

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 857/ 1989.  
~~TA--No--~~

DATE OF DECISION JANUARY 5, 1990

Shri Krishan Lal Applicant (s)

In person Advocate for the Applicant (s)

Union of India Versus Respondent (s)

Shri M.L. Verma Advocat for the Respondent (s)

CORAM :

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

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.  
yes.  
No.  
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JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who is an officer borne on the Haryana cadre of the Indian Forest Service and is on deputation to the Central Government w.e.f. 11th October, 1985 to the post of Deputy Commissioner (Training), National Wastelands Development Board, Ministry of Environment and Forests, has prayed, inter-alia, that he be declared as entitled to the pay scale of Rs.1650-75-1800 plus Rs.200 special pay p.m. (revised as Rs.4100-125-4350-150-5300 plus Rs.400 special pay p.m. with effect from 1.1.86) and thus fixation of his pay at Rs.1650 plus Rs.200 special pay w.e.f. 11.10.85 to 31.12.85 and at Rs.4350 plus Rs.400 special pay w.e.f. 1.1.86 alongwith annual incremental benefits prescribed in the scales of the post, and consequent arrears of pay.

The facts of the case, in brief, are as under: -

The applicant, an Indian Forest Service Officer (Cadre: Haryana) was appointed to the post of Deputy Commissioner

(Training) in the Department of Environment, Forests & Wildlife w.e.f. 11.10.1985 in the pay scale of Rs.1100-1600 plus special pay of Rs.200 per month vide Notification dated 18.11.1985 (Annexure II to the application). With effect from 1.1.1986, with the revision of the pay scale, his pay in the revised scale of Rs.3700 - 5000, was fixed at Rs.3700 plus special pay of Rs.400 and raised to Rs.3825 plus special pay of Rs.400 per month w.e.f. 1.1.1987 as a result of one increment (Annexure III to the application). Vide Office Order dated 26th November, 1985, he along with some other officials, was transferred from the Department of Environment, Forests & Wildlife to the National Wastelands Development Board (Annexure IV to the application), and is continuing in the said post since then.

3. The contention of the applicant is that the post of Deputy Commissioner (Training) to which he was appointed w.e.f. 11.10.1985 had been created in the pay scale of Rs.1650-75-1800 plus special pay of Rs.200 per month, as per Order dated 5.12.1983 (Annexure VI to the application) and the existence of the post in the said scale of Rs.1650-75-1800 continued till it was revised to Rs.4100-5300 w.e.f. 1.1.86 on the recommendations of the Fourth Pay Commission. He, therefore, claims that since he has been holding the post of Deputy Commissioner (Training), which is in the scale of Rs.4100 - 5300 (Revised), his appointment in the lower scale of Rs.1100 - 1600 plus Rs.200 special pay per month (revised to Rs.3700 - 5000 plus Rs.400 special pay from 1.1.1986) is illegal, void, ineffective, ultra-vires, unconstitutional, arbitrary, malafide and discriminatory. According to him, the respondents have been taking work of higher responsibilities from him without paying him remuneration prescribed for the work of the post of the Deputy Commissioner (Training), which is against the principles of natural justice. He states that his case is fully covered by rule 9 of the IFS (Pay) Rules, 1968 and in accordance with the instructions of Department of

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Personnel and Training, initial pay in the IFS Selection Grade is to be fixed at Rs.4350/- p.m. w.e.f. 1.1.86 and the annual increments are to be regulated in accordance with sub-rule (4) of rule 5 of the Rules *ibid*. The applicant's representation dated 20.7.1988 (Annexure X to the application) requesting for fixation of his pay at Rs.1650 per month in the Selection Grade of the IFS (Rs.1650 - 1800 revised to Rs.4100 - 5300) w.e.f. 11.10.85 was considered, but rejected vide Office Memorandum dated 15.2.1989 (Annexure XI to the application).

