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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 828

1986.

T.A. No.

DATE OF DECISION 30.7.1987

Shri K.L.Makin **Petitioner**

Applicant in person **Advocate for the Petitioner(s)**

Versus

Ministry of Defence **Respondent**

Shri P.H.Ramchandani **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial 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*

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA.A. No.828/86

DATE OF DECISION : 30.7.87

Shri K.L.Makin . . . Applicant

Vs.

Ministry of Defence . . . Respondents

For Applicant . . . Applicant in person

For Respondents . . . Shri P.H.Ramchandani,
Advocate.

Coram

The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

(Judgment delivered by Hon'ble Mr. S. P. Mukerji,
Administrative Member)

ORDER

The applicant who is a retired Assistant Controller of Defence Accounts (ACDA) has moved this application dated 29.9.1986 under Section 19 of the Administrative Tribunals Act, 1985 praying that the charge allowance should be paid to him with effect from 27.9.1984 when he completed three years of service as Group Officer and his pension and retirement benefits be revised accordingly.

2. The brief facts of the case can be recounted as follows. The applicant while working as Accounts Officer in the Class I grade in the Defence Accounts was promoted on 28.9.1981 on an ad-hoc basis as

ACDA in the junior scale Class I of the Indian Defence Accounts Service (IDAS) in the scale of Rs.700-1300 for a period of six months. He was transferred on promotion to Dehradun as ACDA. His ad-hoc promotion was extended from time to time without any break till he retired on 30.6.1985. His grievance is that from the date he ~~has~~ assumed the charge as ACDA he was appointed as Group Officer the duties of which are normally performed by a (Deputy Controller of Defence Accounts) DCDA in the senior scale of Rs.1100-1800. When he was paid the basic pay scale of Rs.700-1300 which is the junior scale of IDAS he was not paid the Charge-Allowance of Rs.150 per month which is admissible to all ACDAs who complete three years of service as Group Officers. This denial of Charge Allowance has resulted in loss in his emoluments and a recurring loss in the fixation of his pension and retirement benefits. He claims that on the basis of the nature of duties performed by him, Charge-Allowance from the date he completed three years of service as Group Officer i.e, from 27.9.84 should be allowed to him. In accordance with the respondents ~~that~~ 80% of the Group II posts in the IDAS are filled by direct recruitment and 20% by promotion on the recommendations of the DPC. The applicant was not entitled to the regular appointment of the IDAS because of his over-age and therefore he was appointed on an ad-hoc basis. However, it was decided to relax the age limit for such officers and the applicant was considered by the

OPC in Jan'85 for regular promotion and was appointed on a regular basis w.e.f. 28.1.1985. He thus, became ^a regular member of the IDAS w.e.f. 28.1.1985 and his ad-hoc service prior to that date cannot be taken into account for the purposes of reckoning three years of ^{qualifying} service in the junior timescale for the grant of Rs.150 per month as Charge-Allowance ^{or} as the special pay. They have admitted however, ^{that} on his ad-hoc promotion he was given the payscale of Rs.700-1300 which ^{is} the regular pay scale of the junior scale of the IDAS.

3. We have heard the arguments of the applicant in person and the learned counsel for the respondents and gone through the documents carefully. The main contention of the applicant is that having performed all the duties of a Group Officer which is equivalent to those of Deputy CDAs and having completed three years of service in the junior scale of the IDAS he is entitled to the same Charge-Allowance of Rs.150 as are admissible to the regular Members of the IDAS whether direct recruits or promotees. The learned counsel for respondents has argued strenuously that the charge-allowance of Rs.150 per month is not related to the duties and responsibilities which the Group Officers have to undergo but is given only to the regular members of the IDAS whether direct recruits or promotees who have completed three years of service in the junior scale of IDAS but could not be promoted to the senior

