

18

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

O.A.No.447 of 1986

Date of Decision: 4.6.93

R.K.Sethi.....Applicant.

Versus

Ministry of Finance, North Block, New
Delhi & others Respondents.

CORAM:

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

Hon'ble Mr.S.R.Adige, Member(A)

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member (A).)

The applicant Shri R.K.Sethi is a retired Administrative Officer in the Comptroller and Auditor General Office, New Delhi and he has made a prayer for the following reliefs:

- i) to grant special pay admissible to Asstt. Supdt/Section Officer in Comptroller & Auditor General's office to the petitioner from the date of passing the S.A.S Examination(1964).
- ii) to grant certificate of next below rule for the period the petitioner was on deputation to Staff Selection Commission.
- iii) Fixation of pay on appointment as Accounts Officer in Director of Audit Commerce Works Misc. on the basis of the pay drawn in the ex-cadre post of Accounts Officer in identical time scale in Staff Selection Commission.
- iv) Counting of special pay admissible to Section Officer of Comptroller & Auditor General on promotion as Accounts Officer in the field Offices(CAG's order dated 16.11.80). Even though the petitioner was not actually working as Section Officer in CAG's office before promotion as Audit Officer in Director of Audit, Commerce Works & Misc.'s office due to no fault of the petitioner but only due to the inconsistent policies followed by CAG's Office.
- v) To grant any relief which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. His case is that he passed the Subordinate Accounts Service Examination in 1964 and was allotted to the Office of Accountant General Commerce Works & Miscellaneous, New Delhi, without obtaining his consent;

where he joined in June, 1964. That office was considered a Field Office and those posted there, were not entitled to draw special pay, while certain others who were retained in C.A.G's Office were eligible for the same and this was discriminatory. The applicant averred that he represented against this discrimination, but he was neither repatriated to CAG's Office nor was any reply given. This arrangement of allotment to field Offices was contested by the Accountant General, Central Revenue Staff in the Delhi High Court and ultimately the writ was withdrawn on the specific assurance given by the C.A.G's Office that no further allotment of Subordinate Accounts Services (SAS) would be made; all persons who stood allotted would be withdrawn in a phased manner; the period of withdrawal would be kept to the barest minimum; and till the allotted officials were withdrawn and taken back to C.A.G's ^{Office} ~~and~~ ^{it would be created in} adhoc posts ^{to accommodate} the allottees, ~~and~~ ⁱⁿ ⁱⁿ ~~and~~ ^{the} actually working in Accountant General Central Revenue's Office. As a result of this assurance, the allottees working in the Field Offices were taken back in the CAG's Office. Meanwhile prior to the commitment, the applicant was deputed to the post of Accounts Officer in the Instt. of Sectt. Training & Management and on conclusion of the deputation in April, 1978, he was directed to report to the Director of Audit, Commerce Works & Misc. inspite of a request for posting in C.A.G.'s Office. Further more, although the allottees, who were withdrawn in terms of the assurance given, ought to have been promoted as Accounts Officer in the parent Office (C.A.G's Office), they were again sent to the Office of their allotment at the time of their promotion as Accounts Officers by giving them adhoc posts which contravened the assurance given to the High Court and it resulted in infructuous expenditure. Meanwhile the applicant again requested for repatriation to C.A.G's

and also to give a certificate to the effect that on deputation he would have been continued to officiate as Asstt. Superintendent in C.A.G's Office but this request was not acceded and an order was communicated to him in January, 1980 stating that the allotted persons have to look for their confirmation in the office of allotment and no question of giving a certificate of continued officiation in C.A.G's Office arise. The applicant alleges that such certificates were given in certain other cases. In November, 1980, the CAG's Office clarified that in case of allottess-Section Officers, who were originally members of CAG's Office, the special pay drawn by them in CAG's Office while working as Asstt. Superintendent was not a special pay drawn in the ex-cadre post and when they got promotion in the C.A.G's Office, their pay was fixed taking into account the special pay drawn in the C.A.G's Office and these instructions were given effect retrospectively. This resulted in anomalies of juniors getting more pay than seniors and it is alleged that one ^{Shri} Samajdar, who retired in 1978, and was not working in CAG's Office was made an exception to this rule. Similarly those persons who were allocated to Accounts in 1976 and had worked in ^{officer in} CAG's ^{1st}, were given the benefit of special pay as late as in 1981 with retrospective effect even though in 1976 they had ^{second} connection with the Audit Department. The applicant alleges that he is a permanent member of CAG's but was not allowed the benefit of special pay on promotion as Accounts Officer in the allotted Office on the ground that he was not actually working in the office of CAG at the time of promotion. He was also not allowed the benefit of pay drawn by him in ex-cadre post

in identical time scale (Rs 40-1200) while on deputation to the Instt. of Sectt. Training & Management on his appointment as Accounts Officer in the Office of Director of Audit Commerce Works & Misc. Ultimately, the applicant was repatriated to C.A.G.'s Office (parent Office) on 21.12.83.

