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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO.1905/88

DATE OF DECISION : 08.01.1993

Shri N.K. Srivastav & Anr.

...Applicants

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri B.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

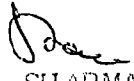
For the Applicants

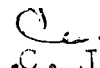
...Shri E.X. Joseph

For the Respondents

...Shri P.P. Khurana

1. Whether Reporters of local papers may be allowed to see the Judgment? /s
2. To be referred to the Reporter or not? gs


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)

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JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

Madhya Pradesh Unit of All India Association of Accounts/Audit Officers of the Indian Audit and Accounts Department through its Secretary filed the present application under Section 19 of the Administrative Tribunals Act, 1985 along with another applicant, Shri Puran Chand Gupta, Audit Officer, against the Orders Nos. Admn./CC/Audit/Court/202/TR II/1188 and F.15(1)/IC(86) dt.19.4.1988 and 22.9.1986 respectively. In short, the applicants have assailed the decision of the Government of India for not continuing the ad-hoc special allowance of Rs.100 p.m. payable to the Audit Officers of Indian Audit and Accounts Department. The applicants had also filed an application earlier, which was disposed of along with bunch of other applications by the order dt. 10.12.1987 by the Principal Bench with liberty to the applicants to come again after the disposal of their representation which was under consideration in the Ministry

of Finance, but because of filing that application, the matter was stalled. On reconsideration of the representation of the applicants, the Office of the Accountant General Audit, Madhya Pradesh informed applicant No.1 that the matter has been reexamined by taking into account all the points raised in the representations and the Government finds no justification to modify the stand taken by them earlier. The Notification dt. 22.9.1986 has been issued by the Ministry of Finance, Department of Expenditure by which the pay scale of the Indian Audit and Accounts Department was revised and Audit Officers have been placed in the pay scale of Rs.2375-3500 with the remark that there will be no special allowance. There is a further functional grade of Rs.2000-3200 given to existing incumbents in the selection grade as personal to them. Earlier to this, the scale of Audit Officer was Rs.840-1200 plus Rs.100 as special allowance.

2. The reliefs claimed by the applicants in this application are as follows :-

- (i) Grant of order striking down, quashing and setting aside the decision of the Government conveyed in Letter No.Admn/CC/Audit/Court/202/TRII/1188 dated 29.4.88 issued by the Accountant General (Audit-I), Madhya Pradesh, Gwalior conveying the decision of the Government of India;
- (ii) Grant of appropriate order or direction to the respondents to continue the payment of ad-hoc special allowance of Rs.100/- treating it as special pay w.e.f. 1.3.1984;
- (iii) Grant of orders declaring that the discontinuance of

the adhoc special allowance for Audit Officers of the Indian Audit & Accounts Department in Government of India, Ministry of Finance (Department of Expenditure) Notification No.F.15(I)IC/86 dated 22nd September, 1986, i.e., GSR No. 1105(E) is illegal, discriminatory and unconstitutional as violative of the provisions of Articles 14 and 16 of the Constitution.

3. The facts of the case are that the applicants are Audit Officers and have alleged that they carry out the most onerous responsibility and important function of auditing the accounts of Central Government as well as the states. Article 148(5) of the Constitution of India contemplates that the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by the rules made by the President after consultation with the Comptroller and Auditor General. Upto 29.2.1984, there was a cadre of Accounts Officers with a seniority list in the Civil Accountants General Office of the Indian Audit and Accounts Department. Accounts Officers were discharging other accounting functions or audit functions and their services were inter-transferable between Accounts and Audit posts of the department. A scheme for restructuring the Civil Accounts Accountants General offices by separating them into two different offices was implemented w.e.f. 1.3.1984. One unit was entrusted with audit functions and the other with accounts functions. The idea behind the bifurcation of functions was to separate the audit

functions from the accounting functions. The staff and officers (other than IA & AD officers) were called upon to opt between Audit and Accounting Wings before 31.1.1984. Audit Officers were granted ad-hoc special allowance of Rs.100 by Order No.2805-G. S II/191-83 dt. 18.9.1985 (Annexure A1). It is the case of the applicants that the ad-hoc special allowance was granted to the Audit Officers because of the special arduous and onerous nature of their duties and in lieu of the higher pay scales which the Comptroller and Auditor General of India (CAG) had recommended to the Government as well as to the 4th Pay Commission. The 4th Pay Commission submitted its report on 30.6.1986. The Pay Commission recommended parity of pay scales between the Audit Officers of IA & AD and the Accounts Officers of various ~~Pay Commissions~~ ^{other organisations} and recommended the pay scale of Rs.2375-3500.

