

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

Date of Decision: 4-9-82

OA 866/86

D.S. KAPUR

... APPLICANT.

Versus

UNION OF INDIA

... RESPONDENT.

CORAM:

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

For the Applicant

... SHRI R.P. OBEROI.

For the Respondents

... SHRI M.L. VERMA.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

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

The applicant is Office Supdt. Grade-I, Directorate General, Defence Estates, Ministry of Defence, New Delhi, has assailed the orders dated 28.3.85 and 7.5.86. The applicant was disallowed the claim of pay and allowances thereon for the period 11.3.74 to 31.3.77, as recommended by the 3rd Pay Commission.

2. The applicant has claimed the relief that the respondents be directed to pay to the applicant the pay with deputation allowance for the duties performed by him

during the period from 11.3.74 to 31.3.77 alongwith 6% interest.

3. The facts of the case are that the applicant was working as Office Supdt. and was transferred to the Military Lands and Cantonments Directorate and taken on the roll of the Chief Administrative Officer, Ministry of Defence w.e.f. 11.3.74. The applicant worked against one of the four posts of Office Supdts. carrying the pay scale of Rs.550-750. These above 4 posts of Office Supdts. were upgraded to that of the post of Assistant Civilian Staff Officers carrying the pay scale of Rs.650-1200. The applicant also worked against one of these four upgraded posts from 1.4.77 to 31.3.81.

4. Before the appointment of 3rd Central Pay Commission the Clerical Supervisors designated as ACSOs working in AFHQ and Inter Service Organisations were getting the pay scale of Rs.650-1200. Clerical Supervisors designated as Office Supdts. working in subordinate offices under the Ministry of Defence were getting the pay scale of Rs.210-475 Class-III non-Gazetted. Similar pay Scale was admissible to Clerical Supervisors brought from subordinate offices under the Ministry of Defence to work in AFHQ and Inter Service Organisations.

5. The 3rd Central Pay Commission rejected the demand for parity in the pay scales of Office Supdts. and ACSOs. But at the same time distinguished those Office Supdts.

of subordinate offices under the Ministry of Defence who are transferred to work in AFHQ by recommending that they should be treated as on deputation and their pay be regulated accordingly. The applicants claim is for the pay and allowances for the duties performed by him during the period from 11.3.74 to 31.3.77. The respondents rejected the claim of the applicant on the ground that there were no orders prior to 1.4.77 so the question of granting of deputation allowance retrospectively from 11.3.74 does not arise. Under the normal rule ^a deputation is can get deputation allowance only for four years. Since the applicant has been paid from 1.4.77 to 31.3.81 so he cannot claim the same for the period from 11.3.74 to 31.3.77 also. The contention of the learned counsel for the applicant is that the orders dated 1.11.73 are to the effect that Commission's recommendations relating to pay shall be made effective from 1.1.73.

6. In the case of Office Supdts. working in the subordinate offices 20% of the Office Supdts. in the higher pay scale of Rs.550-750 were given w.e.f. 1.1.73 and the period of deputation of four years from 1.4.74 to 31.3.81 is not to be added to the earlier period from 11.3.74 to 31.3.77. During the period from 1.4.77 to 31.3.81 the applicant worked against the upgraded post of Assistant Civilian Staff Officer. This has to be treated as an appointment to a new post on a fresh deputation for the

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purpose of regulating deputation allowance in accordance with the clarificatory instruction No.XI issued vide Ministry of Finance O.M. No.F-10(24)-E-III(B)/60, dated 10.8.72. Thus, according to the learned counsel for the applicant for the purpose of applying of maximum period of four years deputation the period from 11.3.74 to 31.3.77 and from 1.4.77 to 31.3.81 are to be treated separately. It is further contended that from March, 74 to March, 77 the applicant worked against lower post of Office Supdt. whereas from April, 77 to March, 81 the applicant worked against the upgraded post of ACSO. Both these period, therefore, cannot be clubbed together. The applicant made representation but the same was rejected hence the present application for the relief stated above.

7. The respondents contested the application and it is stated in the reply that the posts of ACSOs were created w.e.f. 31.3.77 and the applicant was held against the post of ACSO and paid deputation allowance. The deputation allowance cannot be paid for more than four years in terms of para 9.1 and 9.2 of the OM No.F.1(1)/E.III(B)/75 dated 7.11.75. The OM of Ministry of Finance dated 10.8.72 referred to by the applicant also states the same facts that the deputation allowance has to be restricted for a period of 3/4 years. Further, a person who is working in a lower post and is promoted to a higher post the deputation period cannot exceed the total permissible

period. In fact, if the applicant is granted deputation allowance from 11.3.74 for a period of four years, he will receive a lesser amount as compared to what he received from 1.4.77 to 31.3.81. Thus, according to the respondents the applicant is not entitled to any deputation allowance for the period from March, 1973 to March, 1977. Para 9.1 and 9.2 of the OM dated 7.11.75 are quoted below :-

"9.1 The period of deputation shall be subject to a maximum of 3 years in all cases except for those posts where a longer period of tenure prescribed.

9.2 Administrative Ministries may grant extension beyond this limit upto one year, after obtainin orders of their Secretary, in cases where such extension if considered necessary in public interest, Extension beyond this period would be with the specific approval of the Ministry of Finance. No deputation allowance will be allowed for such extension, if agreed to by the Minister of Finance."

