

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(8)

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Regn. No. OA 800/90

Date of decision: 7.5.91

J.P. Mittal

Applicant

Vs.

Union of India & Ors

Respondents

PRESENT

Shri R.P. Oberoi, counsel for the applicant.

Shri K.C. Mittal, counsel for Respondent No. 3.

None for Respondents 1, 2 and 4.

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Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Mr. P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Mr. Justice
Ram Pal Singh, Vice-Chairman (J).)

By this Original Application, filed under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'), the applicant prays for quashing order dated 30.3.1990 (Annex.II) and directions to Respondent No.4 to make the payment as per bills submitted by him and remain paying him the training allowance at appropriate rates.

2. According to this Original Application, the applicant is a member of Indian Defence Estates Service (Group 'A') and is presently posted as O.S.D. in the National Institute of Management Accounts (for short NIMA). This was set up by the Union of India as a training Institute for officers and staff of two Central Services known as Indian Defence Accounts Service and Indian Defence Estates Service which work under the administrative control of the Ministry of Defence. Answering Respondent is entrusted with the work of payment and pre-audit of bills relating to salary, allowances, etc. of civilian officers from Defence Services Estimates to which the applicant belongs.

Remedy

Department of Personnel & Training (Training Division) of the Ministry of Personnel framed guidelines taking into account the introduction of the 4th Pay Commission ^{pay scales and various references} for improvement of service conditions of faculty members in training Institutes, in their Memorandum dated 31.3.87 (Annex. II). These guidelines provide for payment to officers who join as faculty members, allowance at the rate of 30% of their basic pay. This allowance is payable to officers who join as members and are not borne on the permanent establishment of the training Institutes. Letter dated 21.8.89 (Annex. III) issued by the Ministry of Defence contains instructions regarding applicability thereof to the officers of Indian Defence Estates Services posted as faculty members in NIMA. According to the applicant, he was posted to NIMA under orders issued by Respondent no. 3 on 12.4.88 (Annex. VI) for strengthening the establishment at NIMA and was designated as O.S.D. (Training & Management Studies). The applicant was assigned the task of undertaking first major study relating to staffing pattern of Cantonment Boards and he joined NIMA on 1.7.88 and remained posted there till filing of this O.A. Thus, a sum of Rs. 1275/- which was due to him was claimed by the applicant which was disallowed by Respondent No. 4 by letter dated 24.10.89 (Annex. VIII) on the ground that the applicant has been attached for Management Development studies and not as a faculty member. Director (Defence Estates Wing) by letter dated 30.10.89 (Annex. IX) informed Respondent No. 4 that the post against which the applicant had been posted had been allocated to NIMA (DE Wing) after due selection requesting Respondent No. 4 to admit the payment claimed through supplementary bill for Rs. 1275/- for October 1988 in audit and pass for payment. But Respondent No. 4 did not release the payment claimed and they have been making deductions unauthorisedly from regular monthly bills putting the applicant to financial loss.

Summary

3. Being aggrieved by the action of Respondent No.4, the applicant submitted a representation dated 6.11.89 (Annex.X) to Secretary, Ministry of Defence, (Respondent No.1), but no action was taken on the representation and he is not being paid his dues.

4. Though all the respondents were served, none other than Respondent No. 3 filed the return. Respondents No. 3 in their counter contended in paragraphs 4.7 and 4.8 that the Director General, Defence Estates, diverted a senior time scale post out of the existing strength of NIMA and the applicant was posted as O.S.D., Training & Management Studies, and he has been working as a full fledged faculty member from 1.7.88, imparting training to probationer officers and staff of Defence Estate Organisation. Respondent No. 3, in paragraph 4.9 of the return, admitted that the applicant was entitled to training allowance because he was posted to NIMA for doing faculty/training work from 1.7.88 and like other faculty members, applicant is also entitled to training allowance. Respondent No. 3 also contended that CDA Central Command should review their decision and pay the allowance to the applicant, but the Government have, in consultation with their Finance Division, decided that the applicant is not entitled to the training allowance. In their contradictory stand Respondent No. 3 further contended that although applicant has been performing the training functions in addition to the management studies, the Ministry of Defence has taken the view that the training allowance is only admissible to the two permanent faculty members created by the Government at the time of the establishment of the training Institute in the year 1982.

5. The cause of action, according to this O.A., appears to be Annex. I dated 30th March, 1990 issued from the office of Respondent No. 4 and Annex. 8. In this letter addressed to

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Director DE, NIMA, Defence Estate Wing, Meerut Cantt., the Accounts Officer of Respondent No. 4 has stated that as Shri J.P. Mittal was posted to NIMA to carry out studies assigned to him by the D.G.D.E., New Delhi, vide their letter, as such he is not entitled to the payment of training allowance. In Annexure 8, it is stated that Shri J.P. Mittal had been disallowed the allowance as he has been attached with NIMA to carry out management development studies and not attached as faculty member. It can be gathered that the main contention of Respondent No. 4 is that as the applicant has been appointed as O.S.D. and not as faculty member, he is not entitled to receive any allowance.