4. The grievance of the applicants is that the 4th Pay Commission did not recommend a fair pay scale taking into account the restructuring scheme in the department and the special arduous nature of duties of Audit Officers, but recommended that there was no adequate justification for continuance of special ad-hoc allowance of Rs.100. This recommendation was accepted by the Central Government and the special allowance was discontinued on 1.10.1986. It is said that the said decision of

the Government of India and the 4th Pay Commission are patently unfair, unjust and unreasonable.

5. The respondents contested the application and stated that the special ad-hoc allowance of Rs.100 granted to Audit Officers was not in lieu of arduous/onerous nature of duties nor it was in lieu of higher pay scale. It was in the nature of ad-hoc allowance pending the receipt of the report of 4th Pay Commission. The Commission has found no justification for continuance of ad-hoc allowance with the revised pay scale. The applicants have not been discriminated. It is further stated that CAG had recommended to the Government as well as to the 4th Pay Commission for the Audit Officers a pay scale higher than the Accounts Officers. The Government and the Pay Commission did not accept the recommendations of CAG. The office of respondent No.2 in May, 1984 had recommended a special pay/special allowance of Rs.150 p.m. (in view of the *Le* arduous and *nature of duties* ~~continuous bearing~~ involved) for Audit Officers as an interim solution which was to be merged in the revised scale. As against this proposal of CAG, the President was pleased to sanction only a special ad-hoc allowance of Rs.100 p.m. to Audit Officers w.e.f. 18.9.1985 pending the receipt of the report of the 4th Pay Commission. Subsequently, the 4th

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Pay Commission while recommending revised scale of pay for the Audit Officers, did not find any justification for the continuance of this allowance with the revised scale of pay in para 10.520 of their report. In the counter, reliance has also been placed on the decision of the case of B.B. Srivastava Vs. Union of India (OA 489/86).

6. It is thus prayed that the application is totally devoid of merit and the applicants are not entitled to higher pay scales or ad-hoc special allowance of Rs.100. No rejoinder has been filed to the above reply.

7. We have heard the learned counsel for the parties at length and have gone through the record of the case. The facts of this case are almost covered by the decision in OA 1903/88 decided on 5.4.1991 by the Principal Bench (Sh.S.R.Gupta & Ors. Vs UOI). Shri S.R.Gupta and Others also filed earlier OA 658/87 which was disposed of along with a bunch of other similar OAs by the Principal Bench by the order dt.10.12.1987, the judgment of which has been filed as Annexure All to the application. In that OA also, the challenge was to the order dt.14.5.1988 praying for quashing and setting aside the decision of the Government similar to the order under challenge in the present OA dt.29.4.1988, referred to above. In that OA also, the applicants of

OA 1903/88 had prayed for quashing of the Notification dt.22.9.1986 by which the Audit Officers were granted the scale of Rs.2375-3500 by the Government on the recommendation of the Pay Commission. In the aforesaid judgment of Shri S.R.Gupta & Ors., the reliefs claimed by the applicants of that case were disallowed.

8. The first ground taken by the learned counsel for the applicants is that the grant of special ad-hoc allowance of Rs.100 to the Audit Officers of IA & AD was in regard to the grant of higher pay scale which was in lieu of higher pay scale taking into account the responsibilities and duties of the Audit Officers. This grant of special allowance according to learned counsel for the applicant was based on the scheme of restructuring the cadres in IA & AD. The grant of the said allowance in September, 1985 ^{is said to be} in support of the contention of the learned counsel that the Government recognised and accepted the fact that the Audit Officers' duties are of special and arduous nature and they were entitled to higher scales of pay. The stand of the respondents is clear as argued by the learned counsel for the respondents that this ad-hoc special pay was granted to Audit Officers only as an interim measure pending recommendation of the 4th Pay Commission. To qualify special

pay under FR 9 (25), the said allowance has to be an addition of the nature of pay to the emoluments of a post of a Government servant. The learned counsel for the respondents has referred to the findings given in the case of Sh.B.B. Srivastava^(supra), which is quoted below :-

