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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. O.A. 378/ 1987
T.A. No.

DATE OF DECISION 31.8.1987.

Shri R.K. Bhasin **Petitioner**

Shri Umesh Mishra and Shri R.R. Rai **Advocates for the Petitioner(s)**

Versus

Union of India & others **Respondent**

Shri P.P. Khurana **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member.

~~The Hon'ble Mr.~~

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 their Benches ? *No*

Kaushal Kumar
(KAUSHAL KUMAR)
MEMBER
31.8.1987.

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 378/87. DATE OF DECISION: 31.8.1987.

Shri R.K. Bhasin Applicant.

V/s.

Union of India & others Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

For the applicant Shri Umesh Mishra,
Counsel with Shri
R.R. Rai, Counsel.

For the respondents Shri P.P. Khurana,
Counsel.

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

JUDGMENT

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant who was initially appointed as a Comptomist in the year 1964 in the scale of Rs.110 - 180 plus Rs.15 per month as Special Pay in the Ministry of Defence, has questioned the order dated 19.1.1987 whereby his basic pay in the old pre-revised scale of Technical Assistant viz., Rs.425 - 800 was shown as Rs.530/- p.m. instead of Rs.580/- p.m. with effect from 1.5.85 as fixed earlier by the order dated 25.2.1986 issued by the Respondents (Annexure 'A' to the application). The relief claimed in the application is for a direction to the respondents not to reduce the pay of the applicant as earlier fixed by the order dated 25.2.1986 and not to make any recovery from payments already made on the basis of the said fixation order.

2. The short point for determination in this case is whether the Special Pay granted to the applicant as a Comptomist was in lieu of a higher scale of pay or not and as such whether the same has to be taken into account or not for the purpose of fixing his pay under F.R. 22-C in the

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higher grade of Technical Clerk (U.D.) on promotion. The Civilians in Defence Services (Revised Pay) Rules, 1960 framed under the proviso to Article 309 of the Constitution prescribe the pay scales of Civilian posts in Defence Services whose pay is debitable to Defence Services Estimates and in the Schedule (Part A Section I) to the said Rules the revised scale of pay for the post of 'Comptomist' has been shown under column 4 as Rs. 110-180 plus Rs. 15 per month as Special Pay.

3. Fundamental Rule 22-C provides that where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. Decision No. (13) under Fundamental Rule 22-C envisages that "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

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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"

With regard to treatment of Special Pay for fixation of pay on promotion, Note 1 under Decision No.13 of the Fundamental Rule 22-C stipulates that the special pays shown in the Schedule to the Central Civil Services (Revised Pay) Rules, 1960 will be treated as in lieu of higher scale of pay. However, the special pay of Cashiers, Comptists and Machine Operators will not be treated as in lieu of a higher scale of pay even if such special pays are included in the schedules to the Central Civil Services (Revised Pay) Rules, 1960. In this context it may be mentioned that the applicant is an employee of the Ministry of Defence and as such is governed by the Civilian in Defence Services (Revised Pay) Rules, 1960. At the time of his promotion to the post of Technical Clerk (U.D.), the applicant was drawing a pay of Rs.122/- plus Rs.15/- as special pay totalling to Rs.137/-. Treating the special pay as part of the basic pay and after giving him one increment of Rs.4/- in the lower scale raising his pay to Rs.141, his pay was fixed at Rs.145/-, that is at the next stage available in the higher pay scale of Rs.130-280 for the post of Technical Clerk (U.D.).

4. The contention of the respondents is that this was done inadvertently since the post of Comptomist is excluded from the provision for treating the special pay attached to the said post as being in lieu of a higher scale of pay.

5. In so far as the officials governed by the Civilian in Defence Services (Revised Pay) Rules, 1960 are concerned, their cases are regulated by the Ministry of Defence Office Memorandum No.2(2)/65/D (Civ-I), dated the 31st August, 1968

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on the subject of treatment of special pay for the purpose of fixation of pay on promotion to a higher post. The said Office Memorandum is reproduced below: -

"Subject: - Treatment of special pay for the purpose of fixation of pay on promotion to a higher post.