4. The plea of the respondents is that the offer of appointment contained a clear stipulation that the applicant will be remunerated in the scale of Rs.1100-1600 plus special pay of Rs.200/- per month and the post was considered as being equivalent in status and responsibilities to the post of Assistant Inspector General of Forests. The applicant could not have been considered as eligible for appointment if the post was to be declared as equivalent to the selection grade of the IFS as officers with 13 years of service were only eligible for appointment to the selection grade. His official status in the I.F.S. is that of senior scale which he continues to retain. He was selected for appointment on Central deputation to posts in the senior scale of IFS along with other officers and his was not a case of isolated selection for the post of Deputy Commissioner (Training) alone. According to the respondents, the applicant has not challenged statutory provisions under which his pay has been regulated and in terms of the provisions of the statutory rules, he cannot be allowed pay more than in the scale of the post to which his post has been declared equivalent. The scale of pay of any post not included in Schedule-III to the Pay Rules becomes relevant only in a case where the said post has not been equated to a post included in the Schedule to the Pay Rules. In the present case,

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the post in question having been equated to the post of Assistant Inspector General of Forests, a post included in the Schedule to the Rules, the scale of pay in which the post was originally sanctioned becomes irrelevant to the payment of salary to an IFS Officer holding the post.

5. I have heard the applicant in person and the learned counsel for the respondents and have also perused the material on record of this case.

6. A post of Deputy Commissioner (Training) was created in the pay scale of Rs.1650-75-1800+special pay of Rs.200/- per month vide Ministry of Agriculture (Department of Agriculture & Cooperation) order dated 5.12.83 (Annexure-<sup>vi</sup>~~5~~) to the application. The applicant was appointed to this post in the Department of Environment, Forests & Wild Life w.e.f. 11.10.85 vide Ministry's Notification dated 18.11.85 (Annexure-<sup>ii</sup>~~2~~) to the application. In the endorsement of this notification to cash and accounts section, it was mentioned that the applicant has been appointed in the pay scale of Rs.1100-1600+special pay of Rs.200/- per month. The applicant was the first appointee to this post and has continued to work thereon since 11.10.85. This post is not included in schedule-III to the Indian Forests Service (Pay) Rules, 1968. These facts are not in dispute. The applicant contends that in accordance with these rules, he is entitled to pay in the scale of Rs.1650-1800/-+special pay of Rs.200/- per month while the respondents contend that the applicant has been rightly allowed under these rules pay in the scale of Rs.1100-1600+special pay of Rs.200/- per month. For proper appreciation of the rival contentions, Rule 9 of the Indian Forests Service (Pay) Rules, 1968 (herein after to be referred as the 1968.(Pay)Rules. is reproduced below:-

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"Pay of members of the service appointed to posts not included in Schedule III - (1) No member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to had he been appointed in the post to which the said post is declared equivalent.

(3) For the purpose of this rule 'post other than a post specified in Schedule III' includes a post under a body incorporate or not which is wholly or substantially owned or controlled by the Government.

(4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government in respect of any posts under its control, may, for sufficient reasons to be recorded in writing, where equation is not possible appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III.

(5) A member of the Service on appointment to a post referred to in sub-rule (4), in respect of which no pay or scale has been prescribed, shall draw such rate of pay as the State Government in consultation

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with the Central Government in the case of a post under the control of the State Government, <sup>or</sup> as the Central Government in the case of a post under the control of the Central Government may, after taking into account the nature of duties and responsibilities involved in the post, determine.

(6) A member of the Service on appointment to a post referred to in sub-rule (4), in respect of which any pay or scale of pay has been prescribed shall draw where the pay has been prescribed, the prescribed pay and where a scale of pay has been prescribed, such rate of pay not exceeding the maximum of the scale as may be fixed in this behalf by the State Government or as the case may be by the Central Government.

Provided that the pay allowed to an officer under this subrule and sub-rule (5) shall not at any time be less than what he would have drawn had he not been appointed to a post referred to in sub-rule (4)."

7. From a perusal of the above rule, it is clear that as the post of Deputy Commissioner (Training) was not included in the schedule to the 1968 (Pay) Rules, the competent authority should have either declared this post to be equivalent to a post included in the schedule, or should have recorded the reasons if it thought that equation of this post with any post included in the schedule was not possible. The respondent's contention is that the post of Deputy Commissioner (Training) was considered equivalent to the post of AIGF and the applicant was accordingly allowed pay in the scale of Rs.1100-1600/- which is the senior time scale for Indian Forest Service and to which members of the service holding the post of AIGF were entitled. However, they have not filed