6. Hence, it has to be seen whether the applicant though designated as O.S.D. and posted in NIMA; though not appointed as a permanent faculty member of NIMA, performed duties as a faculty member or not. If he performs similar duties as a permanent member, he is entitled to the same allowances which are received by the two permanent faculty members of N.I.M.A. Therefore, we have to see whether the applicant who is not a permanent faculty member of NIMA but performs the duties similar and like duties of permanent members can be said to be performing his duties as a faculty member?

7. Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training (Training Division), on 31st March 1987 issued an Office Memorandum in supersession of the previous Memoranda on the subject of improvement in service conditions of faculty members in training Institutes which is being reproduced for convenience:-

"When an employee of Government joins a training institution meant for training government officials, as a faculty member other than as a permanent faculty member, he will be given a "training allowance" at the rate of 30 per cent of his basic pay drawn from time to time in the revised scale of pay."

(Emphasis supplied by us.)

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No effort is required to understand the meaning of the above noted underlined simple words, still we strive to be more clear. It simply means that the training allowance at the rate of 30 per cent of his basic pay shall be paid to an employee of Government when he joins a training institution meant for training Government officials (as is being done in NIMA) as a faculty member other than as permanent faculty member. Our views are further strengthened by the contents of Annexure III dated 21st August, 1989, a Memorandum issued by the Ministry of Defence, addressed to the Director General, Defence Estates. The subject of this document pertains to; "Improvement of Service Conditions of Faculty Members in the NIMA and Accounts (IDES Wing), Meerut". This document further elaborates Annexure II, referred hereinabove and explains that the guidelines contained in the said Office Memorandum will be applicable to the officers of the Indian Defence Estates Services posted as faculty members other than a permanent faculty member in the NIMA, Meerut.

8. Annexure IV, a Ministry of Defence document dated 5th October, 1989 addressed to Director, DE, NIMA (DE Wing) Ministry of Defence is being reproduced for clarity:-

"The following officers of the Indian Defence Estates Service were posted as faculty members in the National Institute of Management and Accounts (DE Wing) - Meerut Cantt from 01.1.86 onwards:-

Director NIMA

- i) Shri L.R. Julka 1.1.86 to 10.2.86
- ii) Shri S.R. Lakshmanan 5.5.86 to date

Joint Director

- i) Shri M.H. Alavi 1.1.86 to 10.5.87
- ii) Dr. H. Nagabhushnam 11.3.87 to date.

Office on Special Duty

- i) Shri J.P. Mittal 1.7.88 to date.

It is certified that the abovementioned officers of the IDES were duly selected for posting to NIMA (DE Wing),

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Meerut Cantt on the basis of the revised criteria laid down in the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel & Training (Training Division), New Delhi O.M. No. 12017/2/86-Trg (TNP) dated 31.3.1987. Training allowance will therefore be admissible to the above faculty members for the duration of their tenure in NIMA (DE Wing)".

(Emphasis supplied by us.)

The Director, NIMA, Defence Estates Wing, expressed his views clearly in Annexure IX dated 30.10.89 addressed to Respondents

that the applicant, Shri J.P. Mittal, is as much a part of the faculty as any other officer of this institute (emphasis supplied by us).

Furthermore, Director NIMA, in Annex. IX, letter dated 30th October, 1989 mentions that Shri J.P. Mittal is as much ^{of} part/ faculty as any other officer of this institution.

He further proceeds "It is certified that Shri Mittal has been doing faculty/training work from 1.7.88 onwards." He has, therefore, rightly recommended in this letter to Respondent No. 4 that the bill for Rs. 1275.00 on account of training allowance of Shri J.P. Mittal be admitted in audit and passed for payment.

11. The word 'faculty' means any branch of learning in an institution; department of university teaching as law, medicine, science and arts etc. and staff of any college. If the applicant performs the duties as a faculty member, it means that he is working as a faculty member in NIMA other than the two permanent members. The word 'as' indicates that the applicant performs similar duties as faculty member of NIMA like the two other permanent faculty members. The recommendation of the Director, NIMA, contained in Annex. IX dated 30th October, 1989 to Respondent No. 4 that the applicant be given the training allowance at the rate of 30 per cent of the basic pay drawn from time to time in the revised scale of pay leave no doubt in our mind that the applicant is entitled to the relief as prayed for.

12. Consequently, this Original Application is allowed and Annex. I issued by Respondent No. 4 is quashed. Respondents

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and Respondent No. 4 in particular are directed to pay the applicant training allowance at the rate of 30 per cent of the basic pay to the applicant due to him. The prayer of the applicant for payment of interest on the outstanding amount at the rate of 18% per annum is rejected. All the ^apayment to the applicant, as indicated hereinabove, be made by the Respondents within three months from the date of receipt of the copy of this judgment. Parties shall bear their own costs.

(P.C. JAIN)

MEMBER

(RAM PAL SINGH)

VICE-CHAIRMAN