The undersigned is directed to refer to this Ministry's OM No. 2(2)/65/3981 D (Civ-I), dated 22nd May, 1965 and to say that some doubts have been expressed regarding the criteria to be adopted to ascertain whether a special pay is in lieu of a separate higher scale of pay or not. It is clarified that the special pays shown in the schedules to the CDS (RP) Rules, 1960 will be treated as in lieu of higher scales of pay.

2. According to para 1(ii) of this Ministry's Office Memorandum dated 22nd May, 1965 referred to above, the special pay in lieu of a higher scale should have been drawn continuously for a minimum period of 3 years on the date of promotion for it to be treated as part of basic pay. It is clarified that where such special pay has been drawn for a minimum period of 3 years without break in more than one post within the same cadre or department, the total period will be taken into account. In cases where the quantum of special pay varies in different posts, the least of the special pays drawn in different posts should be taken into account for the purpose of fixation of pay in the higher post.

3. These orders will take effect from 8.1.68. Past cases decided otherwise than in accordance with these orders would not be reopened but outstanding cases may be dealt with in accordance with these orders.

4. This issues with the concurrence of the Ministry of Finance (Defence) vide their u.o. No. 317/PB of 1968.

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(Based on Ministry of Finance OM No.F.6(I)-E.III(B)/68 dated the 8th January, 1968)."

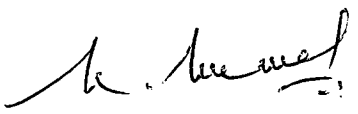
6. The learned counsel for the respondents contended that this Office Memorandum issued by the Ministry of Defence was based on the Ministry of Finance Office Memorandum No.F.6(I)-E.III(B)/68, dated 8.1.1968 which specifically provides that "the special pay of Cashiers, Comptists and Machine Operators will not, however, be treated as in lieu of a higher scale of pay even if such special pays are included in the Schedules to the C.C.S. (R.P.) Rules, 1960." He argued that in the Ministry of Defence Office Memorandum which did not strictly conform to the Office Memorandum of the Ministry of Finance dated 8.1.68, the omission of certain posts corresponding to those excluded from the ambit of Ministry of Finance Office Memorandum dated 8.1.86 was only through an inadvertence.

7. Be that as it may, the fact remains that the case of the applicant has to be governed by the Ministry of Defence Office Memorandum dated 31.8.68. The post of 'Comptist' referred to in the Central Civil Services (Revised Pay) Rules, 1960, which is excluded from the provision of treating the special pay attached thereto as being in lieu of a higher scale of pay as mentioned in Office Memorandum of Ministry of Finance dated 8.1.86 does not find a mention in the Civilians in Defence Services (Revised Pay) Rules, 1960. The post mentioned therein is that of 'Comptomist'. As such even an extension of the provisions of the Ministry of Finance Office Memorandum dated 8.1.1986 to employees of Defence Services would not cover the incumbent of the post of 'Comptomist'. The fact ^{also} remains that the Ministry of Defence Office Memorandum dated 31.8.68 does not provide

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for any posts having been excluded from its purview and on the other hand clearly lays down that the special pays shown in the Schedule to the C.D.S. (R.P.) Rules, 1960 will be treated as in lieu of higher scales of pay.

8. In view of the above discussion, the pay fixation already made by the order dated 25.2.86 is held to be in accordance with the rules and instructions issued ^{in existence} thereunder as/at the time when the order was made and the subsequent order dated 19.1.87 is held to be without any authority under law or rules. Accordingly the application is allowed and a direction shall issue to the respondents not to make any recovery from the applicant in regard to the payments already made on the basis of the pay fixation done vide order dated 25.2.86. If any recovery has already been effected in pursuance of the order dated 19.1.87 taking the pay of the applicant as Rs.530/- instead of Rs.580/- with effect from 1.5.85, the said amount shall be refunded to the applicant within a period of two months. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER
31.8.1987.