scale of IDAS as they have not completed three years of service in the junior scale. This was vehemently opposed by the applicant who argued that the charge allowance was given primarily for discharging the duties of a Group Officer which are generally discharged by the DCOA in the senior scale of the IDAS and since this 'charge-allowance' related to the higher duties and responsibilities discharged by the direct recruits or promotees while working in the junior scale of the IDAS. The charge-allowance/Special Pay of Rs.150/- is in lieu of the senior scale and cannot be denied to him merely because he was not a regular member of the IDAS and was an ad-hoc appointee, though as a matter of fact he was given regular pay in the junior scale of IDAS. In order to have a clear picture of the genesis of the charge-allowance/Special Pay we went through the departmental File No AN/1/1264/2/Vol.I (Part) which the learned counsel for the respondents was good enough to make available to us. The following picture emerged from the perusal of the ~~material~~ ⁱⁿ the file. In the Defence Accounts Department in 1979, ⁱⁿ the officers category other than those in the administrative grade there were posts of two categories (1) Section Charges and (b) Group Charges. Section Charges posts were manned by Accounts Officers and IDAS officers in the junior time scale. The Group Charges posts were required to be manned by the officers

in the senior scale of the IDAS. Such officers were those who had to put in atleast 4 years of service in the junior scale of the IDAS. It was indicated by the then Additional CGDA that while there had been no shortage of officers to man Section Charges, there was an acute and persistent shortage of Group Officers for various reasons. For better supervision and control of work the Officers' posts were being ~~Group/Charges~~ are manned by local arrangement by asking IDAS Officers in the junior scale having less than four years of service in that scale who were not eligible to be promoted to the senior scale, and also temporary ACDS, to look after the duties of the senior scale of the Group Charges posts. At that time "no charge allowance/Special pay was being given to them, even though they ^{were} ~~are~~ required to shoulder higher responsibilities and this created discontent amongst them. Some of them have even approached the Law Courts for redressal of their grievances." It was also indicated that at that time three types of officers were holding such charges of Group Officers, namely, direct recruit IDAS officers in the junior time scale with less than four years of service, permanent Accounts Officers directly promoted to the regular IDAS cadre and thirdly permanent Accounts Officers promoted as temporary ACDA in the junior scale. It was, therefore, recommended that such Group Officers in these cadres may be allowed special pay of Rs.150 per month. The matter continued to be under discussion with the Ministry of Finance and the Department of

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Personnel at Secretaries' level and then Personnel
Secretary raised a caveat that the shortage of
of senior scale officers to hold the Group charges
as a result of which local arrangements had to be made,
should be corrected by proper management of the
IDAS cadre and reducing the number of ^{senior scale} such officers
on deputation to ex-cadre posts. Finally as a
short-term measure the then Personnel Secretary
agreed to the system of charge-allowance but with
the condition that the charge allowance of Rs.150
would be given only to those who have completed
three years of service in the junior scale whether
direct recruits or promotees. The then Personnel
Secretary while agreeing to the proposal for one
year indicated that further continuance of the
scheme will have to be supported by evidence of
better cadre management. The scheme was extended
from time to time. During 1984-85 a case arose
of a Class II Accounts officer promoted to the
junior scale of the IDAS on an ad-hoc basis and
^{or without being promoted to the IDAS as a regular member. He}
given Group Charge. The question was whether
after completing three years of ad-hoc service
in the junior scale while holding Group Charge
he should be given the charge allowance of Rs.150
per month. It was finally decided that since the
officer had not become a Member of the IDAS the
charge allowance ^{was} is not admissible to him. The
same stand is being taken in the instant case
also.

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4. From the above it becomes crystal clear that the charge allowance of Rs.150 per month was allowed primarily for holding the superior charge of the Group Officers as a compensation for not being promoted to the senior scale of the IDAS, in which scale such posts are normally borne. Therefore, we cannot accept the contention of the learned counsel for respondents that ^{the charge allowance} it was being given only to the Members of the IDAS as a compensation for their non promotion to the senior scale after they have completed three years of service. The argument that if the charge allowance was given in relation to the onerous duties of the Group Officers ^{then it} which should have been given to ^{also not} those who had been completed three years of service in the junior scale but holding the charge of the Group Officers. Though the arguments seems plausible, the circumstances in which the charge allowance was agreed ^{upon, go} to show that this allowance was founded on the question of holding the higher charge of the Group Officers and the ^{three} year formula ^{as} seems to have been agreed upon during inter-departmental confabulation as a compromise to get the consensus of the departments concerned. The fact that the allowance is not admissible to those who have less than three years of service in the junior scale while holding the Group Charge cannot be ^a reasoned to deny it to those who have completed three years of such service, but ^{the latter} it should be a good reason to question

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its inadmissibility to those with less than three years of qualifying service. Since ~~that~~ nobody with less than three years qualifying service in the junior scale has raised this issue before us nor has the applicant claimed the allowance for the period before he completed three years of service, we do not wish to go into the question of admissibility of charge-allowance prior to completion of three years of service.

