

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 71/ 1986
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DATE OF DECISION 28.8.1986.

Shri Ashwini Kumar Saxena Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent


Shri N. S. Mehta Advocate for the Respondent(s)

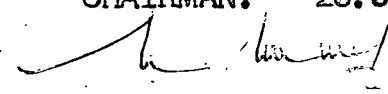
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether to be circulated to other Benches ? Yes.


(K. Madhava Reddy)
CHAIRMAN. 28.8.86.


(Kaushal Kumar)
MEMBER. 28.8.86.

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PRINCIPAL BENCH, DELHI.

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Shri N.S. Mehta Advocate for the
respondents.

CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

(Judgment of the Bench delivered by the
Hon'ble Member, Mr. Kaushal Kumar.)

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant seeks correct fixation of his pay in the scale of Rs.1100-1600 with effect from 13.2.1984 (A.N.), the date on which he was promoted as Deputy Controller of Accounts in the said scale and posted as Assistant Financial Controller in the Department of Civil Aviation, as also arrears of pay and settlement of retirement benefits based on revised fixation, as claimed by him.

2. The applicant was appointed as Accounts Officer in the office of the Controller of Accounts, Ministry of Commerce, on 23.7.1976 on transfer from the office of the Director of Audit, Posts and Telegraphs, consequent on the Departmentalisation of Accounts. Subsequently he was drafted to serve in the office of the Controller General of Accounts on 21.7.1977 as Accounts Officer in the scale of Rs.840-1200. He served in the said post from July 1977 to February 1984. On 13.2.1984, the date on which he was transferred on promotion, his basic pay as Accounts Officer was

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Rs.1200 and he was also drawing in addition Headquarters Special Pay of Rs.150 per mensem and a stagnation increment of Rs.40 p.m. He had been drawing the Special Pay of Rs.150 for a continuous period exceeding three years. On promotion to the post of Deputy Controller of Accounts in the scale of Rs.1100-1600, the pay of the applicant was fixed at Rs.1250 p.m. under F.R. 22-C. It is the claim of the applicant that on promotion to the grade of Rs.1100-50-1600, his pay should have been fixed after taking into account the Headquarters Special Pay of Rs.150 per month under the provisions of the Government of India, Ministry of Finance, Office Memo No.6(1)-E.III/B/165^{F.} dated 25.2.1965, which is inserted as Government of India Order No.13 under F.R. 22-C in Swamy's Compilation of F.R. & S.R. (Part I - General Rules). According to the petitioner, since he was drawing a Special Pay of Rs.150 p.m. and a stagnation increment of Rs.40 p.m., his pay in the scale of Rs.1100-1600 with effect from the date of his promotion should have been fixed at Rs.1400 p.m. and further he was also entitled to draw annual increment raising his pay from Rs.1400 p.m. to Rs.1450 p.m. from 14.2.85. The applicant has since retired on superannuation on 31.1.1986. During the course of oral submissions at the time of hearing, the applicant contended that in the alternative, his Special Pay and stagnation increment should be protected on promotion by way of 'personal pay' in terms of the Government of India, Ministry of Finance O.M. No.8(113)-E.III/62, dated the 29th July, 1963, inserted as Government of India's decision No.2(a) under F.R. 9(23) in Swamy's Compilation of F.R. & S.R. (Part I - General Rules).

3. Shri N. S. Mehta, learned Standing Counsel appearing on behalf of the respondents pleaded that the pay of the applicant on promotion as Deputy Controller of Accounts,

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had been correctly fixed at Rs.1250 p.m. in the senior time-scale of Rs.1100-1600 under F.R. 22-C. Shri Mehta pointed out that the applicant did not fulfil the conditions required for protection of Special Pay for the purpose of fixation of pay on promotion as envisaged in the Ministry of Finance O.M. dated 25.2.1965, referred to above, since the Headquarters Special Pay of Rs.150 p.m. attached to the post of Accounts Officer was not in lieu of any separate higher scale. Shri Mehta also pointed out that the proposal of the Controller General of Accounts for allowing the Accounts Officers to count Special Pay drawn in the Headquarters Organisation as part of basic pay for purposes of fixation of pay on promotion in the senior time-scale, if the said Special Pay had been drawn continuously for a minimum period of three years preceding the date of promotion, had not been accepted by the Ministry of Finance, Government of India.

