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512-12

Hon'ble Mr. J.P. Sharma, Member (J)  
Hon'ble Mr. B.K. Singh, Member (A)

Petitioner

VS

## Respondents

ORDER  
(Delivered by Hon'ble Mr. J.P. Sharma, Member (J))

## ORDER

(Delivered by Hon'ble Mr. J.P. Sharma, Member (J))

The applicant is permanent Assistant of Central Secretariat Service Cadre (CSS) of the Ministry of Home Affairs. He was promoted as Section Officer on adhoc basis on 4.11.1982. However, he was reverted as Assistant on 22.12.1982. He remained on leave till 31.1.1983 and was again promoted on adhoc basis as Section Officer with effect from 1.2.1983 and posted in the Integrated Finance Division of the Ministry of Home Affairs. He was again reverted to his substantive post of Assistant on 2.4.1983. He was again promoted on adhoc basis as Section Officer on 26.4.1983, and continued to officiate in the Section Officer Grade on adhoc basis with a day's break after 60 days of officiation till his retirement on superannuation on 28.2.1985.

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was continued to hold the desk dealing with the cases of pension and training which he was holding as Assistant in pursuance of Dept. of Personnel and Administrative Reforms OM dated 11.12.1975 and was getting Rs. 50/- as special pay. He

was not redesignated as Desk officer nor he was paid the special pay of Rs. 75/- per month <sup>at</sup> attach to the post of Desk Officer. He made representation (Annexure A III) to the Joint Secretary (Administration) Ministry of Home Affairs for issuing of orders for payment Rs. 75/- per month with effect from 4.11.1982. He made other representations subsequently but to no effect. He filed the present application on 11.8.1988 praying for the grant of the relief that the order dated 6.4.1988 (Annexure AI) be modified in so far as the case of applicant is concerned for payment of special pay of Rs. 75/- per month attached to the post of Desk Officer with all allowances from 1.2.1983 to 28.2.1985 together with arrears and the said special pay of Rs. 75/- be taken into account for calculating the revised pensionary benefits viz., pension, commutation of pension, encashment of leave, grant of gratuity etc. alongwith the interest @ Rs. 18/- per annum from 1.2.1983 till the amount to be paid to the applicant.

A notice was issued to the applicant who contested the application by filling a reply opposing the grant of relief prayed for by the applicant. It is stated that the applicant was promoted on adhoc basis with effect from 26.4.1983 as Section Officer only in the Finance II desk of the Ministry (proper) in lieu of a Desk Officer. The case of the respondent is that only regular Section Officers of CSS or Assistants of CSS with a minimum of 8 years service in that grade who have

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been appointed on long term basis as Section Officer or those who are included or approved for inclusion in the select list of Section Officer can be considered for appointment to the post of Desk Officer carrying a special pay of Rs. 75/- per month (pre. 1.1.1986 ) over and above the scale of pay of Section Officer. The reliance has been placed by the respondents on the OM dated 11.12.1975 Annexure A) and further clarified by the Department vide OM dated 1.4.1976 (Annexure B) annexed to the counter. However, in consideration of the fact that he was posted in a desk (even though as SO adhoc), he has been granted suitable honorarium while MHA OM dated 6.11.1988. It is this order of 6.11.1988 that the applicant had prayed for modification to the grant of special pay of Rs. 75/- attached to the post of desk Officer. Since the applicant was never fulfilled the requirement for appointment as Desk Officer and was never notified and only discharged full responsibility of a Desk Officer, he cannot be granted the benefit of special pay.

The applicant has also filed the rejoinder reiterating the same facts. He has, however, referred to certain cases of Shri S. Sridharan and Shri B.L. Juneja who in similar circumstances were granted special pay. The reply of the respondent is that the case of Shri S. Sridharan and Shri B.L. Juneja and Shri Y.P. Dhingra should not be treated as precedence in view of the subsequent policy decision of the Government after review, which was extended to the case of the applicant.

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We have heard the applicant in person and the learned counsel for the respondents and perused the record. The claim of the applicant with effect from 4.11.1982 or in the relief column with effect from 1.2.1983 are basically hit by the limitation. The applicant has come against an order of 6.4.1988 by which the applicant has been granted honorarium for performing duties of arduous nature while working in the various desks in the Ministry (Proper) where alongwith the applicant 14 other Section Officers were granted the same benefit. The applicant should have assailed his grievance when the respondents did not consider his representation in 1984. The present application has been filed three years after his retirement and is totally a stale claim. Even in serv<sup>ic</sup> matters 6 the aggrieved person has to file his claim with limitation as held in the case of State of Punjab Vs. Gurdev Singh, 1991 (4), SCC P 1. Thus, this claim of the applicant is barred by limitation.

Even on merits the stand taken by the respondent is based on the OM dated 11.12.1975 and 1.4.1976 (Annexure A & B) filed to the counter) which disallows such claims on the strength that the applicant was neither a regular Section Officer nor included in the select list of Section Officer and so not eligible for appointment to the post of Desk Officer. It was only in those cases where the regular Section Officers posted on the desk to work as Desk Officer with a special pay of Rs. 75/- per month revised to Rs. 150/- after 1.1.1986 has been agreed to be paid. The applicant who argued in person stressed that by virtue of OM of DP& AR dated 11.12.1975, en  
↓ (para 2 is on the recommendation to Desk officer at Section Officer level) provides all officers including those from CSS

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will get a special pay of Rs. 75/- per month in addition to their grade pay. This will be in force for a period of two years from the date of issue of these orders and after that the necessity for the special pay would be reviewed by the Dept. of Personnel & Administrative Reforms. This OM visualises the appointment of incumbent as a Desk Officer. Since there was no notification in respect to the applicant appointing as Desk Officer, he could not <sup>authenticate</sup> ~~undertake~~ order etc. under Article 77(II) of the Constitution of India. This, therefore, necessitate that the notification has to be issued and since there is no notification of formal appointment as Desk Officer by the respondents. The applicant cannot claim the special pay nor he can assert that there is a violation of FR 17. The applicant has been compensated by grant of honorarium by the Impugned order dated 6.4.1988 as he performed some of the duties of Desk Officer in addition to his own duties as Section Officer. It is a fact that the applicant made representations for the grant of the special pay but till his retirement the respondents have not notified the appointment of the applicant as Desk officer and it is obviously because the applicant was only adhoc Section Officer. During the period he worked as Section Officer on adhoc basis after every 60 days of officiation there was break and he was never regularised in his appointment as Section Officer as per his seniority in the grade of Section Officer in CSS. The applicant, therefore, should not have any grudge on this account. The exemplars cited by the applicant cannot be taken as correct precedence in view of the subsequent policy decision of the Government. The mere posting of the applicant to discharge certain duties of Desk Officer in Finance (II) desk by the respondents would not confer full responsibility of the post of Desk Officer as

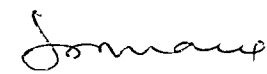
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visualised under Article 77 (II) of the Constitution of India. Further the OM of 1976 (Annexure B to the counter) visualise that a panel of Desk Officers should be prepared caderwise. It is not the case of the applicant that any point of time he has been included in the panel of Desk Officers. Taking all facts into account we find no merit in this application and the same is dismissed as devoid of merits leaving the parties to bear their own cost.

  
(B.K. Singh)

Member(A)

  
(J.P. Sharma) 5/11/76

Member (Jn)

'SLP'