5. The paramount question that remains before us whether the applicant can be denied charge-allowance after he has completed three years of service in the junior scale while continuously holding group charge, merely because he was appointed to the junior scale on an ad-hoc basis. We feel that the denial of charge allowance to the applicant is fundamentally illegal, discriminatory and unconstitutional. Having been promoted to the junior scale of the IDAS and given its regular payscale of Rs.700-1300 and having been assigned Group Charge right from the beginning of such promotion, it will be highly discriminatory to deny him the charge-allowance merely because he ~~is~~ not a member of the IDAS. Having gone through the various papers ^{and} files ^{as} ~~are~~ discussed above, we are fully convinced that the charge-allowance is an allowance or special pay given for discharging higher duties of Group Officer normally in the senior scale of the IDAS and is not ^a titular monetary appendage to be bestowed on the members of the IDAS.

6. It has been held by the Supreme Court in Dhirendra Chamoli and another vs. State of U.P.

ATR 1986 SC 172 that even casual employees who admittedly performed the same duties as Class IV employees must get the same salary and conditions of service as Class IV employees and that it makes no difference whether they were appointed in sanctioned post or not. In still another case (Surinder Singh and another Vs. Engineer-in-Chief, CPWD and Others) ATR 1986(1) SC 76, the Supreme Court observed that the principle of equal pay for equal work is implicit in Article 14 of the Constitution of India and the Central Government like all organs of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. In Randhir Singh Vs. Union of India SCR 1982(3) 298 the same Court had an occasion to explain the observation in Kishori Mohandas Bakshi Vs. Union of India AIR 1962 SC 1139 and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. That Court pointed out "that the decision in Randhir Singh's case has been followed in any number of cases by this Court and has been affirmed by the Constitution Bench of this Court in D.S. Nakara Vs. Union of India 1983(2) SCR 195. The Central Government, State Government and all public sector undertakings are expected to function like model and enlightened employers. The arguments such as this which was advanced

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before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouth of the State and State undertakings."

6. Accordingly, by the principle of equal pay for equal work which has been so emphatically propounded by the Supreme Court in the aforesaid cases, the applicant is entitled to the charge allowance/special pay as is available to the members of the IDAS so long as he discharges the identical duties and responsibilities of a Group officer like the IDAS officers either promotee or direct recruit who have completed three years of service in the junior scale of the IDAS. Otherwise also, having allowed him the regular junior pay scale of the IDAS, the respondents cannot deny him the additional special pay for discharging the duties of Group Officers. It may also be noted that the applicant was promoted to the junior scale of the IDAS in a regular capacity with effect from Jan. 1985 by relaxation of age limit rules and could have as well been regularised from an earlier date if the decision of age relaxation had been taken earlier. There was, thus, nothing egregious in ^{his} ad-hoc promotion in the junior scale of the IDAS. The ad-hoc character of the promotion being related only to ^{to} ~~related~~ the question of age limit.

7. In the conspectus of the facts and circumstances discussed above, we allow the

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application and direct that the applicant should be paid charge-allowance w.e.f. 28.9.84 when he completed three years of service in the junior scale with all consequential benefits of payment of arrears, re-fixation of his pension and other retirement benefits in accordance with relevant rules. The orders regarding payment of arrears and re-fixation of his pension and retirement benefits should be passed within four months of the communication of this order. The application is disposed of on the above lines. There will be no orders as to costs.

Ch. Ramakrishna Rao

(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji

30.9.87

(S.P. Mukerji)
Administrative Member