Even OM dated 10.8.72 provides/^{that} the deputation allowance will be 20% but the grant of deputation allowance will be restricted to a maximum period of 3/4 years from the initial date of deputation. The main contention of the learned for the applicant is that the posts of ACSOs were not created w.e.f. 31.3.77. In fact, the letter dated 25.8.75 of the Directorate General, Defence Estates, includes 3 posts of ACSOs and 4 posts of Office Supdts. These 4 posts of Office Supdts. were upgraded to that of ACSO by the Ministry of Defence Corrigendum dated 31.3.77. The applicant has worked against one of the four posts of Office Supdts. from 11.3.74 to 31.3.77 and since these posts having been upgraded against one of the upgraded posts of ACSO the

applicant worked from 1.4.77 to 31.3.81. The learned counsel for the applicant relied on the extract of the Ministry of Finance OM dated 10.8.72 where in the clarification it is stated that grant of proforma promotion in the parent cadre of the deputationist or simple revision of the scale of pay of the deputationist post shall not affect the entitlement to the deputation allowance at the higher rate upto the maximum prescribed limit in the period of deputation. But the post held by deputationist is upgraded, this should be considered as an appointment to a new post on fresh deputation for the purpose of regulating deputation allowance in terms of orders of 22.1.70. However, clause 5 of the said clarification clearly lays down that the grant of deputation allowance will be restricted from the maximum period of 3/4 years from the initial date of deputation. This clarification of 1972 does not help the applicant's case at all. The contention of the learned counsel for the applicant is that both period should be taken separately i.e. one from 11.3.74 to 31.3.77 and the other from 1.4.77 to 31.3.81 and none of the two period exceeds 4 years. There is no claim for deputation for more than 4 years in either of the two deputations. The contention of the learned counsel cannot be accepted as the extract from Ministry of Finance OM dated 10.8.72 relied by the respondents only deal with the admissibility of rate of deputation allowance in the circumstances different than those of the instant case.

8. Much reliance has placed by the respondents on the recommendations of the 3rd Central Pay Commission. It is admitted by the learned counsel for the applicant that the Central Pay Commission rejected the demand for parity in the pay scale of Office Supdts. and ACSOs. Regarding induction of Office Supdts. from the subordinate offices to AFHQ the Commission, of course, recommended that the present practice will be continued despite the formation of the AFHQ and that posting to AFHQ does involve assumption of higher responsibility of doing different type of work and such a posting should be treated as on deputation and pay regulated accordingly. The case of the applicant is that he has worked against one of the four posts of Office Supdts. till 19.3.77. There is Commission's recommendation that such posting should be treated on deputation and pay regulated accordingly and since the applicant had already been paid deputation allowance for the period from 1.4.77 to 31.3.81 there is sound basis for his claim for the deputation allowance for an earlier period from 11.3.74 to 31.3.77. In fact, the applicant has been paid for the period from 1.4.77 to 31.3.81 the benefit of the upgraded post and the respondents have also paid him the deputation allowance for that period when the applicant worked on deputation on the post of Office Supdt. in the pay scale of Rs.550-750 and this post was included in 4 posts mentioned by the Directorate General for

which the 3rd Central Pay Commission recommended the payment of the deputation allowance. It is a fact that applicant has worked outside the normal field of deployment in the public interest. It is also correct that the 3rd Pay Commission's recommendation has been accepted by the Govt. for payment of the specific pay to such incumbents working on the post of Office Supdts. The applicant has worked on this post w.e.f. 11.3.74 i.e. after the recommendation of the 3rd Pay Commission was accepted by the Govt. The office of Directorate General DL&C (an Inter Service Organisation) had become the office of deputation to the effect from the acceptance of the recommendation by the Govt. of the Central 3rd Pay Commission's report. The applicant on transfer from Agra to Directorate General, DL&C was taken on the strength of CAO, Ministry of Defence against the post of Office Supdt. Thus, claim of the applicant for the deputation allowance for the period from 11.3.74 to 31.3.77 is justified and the respondents cannot deny the same on the pretext that the applicant was paid deputation allowance for a subsequent period i.e. from 1.4.77 to 31.3.81 when the applicant worked on the upgraded post of AGSO.

9. It was for the respondents to see that the period of the deputation does not exceed the prescribed period as mentioned in the OM dated 10.8.72 as well as dated 7.11.75. If the applicant had already worked and he has been paid deputation allowance for the later period he cannot be denied the benefit for an earlier period and there cannot be any set-off in such a case.

10. Regarding the plea of limitation taken by the respondents, the applicant was informed on 7.5.86 and the present petition has been filed in 1986 only. Thus, the application cannot be said to be beyond the period of limitation. The respondents did not reject the representation of the applicant on the ground of stale claim was preferred but they have applied their mind and disposed of the representation with remark that the request cannot be acceded to but exceeded to without giving any reason.

11. In view of the above facts, the application is allowed and the respondents are directed to pay to the applicant the deputation allowance for the duties performed by him during the period from 11.3.74 to 31.3.77 and he may be paid the arrears of pay but in the circumstances of the case the

the applicant is not allowed any interest on this amount nor cost of the application.

12. The respondents to comply with the above directions within a period of three months from the date of receipt of a copy of this order.

In the circumstances, parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)