4. For a proper appreciation of the contentions made in this case, it is necessary to refer to the provisions of Government of India, Ministry of Finance O.M. dated 25.2.1965 in regard to treatment of Special Pay for purposes of fixation of pay on promotion. The relevant provision is reproduced below: -

" In cases where a Government servant is in receipt of a special pay in a post, his pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post subject to the conditions mentioned below: -

- (i) The special pay in the lower post should have been granted in lieu of separate higher scale (e.g., special pay granted to steno-typist, clerk-in-charge, etc.)
- (ii) If the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post

will be fixed, under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time-scale of the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay); where this results in drop in emoluments the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;

(iii) In both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post."

5. In the present case, whereas the applicant fulfils the condition regarding drawal of special pay for a minimum period of three years as on the date of his promotion, there is a clear denial and rebuttal of the contention that the special pay was granted in lieu of any higher scale. It has been stated in the counter-affidavit filed on behalf of the respondents that the drawal of the stagnation increment of Rs.40 would itself show that the Headquarters Special Pay attached to the post of Accounts Officers in the Controller General of Accounts Organisation was not in lieu of higher pay scale. It has further been stated in the counter that the Government had not declared that the special pays attached to various posts in the Controller General of Accounts Organisation were in lieu of higher pay scales. It has also been pointed out that ever since the inception of the organisation of the Controller General of Accounts, officials who had gone out of this organisation on promotion to higher posts, after having drawn special pay for the

periods of their service in the said office had not been given the benefit of special pay while fixing their pay in the pay scales of promotion posts, and that right from the beginning the Headquarters special pays attached to various posts had not been held by the sanctioning authority to be in lieu of higher pay scales. It has been pointed out by the applicant in his rejoinder that in the parallel organisation of Comptroller & Auditor General of India, the Headquarters special pay of Rs.150 per month sanctioned to the Accounts Officers drafted from field offices to work in the Headquarters had been declared to be in lieu of a higher pay scale and that the Ministry of Finance cannot have different yardsticks for the personnel of two parallel organisations.

6. We have carefully considered the contentions made from both sides and find that it would not be possible to extend the benefits of the provisions of the Ministry of Finance O.M. dated 25.2.1965 to the applicant since the special pay of Rs.150/- p.m. had not been granted in lieu of any higher pay scale. The petitioner can rest his claim only on the basis of a rule or executive instructions issued by the Government and not on the analogy of a practice in a parallel organisation.

7. The conditions for protection of special pay on promotion to a higher post by way of 'personal pay', however, would appear not only to be satisfied in terms of the Ministry of Finance O.M. No.8(113)-E.III/62, dated the 29th July, 1963, quoted as Government of India's decision No.2(a) under F.R. 9(23), but it also finds support in actual fixation done and approved by the Government in a case having identical parameters.

8. The conditions prescribed for protection of special pay on promotion "by way of personal pay" are:

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- (i) It must be certified that but for his appointment to the other post the Government servant would have continued to draw special pay.
- (ii) The protection will only be for so long as the Government servant could have continued to draw the special pay.
- (iii) The personal pay will be absorbed in subsequent increases of pay.

In so far as the first condition is concerned, this would appear to be satisfied in the light of the assertion made in the last para of the proposal made by the Controller General of Accounts to the Ministry of Finance for allowing special pay to be counted as part of basic pay for purposes of fixation of pay in the senior time-scale in terms of the Ministry of Finance O.M. dated 25.2.65. The last para of CGA U.O. No.A-19014/1/80/PF/95/CGA/Admn./1343, dated 14.11.85 is reproduced below: -

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"If, however, it is not considered appropriate to treat the special pay as part of basic pay for pay fixation in Senior Time Scale, Establishment Division may at least kindly agree to protect the drop in emoluments by grant of Personal Pay. In these cases, it is possible for this organisation to certify that, but for their promotion to Senior Time Scale under Proviso to Rule 20(1)(ii), the officers would have been allowed to continue in this office in the interest of work. In such circumstances, it appears to be only just and proper that the officers are not allowed to suffer drop in emoluments (and drop in pensionary benefits) due to their promotion to Senior Time Scale, on merit basis.