3. In the counter-affidavit, the respondents have contested the application and have pointed out firstly that the same is not within time as prescribed in Section 21 of the Administrative Tribunals Act and is thus barred by limitation.

4. They have also denied that the applicant has been discriminated in the matter of payment of special pay vis-a-vis his other colleagues. The respondents contend that special pay is admissible for working in CAG's Office and so long as the applicant worked in that office, the special pay as admissible was duly paid to him. They contend that the CAG's Office is Headquarter Office of the Indian Audit and Accounts Department with subordinate offices of Accountants General and D.A.C.R./D.A.C.W. & M., etc. All the subordinate offices as well as the office of respondent no. 2 (CAG) have separate cadres of their own. The pay scale of Administrative Officers/Asstt. Superintendents/Section Officers (now Asstt. Administrative Officers) carry special pay as in lieu of higher scale of pay than those of subordinate offices. As per the re-organisation Scheme as introduced in 1961, the then existing staff of CAG's Office who had no lien in other offices and were holding posts of Asstt. Supdts. and above in a substantive or officiating capacity were allotted proforma suitable positions in the respective cadres of field offices, after obtaining their choice(s) of posting as far as possible subject to administrative convenience. Under the aforesaid

scheme, UDCs/Clerks originally recruited for the office of respondent no. 2 (CAG) on passing the SAS to be allotted to the field offices and in such cases there was no provision for obtaining their choice. After allotment they were to look to the allotted offices for their promotion/confirmation etc. and the applicant's case falls under that category. Upon passing the SAS Examination in 1964, the applicant was allotted to the Office of the A.G.C.W. & M. While doing so, it was ^{not} necessary to obtain his consent as there was no such stipulation in the scheme of allotment. The scheme, however, did not preclude the retention of UDCs in the office of CAG. As per re-organisation Scheme, on allotment to field offices, the officials were to look to the office of allotment for promotion/confirmation etc. and the question of their repatriation did not arise. It is not denied that the officials from various field offices were taken on deputation basis to CAG's office but it is averred that such officials were not given deputation duty allowance; instead they were given special pay in lieu of higher scales of pay in CAG's Office. It is admitted that some staff of A.G.C.R's Office had filed a writ petition in the Delhi High Court in 1973 against the re-organisation Scheme of 1961 which was withdrawn as a result of out of court-settlement. This settlement was made only with a view to neutralise the promotional prospects of the staff of the allotted offices as a result of allotment of the officials of CAG's Office. This settlement, however, did not affect the status of the officials already allotted. It is admitted that in February, 1973, the applicant went on deputation to the Institute of Secretariat.

Training and Management, Delhi against the post of A.O., while working in the A.G.C.W.& M office and he was informed by the CAG's office that after conclusion of the deputation, he should report back to that office. In accordance with the settlement, the allottee officials were to be withdrawn from field offices in a phased manner. The applicant's repatriation to CAG's office depended upon the availability of vacancies and his suitability for a particular post. Since he had never worked in the CAG's Office as Asstt. Superintendent, the certificate prayed for by him regarding continue officiation in the CAG's Office could not be granted. It was granted only in those cases who had actually worked as Asstt. Superintendent in CAG's Office.

5. The respondents further clarified that in the case of allottee Section Officers who were originally members of the Office of CAG the special pay drawn by them was not special pay drawn in an ex-cadre post and when they got promotion in their allotted offices, their pay as Audit Officer was to be fixed with reference to the pay drawn in the office of CAG which included the special pay and the benefit was given with retrospective effect. No discrimination was caused as alleged by the applicant, because the benefit of special pay could accrue only if the official actually works against such post as carries special pay. Certain officials, mentioned by the applicant in O.A., got the benefit of special pay because they actually worked in CAG's office and were in receipt of special pay before promotion or proceeding on deputation from the CAG's office. However, in case of the applicant, this benefit of special pay could not be given as he had not worked in the office of CAG for a single day as

Assistant Superintendent and was not drawing special pay at the time of promotion as A.O. in the allotted office. He was not allowed the benefit of pay drawn by him while on deputation to the Institute of Secretariat Training and Management, at the time of his promotion in 1978 in the allotted office, because the post held by him on deputation was an ex-cadre post. Protection of special pay drawn in the ex-cadre post of the office of CAG had been allowed in the cases of deputationist Section Officers, on their promotion as Accounts Officers in their parent offices. This was done in accordance with the rules then applicable. In April, 1972, the Government issued clarification that special pay drawn in an ex-cadre post was not to be taken into account while fixing pay in a cadre post, and accordingly in the case of promotion of Administrative Officers to IA & AS, such a promotion was not considered from an ex-cadre post and hence the clarification issued by the Government in April, 1972 was not held to be applicable in such cases.

