

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 502/87
TAXXNOK

198

DATE OF DECISION 6.10.1989

P.C. Misra _____ Applicant (s)

Applicant in person _____ Advocate for the Applicant (s)

Lt. Governor, ^{Versus} Delhi & Ors. _____ Respondent (s)

Shri M.M. Sudan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman.

The Hon'ble Ms. Usha Savara, Member(A).

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 ? *Yes* *Fair copy, not photocopy.*
4. To be circulated to all Benches of the Tribunal ? *Yes* *This judgment may be issued*

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Kamleshwar Nath,
Vice-Chairman)

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks a direction to give to the applicant a senior post commensurate with his seniority w.e.f 16.4.1985, when an officer junior to the applicant, Shri X.K. Mehto was posted as Deputy Commissioner Civil Supplies. There is also a claim for financial benefit, which could accrue on the grant of such senior post.

The applicant is a Deputy Director Social Welfare, Delhi Administration, Delhi, belonging to the Delhi and Andaman and Nicobar Islands Civil Service. The service ^{is} governed by DANICS Rules 1971, which constitutes of two grades, Grade-I; Senior Civil Service Group 'A' in the scale of Rs.1200-50-1600 (Selection

Grade) and Grade-II called Central Civil Service Group 'B' in the time scale of Rs.650-1200.

The schedule to the Rules contains a long list of posts of Grade-II. It is the admitted case of the parties that a number of these posts do not bear special pay, but some of them do. The appointments to the service, initially are made in Grade-II and not against any specific post included in the service (vide Rule-18).

Among the posts which carry Special Pay, the post of Deputy Commissioner Civil Supplies carried a Special Pay of Rs.150/- and that of Deputy Director (Training) carried a Special Pay of Rs.100/-. On 16.4.85, Shri X.M. Mehto, was appointed to the post of Deputy Commissioner Civil Supplies, whereas the applicant was the Deputy Director (Training), which had a special pay of Rs.100/- only. Since the special pay held by the applicant was Rs.50/- less than the special pay of the post held by Shri X.K. Mehto, the applicant feels aggrieved. The applicant during the course of arguments also said that again on 24.2.87 Shri V.N. Khanna, who stood at Serial No. 84 in the seniority list was appointed as Joint Director (Trg.) with a special pay of Rs.150/- whereas the applicant who stood at Serial No. 48 in the seniority list was working as Deputy Director (Social Welfare) with a special pay of Rs.100/- only. It may be mentioned that in February, 1988, the applicant was posted as Joint Director (Agriculture) with a special pay of Rs.150/-. The applicant's grievance, therefore, in the matter of special pay is confined to the period from 16.4.85 to January 1988.

The applicant's case is that all the posts in the schedule of the DANICS Rules 1971 are Grade-II posts and only the particular posts thereof carry special pay bearing from Rs.50/- to Rs.150/- (pre-revised). Since there are no rules governing the method of appointments on the posts carrying special pay, whatever it may be, the only fair criterion should be the seniority of the officer.

~~.....~~ He says that ^{if that} be not so, there would be arbitrariness in making the appointments on the special ~~posts~~ pay, which would be invalid in view of the Article 14 of the Constitution of India. The case of the opposite party is that the posts which carry special pay are of a particular nature, which would need officers of a particular efficiency or aptitudes and, therefore, the appointments on those posts have to be made primarily on the basis of suitability and not entirely on the basis of seniority. It is, however, urged that in respect of the posts in question, for which the applicant has grievance, the applicant was not found suitable and, therefore, he had not been given post which carried special pay of Rs.150/-. We have already indicated that the applicant ultimately was given a post in February, 1988 bearing a special pay of Rs.150/-.

There can be no doubt that the posts in a cadre, which bear special pay would possess some special attributes as distinguished from the other posts which ^{do not} carry special pay.

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F.R.9(25) defines the expression "special pay" as an addition (of the nature of pay) to the emoluments of the post or of a Government servant granted in consideration of either the specially arduous nature of duties or a specific addition to work or responsibility. It is plain, therefore, that the posts carrying special pay have some special feature ^{ordinary} over and above the ^{original} features of other similar posts in the cadre.

It is true that DANICS Rules 1971 do not indicate the manner in which the appointments to the posts carrying special pay are to be made; but that does not meet the ^{mean that} appointment to such posts ^{must} necessarily be made on the basis of seniority. Where rules are silent, the considerations of exigencies of service, and the requirements of posts must be relevant for determining the choice of incumbent. This is what the opposite party has described as suitability for the post.

It is common knowledge that all ^{kind} accounts of services have a number of posts in the same cadre bearing special pay and the appointments to those posts are made not on the basis of seniority but on the basis of suitability, ^{and} the requirements and exigencies of service and the aptitude or competence of the incumbent. We may mention that Rule 33 of DANICS Rule 1971 prescribes that in matters not specifically covered by ^{regulations} those rules, requirements and orders, ^{These} applicable to the corresponding officers of the Union. ^{will apply.} Our attention has been ^{not} invited to any Rules or Regulations and orders of the Union.

in this regard. It is common knowledge that the appointments to posts carrying special pay are not made on the basis of seniority but on the basis of suitability, which is a reasonable criterion.

If appointments to post carrying special pay may be governed by considerations of suitability, it follows that arguments to post carrying different amounts of special pay may also be made on the basis of suitability. The opposite parties have clearly stated that the appointments to the post to which the applicant has referred and which has led to his present grievance were made with due consideration of suitability. We hold, therefore, that the applicant can have no legal grievance in this regard and the Application should fail.

The application is dismissed and the parties shall bear their costs.

U. Savara
(Usha Savara) 6. 10. 89.
Member(A)

Kamleshwar Nath
6. 10. 89
(Kamleshwar Nath)
Vice-Chairman

"SRD"