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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 70/90

New Delhi, 19th September, 1994

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

O. P. Chadha,
R/O H.No.20, Samrat Enclave,
Delhi - 110034.

... Applicant

None for the Applicant

Versus

1. Union of India through
Secretary, Ministry of
Industry, Udyog Bhawan,
Rafi Marg, New Delhi.
2. The Secretary,
Deptt. of Company Affairs,
5th Floor, 'A' Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi.
3. The Additional Secretary,
Deptt. of Pension & Pensioners'
Welfare, Nirvachan Sadan,
Patel Chowk, New Delhi.

... Respondents

By Sr. Standing Counsel Shri N. S. Mehta

ORDER

In this application Shri O. P. Chadha, Deputy Director (retired), Department of Company Affairs, has prayed for headquarters special pay of Rs.500/- per month for the period from 1.1.1986 to 30.11.1988 together with interest at the rate of 12% thereon for delayed payment.

2. The applicant who joined the Central Company Law Service on 17.3.1970, was promoted as Inspecting Officer in 1976 and was selected by the UPSC for the post of Dy. Registrar of Companies/Dy. Director (Accounts/Inspection) on 22.12.1978, which post he held

till he superannuated on 30.11.1988. During his service he was posted at headquarters on 2.11.1982 and was in receipt of special pay @ Rs.200/- per month from that date, vide office order dated 25.11.1982 (Annex. 'B'), in terms of office order dated 26.3.77 (Annex. 'A' to the counter reply). This order of 26.3.1977 expressly provides the length of tenure which officers of different grades would have, and according to the order, officers of Dy. Directors' grade were to have a tenure of three years. It appears that as the applicant completed his tenure on 1.11.1985, he should have been transferred from headquarters, and was asked to give his option in regard to the place of his posting vide letter dated 26.2.1986, in reply to which he wrote back on 5.3.1986 requesting to be allowed to remain at headquarters or to be transferred to some other Government office in Delhi in view of the fact that he was to retire from service on 30.11.1988 and because of certain domestic reasons. Again by letter dated 22.2.1987 he was informed that he had completed his prescribed period of tenure at headquarter and was asked to give his option as to where he would like to be posted, in reply to which again by his letter dated 19.2.1987 he requested to be allowed to continue to remain in Delhi till his date of superannuation on 30.11.1987. Meanwhile, the respondents by order dated 19.4.1988 (Annex.-C) sanctioned headquarters special pay w.e.f. 1.1.1986 to the officers of the Central Company Law Service posted at headquarters, according to which officers in the grade of Dy. Director (Accts/Inspection) were entitled to draw special pay @ Rs.500/- per month.

This was followed up by letter dated 24.5.1988 specifying by name the officers to whom special pay was admissible including the officers of the grade of Dy. Directors (Accts./Inspection). The applicant's name did not feature in this order, upon which the applicant filed a representation on 7.9.1988 followed by subsequent representations. As the applicant received no response, he filed this O.A.

3. Meanwhile, on a query made by the Tribunal, it appears that the applicant was paid special pay @ Rs.150/- per month from November, 1985 to April, 1986 and @ Rs.100/- per month from May, 1986 to February, 1987.

4. The ground taken by the respondents to reject the applicant's prayer for special pay @ Rs.500/- p.m. from 1.1.1986 till the date of retirement is that the post of Dy. Director (Inspection) which the applicant held was a tenure post and the applicant had completed his tenure on 1.11.1985. He was retained at headquarters beyond 1.11.1985 on his own request and as such he was not entitled to the headquarters special pay. If he had made his intention clear to demand payment of headquarters special pay at the time he had requested for his retention at headquarters beyond 1.11.1985, he might not have been allowed such retention.

5. I have considered this matter carefully. F.R.9 (25) defines special pay which reads as follows:-

(25) Special Pay means an addition, of the nature of pay, to the emoluments of a post or of a Govt. servant, granted in consideration of-

(a) the specially arduous nature of the duties; or

(b) a specific addition to the work or responsibility."

6. If special pay was attached to Headquarters posts in the Departments of Company Affairs, including the posts of Deputy Director (Accounts/Inspection), it must be presumed that the duties attached to these posts were arduous in nature and carried specific addition to work/responsibility, and this presumption does not disappear merely because its incumbents were posted for a specific tenure. The fact that the applicant did not raise the question of special pay when he sought continuation as Deputy Director at Headquarters beyond 1.11.85, is no ground to deny the special pay which is admissible to him under the rules, particularly when the respondents have averred that he drew special pay at the rate of Rs.150/- p.m. against that post from November, 1985 to April, 1986 and Rs.100/- p.m. from May, 1986 to February, 1987.

7. As the applicant was posted as a Deputy Director at Headquarters till his date of retirement on 30.11.88 and there is no averment of the respondents that he did not perform the duties attached to the post, and the post specifically carried special pay which was subsequently raised vide Circulars dated 19.4.88 and 24.5.88 (Annexure-C and A respectively), the applicant cannot legally be denied the benefits of those circulars.

8. In the result, this application is allowed. The respondents are directed to pay the applicant Headquarters special pay w.e.f. 1.1.86 in accordance with Department of Company Affairs' letter dated 19.4.88 (Annexure-C) less special pay already paid, subject to the restrictions laid down in that circular within three months from the date of receipt of a copy of this judgment, with interest at the rate of 10% per annum from 1.12.88 till the date of actual payment. In case payment is not made within the period specified above, the respondents will have to pay further interest at the rate of 15% per annum on the total sum with effect from that date till the actual date of payment. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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