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With their reply or produced otherwise a copy of any declaration under which the post of Deputy Commissioner (Training) might have been declared as equivalent to the post of AIGF, or the reasons which might have been recorded if such a declaration was not considered possible. In fact, the respondents in their reply to the misc. application No.2235/89 filed by the applicant have admitted that "an exclusive and specific order of equation" has not been issued. They have stated that the respondents had only averred in their reply that in terms of duties and responsibilities, the post was considered equivalent to the post of AIGF, and in consideration of this factor, an appropriate mention of the pay scale was made in the offer of appointment issued to the applicant. It is further stated that declaration of equivalence is imbibed in the offer of appointment issued to the applicant and accepted by him. A copy of the offer of appointment also has neither been filed or produced; what is on record is the notification of appointment referred to earlier.

6. Rule 9(1) of the 1968 (Pay) Rules clearly and unambiguously stipulates that no member of the service shall be appointed to a post other than a post specified in Schedule III, unless the competent government make a declaration that such post is equivalent in status and responsibility to a post specified in the said schedule. The use of the term declaration in the sub-rule cannot be taken to <sup>mean</sup> only a note or an order on the file; the declaration has to be in the form of a formal order. It is clear that no such declaration has been made in this case. It is not the case of the respondents that it was

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not possible to make such a declaration. In any case, even if the position was such, sufficient reasons were required to be recorded in writing. No such reasons have been furnished either with the reply or otherwise. Thus provisions of sub-rule (6) of rule 9 of the 1968 (Pay) Rules become applicable in <sup>this case</sup> ~~that~~ case and the applicant will be deemed to have been entitled to pay in the scale of the post in which the post had been created and to which he was appointed.

9. Respondents have laid great emphasis on the point that the duties and responsibilities of the post of Deputy Commissioner ( Training ) were equivalent to the duties and responsibilities of the post of AIGF, which post carried the scale of Rs. 1100-1600 + special pay of Rs.200/- and which has also been allowed to the applicant on his appointment to that post. This argument is not sustainable. If it were so, than the post itself could have been created in the lower scale, or it could have been down graded before the appointment to the post was made, or even subsequently. There has been no such action on the part of the respondents. As late as 10.3.87, the post of Deputy Commissioner (Training) has been shown in the scale of Rs. 1650-1800+special pay of Rs. 200 per month in the Schedule to resolution No. F.1-11/76-IFS-I issued by the respondent Ministry. This very schedule shows the post of AIFS in the scale of Rs. 1100-1600 + special pay of Rs. 200/- per month. This resolution and the schedule enclosed thereto have been issued for staffing posts, including in the Central deputation quota of the Indian Forest Service. The contention of the applicant,

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however, that the schedule in the annexure to the resolution: *ibid* may be treated as a part of schedule III to the 1968 (Pay) Rules is legally untenable; this schedule is different in its purpose and contents from the schedule which is a part of the 1968 (Pay) Rules. Nonetheless, the resolution and the annexure thereto do ~~so~~ <sup>show</sup> that the post of the Deputy Commissioner (Training) has been considered higher than the post of AIGF.

10. Another point on which the respondents have laid emphasis is that as the applicant had not put in 13 years of service, he was not entitled to pay in the selection grade of service, i.e., Rs.1650-1800. It has been further urged that the applicant was one of the many other officers drawing pay in the senior scale of the service for selection for deputation to the Central Govt and that he was not specifically selected for appointment to the post of Deputy Commissioner (Training) in the scale of Rs.1650-1800/-. In view of the position of the rules already explained above, the process of selection for deputation to the Central Government is not relevant even though the applicant has contradicted <sup>contentions of the respondents</sup> the ~~in~~ his own way. It is, however, true that officers who had put in 13 years of service are eligible for appointment to the selection grade, but this would not matter much in the case before me because the post of Deputy Commissioner (Training) was not created in the selection grade of the service, but in a specific scale of pay which, as it would appear, happens to be the same as the selection grade. Moreover, in the reply, the respondents have stated that "the posts in the scale of Rs.1100-1600 and 1650-1800" are both in the senior scale of the Indian Forest Service and are interchangeable. If the posts are interchangeable, as stated, nothing prevented the respondents from down grading the post to the scale of Rs.1100-1600 before

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appointing the applicant thereto. It may, however, be mentioned here that interchangeability<sup>ce</sup> refers to the posts mentioned in the schedule to the 1968 (Pay) Rules, and as the post under reference was not included in the schedule, this argument is not very relevant in this case.

