & Others) decided on 6.10.1989 that the post carrying special pay has some special features over and above the ordinary features of other similar posts in the cadre of DANI Civil Service and that appointment to such a post cannot be claimed on the basis of seniority alone. It was further held that "It is common knowledge that the appointments to posts carrying special pay are not made on the basis of seniority but on the basis of suitability, which is a reasonable criterion. If appointments to post carrying special pay may be governed by considerations of suitability, it follows that appointments to post carrying different amounts of special pay may also be made on the basis of suitability." It was held that the applicant could have no legal grievance in this regard and the application was dismissed. Therefore, the fact that Shri R.B.S. Tyagi and Shri Rajinder Singh have been posted to posts which carry special pay or if any of them is getting the benefit of special pay on deputation, this also cannot be made the basis of alleged discrimination. If only a few posts in the grade of Service carry special pay, it is inevitable that all officers in that grade cannot be posted to posts carrying special pay and such a situation cannot be a ground of pleading discrimination. Thus, we are unable to uphold the contention of the applicant in regard to discrimination in the matter of posting to a post

which carries a special pay of Rs.300/- per month.

9. Even under the modified order, the applicant has been asked to work on the post of Deputy Director (Training), UTCS. On this post, he has to work under one Mr. V.N. Khanna, who was junior to the applicant in the Selection Grade of Rs.3000 - 4500. Admittedly Shri V.N. Khanna has been promoted to the Junior Administrative Grade of Rs.3700 - 5000 vide notification dated 17.5.89. As such, Shri Khanna will be deemed to be senior to the applicant who is still in the grade of Rs.3000 - 4500. However, the Government of India had decided that in case where a junior is promoted earlier than a senior whose case is placed in the sealed cover, the junior officer should not, as far as possible, be made the immediate superior to the senior, whose case is kept in the sealed cover (D.O.P.&A.R. Memo No.22011/2/86-Estt.(A), dated 12.1.88). Admittedly the case of the applicant for promotion to the Junior Administrative Grade has been kept in the sealed cover. In view of this, it would not appear to be appropriate to ask the applicant to work on the post of Deputy Director (Trg.) UTCS where his immediate officer would ~~be~~ Shri V.N. Khanna and who was admittedly junior to the applicant in the Selection Grade. We have not been informed of any reasons due to which it is not possible for the respondents to be able to implement the aforesaid decision of the Government.

10. In view of the partial modification of the initially impugned order dated 11.7.89 by order dated 5.10.1989, we do not consider it necessary to either go into the other contentions of the parties in regard to order dated 11.7.89 or pass an order in regard to the validity of that order.

11. In view of the above discussion, Order No.F.30/82/75/S.1/1474, dated the 5th October, 1989
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issued by Service I Department of Delhi Administration, cannot be upheld and has to be set aside. We order accordingly. The respondents are directed to post the applicant to a post which carries pay in the Selection Grade of Rs.3000 - 4500 not for pay purposes only but also for working on that post. The seniority and suitability of the applicant may be kept in view while passing a fresh posting order. We also hold that the applicant does not have any legal right to claim posting to a post which carries special pay of Rs.300 per month. We would, however, state that this finding of ours should not be taken to mean that the applicant, if otherwise found suitable by the respondents, should not be posted to a post which carries special pay. We leave the parties to bear their own costs.

C. C.
(P.C. JAIN) 31/8/90
Member (A)

AMITAV BANERJI
(AMITAV BANERJI)
Chairman.