Sd/- K. GANESAN
DY. CONTROLLER GENERAL OF ACCOUNTS

Min. of Fin., Deptt. of Expenditure, Estt. III (Shri S.C. Mahalik, JS(Per
C.G.A. U.O. No.A-19014/1/80/PF/95/CGA/Admn./1343 dt. 14.11.85,

Thus, it is obvious that the Controller General of Accounts was in a position to certify that but for his promotion to

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the higher post, the applicant would have continued to draw special pay.

9. Fixation of pay in another case having identical parameters has been brought to our notice; an extract therefrom is reproduced below: -

" PRINCIPAL ACCOUNTS OFFICE
MINISTRY OF HOME AFFAIRS
NORTH BLOCK NEW DELHI-1.

Subject: - Protection of stagnation increment.

Under normal rules the ad-hoc increment granted to Group 'B', 'C' and 'D' employees stagnating at the maximum of their pay scales is not to be taken into account for the purpose of fixation of pay on promotion to higher post.

2. An officer at the time of his promotion to a higher post was drawing as under: -

Basic Pay	: Rs. 1200/-
Personal Pay granted on account of stagnation	: Rs. 40/-
Special Pay	: <u>Rs. 150/-</u>
Total	: <u>Rs. 1390/-</u>

3. His pay in the higher post was fixed as under:

Basic Pay under FR 22-C	: Rs. 1250/-
Personal Pay absorbable in future increment protecting the special pay	: <u>Rs. 100/-</u>
Total	: <u>Rs. 1350/-</u>

4. The officer has, however, represented that the personal pay which he was drawing in the lower post on account of stagnation at the maximum of scale could also be protected in terms of clarification issued at point No. I in the Ministry of Finance OM No. 7(22)/E.III/76 dated 22.10.83 which provides that if pay fixed in the higher post under normal rules happens to be less than the pay plus stagnation increment in the lower post, the difference may be allowed as personal pay to be absorbed in future increases in pay. Accordingly, he is asking for fixation of pay as under: -

Basic Pay	Rs. 1250/-
Personal Pay absorb- able in future increments	<u>Rs. 140/-</u>
Total	<u>Rs. 1390/-</u>

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5. As the matter is not free from doubt the case is referred to the DP&AR for advice.

This issues with the approval of CCA (Home).

Sd/- M.L. Budhwar
Dy. C.A.

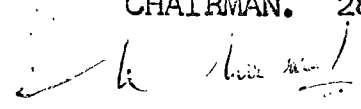
US/DP&AR, Pay Unit, New Delhi
PR. AO. MHA U.C.No.10-PF/NLV/PR AO/MHA/85/985 dt.2.5.85."

The fixation of pay at Rs.1390 with break-up of Rs.1250 as basic pay and Rs.140 as personal pay absorbable in future increments was confirmed by the Department of Personnel & Training vide their U.O. No.1225-Estt(Pay.II)/85 dated 25.7.85.

10. In view of the above position, the petition is partly allowed with the direction that the pay of the applicant with effect from the date of his promotion to the grade of Rs.1100-1600 i.e., 13.2.84 (A.N.) shall be fixed at Rs.1250 p.m. (basic pay) and Rs.140 p.m. as personal pay to be absorbed in future increments. His pay as from 14.2.85, the date of next increment, will be fixed at Rs.1300 p.m. (basic pay) and Rs.90 p.m. as personal pay. The applicant shall be paid arrears of pay and allowances on the basis of the above fixation for the period from 14.2.84 to 31.1.1986, the date of his retirement from service on superannuation and he will also be entitled to pensionary benefits based on the said fixation.

11. In the circumstances of the case, there shall be no order as to costs.


(K. Madhava Reddy)
CHAIRMAN. 28.8.86.


(Kaushal Kumar)
MEMBER. 28.8.86.