11. Learned counsel for the respondents urged, but not pleaded in the counter reply, that the application was time-bared. In view of the fact that the applicant was claiming relief w.e.f. 11.10.85 but the application has been filed on 19.4.89. The applicant urged that at the time he was appointed to the post, the scale of pay in which the post had been created was not disclosed by the respondents and that he came to know<sup>v of</sup> this only in June, 1988. The applicant first represented on 1.6.88 about the change in his designation on 23.5.88 and represented on 20.7.88 for his arrears of pay w.e.f. 11-10-85. His representation was replied to by O.M. dated 15.2.89 (Annexure XI to the application) wherein it is stated that it has been considered carefully but it is regretted that it cannot be agreed to. Thus the limitation in this case would start running from 15.2.89. In view of the fact that the respondents had entertained his representation and rejected it after consideration and not as being late, this plea of limitation does not carry much weight.

12. In pursuance of the recommendation of the 4th Central Pay Commission, pay scale of Rs.1100-1600/- was revised to Rs.3700-5000 from 1.1.86 +special pay of Rs.200/- was raised

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to Rs.400/- per month. Similarly, the scale of pay Rs.1650-1800/- was revised to Rs.4100-5300<sup>and</sup> special pay of Rs.200/- was also raised to Rs.400 per month. The applicant opted for the revised scale of pay w.e.f. 1.1.86. He is entitled to draw pay in the scale of Rs.1650-75-1800+special pay of Rs.200/- per month w.e.f. 11.10.85 till 31.12.85. From 1.1.86, he is entitled to draw pay in the scale of Rs.4100-125-4850-150-5300+special pay of Rs.400/- per month. The applicant has prayed that in the scale of Rs.4100-5300, his initial pay should be fixed at Rs.4350/- and in support of this contention, he has filed a copy of Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel & Training) letter dated 4.11.87, addressed to the Chief Secretaries to the Govt. of all states (Annexure-IX to the application) wherein for the reasons given therein; a decision of the Govt. of India to fix the initial pay of a member of the Indian Forest Service on appointment to the selection grade at Rs.4350/- per month ~~was~~ was conveyed. The background of the decision as mentioned in this letter is that a member of the IFS ~~draws~~ draws pay at Rs.4200/- in the JAG at the time he becomes eligible for appointment to the selection grade in the scale of Rs.4100-5300/- and as such his pay is fixed at Rs.4100/- with Rs.100/- as personal pay, to be absorbed in future increments unlike in the case of promotion to the selection grade in the case of IAS and IPS.

The prayer of the applicant cannot be accepted on this point for the simple reason that his is not a case of appointment to the selection grade of the Indian Forest Service. He would be entitled to get his pay fixed in the selection grade on his

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appointment to the selection grade but not from the date on which he is allowed pay in the grade which happens to be the same as the selection grade.

13. In view of the above discussion, the application is partly allowed in terms of the following orders/directions:-

(i) Endorsement at serial No. 5 of the Notification dated 18.11.85 to the extent it states that the applicant has been appointed in the pay of Rs.1100-1600+ special pay of Rs.200/- per month is quashed. O.M. dated 15.2.89 by which representation dated 20.7.88 of the applicant was rejected is also quashed to the extent it relates to the scale of pay and pay therein. Matters regarding residential accommodation, telephone, stationery, secretarial assistance etc. are administrative matters on which the competent authorities may take appropriate decisions in accordance with the rules/orders on the subject.

(ii) The applicant will be entitled to draw pay w.e.f. 11.10.85 till 31.12.85 in the pre-revised scale of Rs. 1650-75-1800+special pay of Rs.200/-. w.e.f. 1.1.86 he will be entitled to draw pay in the revised scale of Rs. 4100-125-4850-150-5300+ special pay of Rs. 400/- per month. He will not be entitled to get his pay fixed in the scale of Rs. 4100-5300 at the stage of Rs. 4350/- per month, and his pay in the scale be fixed as per other relevant rules.

(iii) The arrears of pay and allowances thereon will be paid to the applicant within 3 months from the receipt of a copy of this order by the respondents.

14. The application stands disposed of with the above directions. The parties will bear their own costs.

( P.C. JAIN )  
MEMBER (A)