6. Lastly, it is averred that when a suitable post was found to be available in the CAG's Office, the applicant was repatriated in December, 1983.

7. We have heard Shri R.K. Sethi-applicant in person learned counsel Shri S.C. Mittal, appeared for the respondents.

8. The first ground taken by Shri Mittal is that of limitation. He has pointed out that the relief prayed for by the applicant is ^{as} date back to 1964 and is, therefore, ~~now~~ ^{already} time barred. He has also pointed out that the applicant was not entitled to special pay while he was posted outside of CAG's Office from 1964 to 1983 and the special pay was

granted to him, immediately he was posted in CAG's Office in December, 1983. Hence there was no merit in this ⁱⁿ ~~in~~ ~~04~~

9. On the point of limitation, the applicant has rebutted Shri Mittal's contention and has argued that the Bench of this Tribunal had already condoned the delay in filing this application and this application would not be hit by limitation. In this connection, he has cited certain rulings in support of his contention that the plea of limitation cannot be raised at this stage. These rulings are:-

- i) M/s J.K.Pritam Singh & others Vs. State of Punjab (1967 (I)SLR 251), wherein it was held that the question of delay or latches does not arise when the order was held violative of Article 16 of the Constitution.
- ii) AIR 1968 Punjab 58, wherein it was held that it is only when a decision is conveyed against a Government servant that he can go to the court. Similar view was held by the Hon'ble Supreme Court in AIR 1960SC 335.
- iii) SLR 1980-3(293) 'Mela Singh Clerk Vs. Union of India' wherein the Punjab and Haryana High Court held that limitation starts from the date of cause of action and in this particular case from the date when the appeal to the department was finally turned down.
- iv) In 1971 (1) SLR 801, wherein Mysoor High Court held that in case of a void order, the suit is not barred by limitation.
- v) 1967(1)SLR 228 SC 'State of Madhya Pradesh vs. Syed Qumar Ali' wherein it was held that a suit for recovery of pay filed

after seven years after dismissal which was held void and the court held that the suit was not barred by limitation..

vi) 1967(1)SLR 927 'Resham Singh Clerk Vs. State of Punjab & Haryana' wherein the Punjab High Court held that a writ was filed after order of transfer from the Head Office, the same was not barred by limitation.

vii) 1978(1)SLR 722, wherein the Gujarat High Court held that there was no limitation against a void order.

viii) 1980(2)SLR 616 'Amrik Singh Vs. State of Punjab, wherein the Punjab & Haryana High Court held that no limitation for recovery of pay consequent to an order of removal in violation of police rules, which was held void, will be hit by limitation.

ix) 1968-SLR 221 'Balbir Singh Vs. Union of India, wherein the Punjab & Haryana High Court held that a belated petition cannot be dismissed on the ground of latches if there was merit in the case.

x) 1979(1)SLR 757 SC 'Madras Port Trust Vs. Himanshu International, wherein the Supreme Court held that a plea of limitation should not originally be taken by Govt. or public authority so as to defeat the just claim of a citizen.

10. In our view, the question is not so much of limitation as want of jurisdiction, in 'V.K.Mehra Vs. Secretary, Information & Broadcasting'

AIR 1986(1) CAT 203, it has been held that the Administrative Tribunals Act does not vest any power or authority in CAT to take cognizance of a grievance arising out of an order prior to 1.11.82 i.e. three years prior to the inception of Tribunal. Where jurisdiction itself is wanting, the fact that the delay in filing the application was condoned, will not vest jurisdiction in the tribunal and the various rulings relief upon by the applicant will not help him either.

Officer while working in the allotted office. He remained on deputation till February, 1978 and was informed by the CAG's Office that after conclusion of deputation, he should report back to the AGCW & M Office from where he had proceeded to deputation. On his return from deputation, his turn for promotion as Audit Officer came immediately in the allotted office and ^{he} was promoted as such in that office. Thereafter, the applicant was considered time and again for posting in the CAG's Office but it was not found administratively expedient to accommodate him. Since he had never worked in the CAG's Office as Asstt. Superintendent, the certificate sought for by the applicant could not be given to him and he was informed accordingly on 22.11.79. Ultimately, he was inducted in CAG's Office in December, 1983 and was given special pay admissible to ^{his} post with immediate effect.

12. Under the circumstances, both on grounds of want of jurisdiction as well as on merits, we find ourselves compelled to dismiss this application.

13. There will be no order as to costs.

Arif Ali
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J. P. SHARMA)
VICE CHAIRMAN (J)

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