"....In this case it cannot be disputed that the Special Adhoc Allowance of Rs.100/- which was paid to Audit Officers was not in lieu of enhanced pay, nor it was paid as Additional Pay. It was paid on ad-hoc basis to satisfy the claim of the Audit Officers that while there has been restructuring of U.D.C.'s and S.Os resulting in suitable benefit to them, similar benefit has not been extended to them, even though they are performing more onerous duties. With a view to satisfy the Audit Officers, a sum of Rs.100/- has been ordered to be paid to the Fourth Pay Commission. On the above facts, we are not in a position to say that the Special Ad-hoc Allowance was in lieu of higher pay. Only when an allowance is paid to an official in lieu of enhanced pay that amount will be taken up for calculation of terminal benefits or pension. An allowance paid purely on ad-hoc basis till a particular event takes place cannot be treated as part of pay. In this view, we are not inclined to say that the Special Ad-hoc Allowance of Rs.100/- should be treated as part of the pay and is to be taken for the purpose of calculation of pension. It is pertinent to note that the Fourth Pay Commission in its recommendations while refixing the pay of Audit Officers from 840-1200 to 2375-3500 specifically stated that the Special Ad-hoc Allowance paid to the Audit Officers cannot be continued in view of the fact that the revised scales of pay take all the matters into consideration. This revised pay scale of Rs.2375-3500 is the same for all those in the scale of 840-1200 whether they were in receipt of special Adhoc Allowance or not. Thus, it is clear that the sum of Rs.100/- paid as Adhoc Allowance was not at any stage treated as part of the pay of Audit Officers....".

9. The next contention of the learned counsel for the applicants is that the Audit Officers were informed that CAG had proposed a higher scale to Audit Officers as part of the scheme for restructuring and that option to the separated cadre of Audit Officers was prerequisite for securing higher pay scale for Audit Officers. The learned counsel has referred to the promissory

estoppel applicable in the present case in view of the decision of M/S Moti Padampat Sugar Mills Company Ltd. Vs. State of Madhya Pradesh and Others, reported in AIR 1979 SC 621. The learned counsel has also referred to Manual of instructions for restructuring arguing that the Government of India had assured the CAG of their willingness to sanction higher pay scales for Audit staff and it was on the basis of this willingness of the Government that the scheme for restructuring was effected and options given. Firstly, there cannot be any promissory estoppel in such a case. The applicants, Audit Officers were given an interim relief of ad-hoc special allowance of Rs.100 and the word adhoc itself denotes that since the 4th Pay Commission had already been constituted and its report was awaited, so, for the time being, an increase in the pay by way of allowance was given subject to the final recommendations of the 4th Pay Commission. Further, MIR scheme does not assure higher pay scales to Audit Officers as alleged. The letter dt.21.1.1984 issued by the then DAI does not mention doctrine about any alleged assurance. Thus the application of promissory estoppel is misconceived in the circumstances of the case.

10. The learned counsel for the applicants also argued that the scale of Rs.2375-3500 sanctioned to the Auditors in the Notification dt.22.9.1986 does not take into account the element of Rs.100 given to them as ad hoc allowance. In this

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connection, para 10.520 of the Pay Commission's report clearly denied this benefit to the Audit Officers. Their Lordships of the Hon'ble Supreme Court in the case of State of U.P. & Ors. Vs. J.P. Chaurasia & Ors., AIR 1989 SC p-19 held as follows :-

"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

Similarly, in the case of Umesh Chandra Gupta & Ors. Vs. Oil and Natural Gas Commission & Ors, reported in AIR 1989 SC p-29, it has been held as follows :-

"The nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the Court to determine by relying upon the averments in the affidavits of interested parties. We have stressed this point in a recent judgment (in Civil Appeal No.56 of 1987, State of U.P. & Ors. Vs. J.P. Chaurasia and Ors. disposed of on 27 September, 1988)."

It was further held that "What applies to the Government and Government servants must equally apply to any management and its employees. If the management for good reasons have classified the posts into two categories with different pay scales, the Courts generally must accept unless it is demonstrated that it is patently erroneous either in law or on fact."

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11. The learned counsel for the applicants has also addressed the arguments on various reasonings given by 4th Pay Commission arguing that the relevant facts have been ignored by the 4th Pay Commission and the recommendations of the CAG, which is constitutional authority under Article 148, have been totally ignored. As said above, the Tribunal cannot sit as an Appellate Authority over various decisions taken by the Pay Commission regarding grant of pay scale. The Tribunal is not an expert body like Pay Commission which has to take into account the various officers/officials working in different organisations of the Union of India and they have to reach a conclusion on equitable basis looking to the qualifications of the posts, the duties being discharged and the functions performed by such incumbents.

12. We have considered the relevant portions of the report of the aforesaid Pay Commission which do not disclose that any extraneous consideration has crept into their deliberations and recommendations in this regard.

13. In view of the above discussion, we are of the considered opinion that the DA does not merit any interference by the Tribunal in the matter of pay scales sanctioned to the applicants and also regarding non grant of special ad hoc allowance of Rs.100. The same is accordingly dismissed with cost on parties.

AKS

(J.P. SHARMA)
MEMBER (J)

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(P.C. JAIN)
MEMBER (A)