

Central Administrative Tribunal
Principal Bench: New Delhi

(11)

OA No.1498/91

New Delhi this the 15th day of December 1995.

Hon'ble Shri A.V.Haridasan, Vice Chairman (J)

Hon'ble Shri B.K.Singh, Member (A)

P.C.Gupta

91, A.G.C.R. Enclave

Delhi-110 092.

...Applicant

(By Advocate: Shri O.P.Khokha)

Versus

Union of India through

1. Secretary

Ministry of Finance

Department of Expenditure

New Delhi.

2. Secretary

Ministry of Personnel, Public Grievances & Pension

Dept. of Pensions and Pensioners Welfare

New Delhi

3. The C&AG of India

Bahadur Shah Zafar Marg

New Delhi

4. The Principal Director of Audit

Central Revenues-II

A.G.C.R. Building

I.P.Estate

New Delhi.

...Respondents.

(By Advocate: Shri P.H.Ramchandani)

O R D E R (Oral)

Hon'ble Shri A.V.Haridasan, Vice Chairman (J)

The applicant who was a permanent Audit Officer in the Office of the DACR-II, New Delhi, was by order dated 15.12.88, entrusted with the charge of the post of Deputy Director of Audit (RAS) in the office of the Director of Audit. He was to receive a special pay of Rs.300/- p.m. for discharging his duties. While so, the applicant retired on superannuation on 31.1.90. The grievance of the applicant is that the special pay of Rs.300/- p.m. which he was

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receiving till the date of his retirement was not reckoned for the purpose of computing his pensionary benefits. Claiming this, the applicant made a representation to the CAG on 12.3.90. In reply this representation, by order dated 19.6.90, the applicant was informed that as the arrangement by which the applicant was entrusted with the charge of the post of Deputy Director did not amount to a promotion or an appointment, the special pay received by him could not be counted towards pension in accordance with rules. It is aggrieved by this that the applicant has filed this application with the following prayer:

- i) Ordering fixing of pay of the petitioner in the scale of Rs.3000-4500 and finalisation of the pension and pensionary benefits accordingly. In case the scale is not to be allowed, Rule No.33 of the Pension Rule be struck to the extent it relates to the special pay granted in lieu of higher scale and in that event special pay granted for discharging the duties and responsibilities of higher post should be treated as part of the basic pay and be counted for working out the average emoluments for the computation of the pension, pensionary benefits and for the admissibility of other allowances. Average emoluments in that case would work out to Rs. 3850/- per month.
- ii) Ordering to pay all arrears to the petitioner on the basis of the judgement of the Hon'ble Court by way of pension and pensionary benefits and other admissible allowances.
- iii) Directing the authorities to pay a sum of Rs. 5,000/- being the cost of legal suit defrayed by the petitioner.

2. The respondents resisted the application. We have heard Shri O.P.Khokhar, learned counsel of the applicant and Shri P.H.Ramchandani for the respondents.

3. The basis of the claim of the applicant that the special pay of Rs. 300/- should be counted for reckoning his pension is that

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the applicant was holding the post of Deputy Director and that it is totally unjust and inequitable to deny him the benefits which is due to him on account of his holding the post of Deputy Director. The issue in this case revolves on an important question - whether the applicant was by the order dated 15.12.88 appointed to the post of Deputy Director or promoted on ad-hoc basis so as to make him to hold that post or was the arrangement only a measure for looking after the current duties of the post pending regular appointment thereto. The answer to this question lies in the order itself. It is pertinent to quote the entire order itself. The order dated 15.12.88 reads as follows:

" Office of the Director of Audit
Central Revenues-1
New Delhi-2

No.Admn.I/O.O.No.194

Dated:15.12.88.

Sh.P.C.Gupta, Audit Officer, has been entrusted with the charge of the post of the Dy.Director of Audit (RAS1) in the office of the Director of Audit, Central Revenues-II, New Delhi in terms of HQs' office letter No.4936-CE.I/183-82 dt.1.19.82, with effect from 1.12.1988 (FN) for a period of six months or till a regular I.A. & A.S. Officer is posted whichever is earlier, purely on Ad-hoc basis subject to the following conditions:-

- i) The arrangement does not constitute promotion or appointment to I.A. & A.S. or to any post of higher scale of pay.
- ii) While looking after the charge of the said post, Sh.P.C.Gupta,
 - (a) will be paid special pay of Rs. 300/- in addition to pay in his own scale of Rs.2375-3500 from time to time provided the period is for 31 days or above but not exceeding in any case, beyond six months.
 - (b) will not exercise the statutory powers vested in the said post under CCS(CCA) Rules, 1965.
 - (c) will not be entitled to any other special pay in addition to the special pay of Rs.300/-p.m.

(1A)

- iii) This ad-hoc arrangement can be terminated any time without assigning any reason.

(Authority Comptroller & Auditor General's letter No.5870-GE.I/22-87 dt.1.12.88)

SD/-

Dy. Director of Audit (Admn.) "

4. A mere reading of this order will leave no doubt of the fact that the applicant was not either appointed or promoted to the post but was only allowed to look after the current duties of the post. This is evident because sub clause (b) of clause (ii) of the order prohibits the applicant from exercising any statutory powers. This alone is sufficient to say that the applicant was not holding the post. Further, the order very clearly states that the arrangement does not amount to appointment or promotion either ad-hoc or regular. The applicant was allowed to draw the pay of his post, namely Rs. 2375-3500 and was given a special pay of Rs. 300/- p.m. as compensation for the work of a higher nature which he was holding. The basic pay for the purpose of computation of pension under FR 9 (21) (a) (i) has been defined as follows:

"the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre".

5. The applicant was not holding the post of Deputy Director. He was only discharging the duties of the post minus the statutory functions while retaining his own pay-scales, getting a special pay of Rs.300/-. So at no stretch of imagination can it be held that the applicant was holding the post of Deputy Director and was entitled to the pay scale of the post of Deputy Director. Learned counsel of the

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applicant brought to our notice an order in OA 367/90 of the Jabalpur Bench - Dhyaneshwar Nandanwar V. Union of India & others and the decision of the Calcutta Bench of CAT in TA No.s 2 & 3 of 1987 K.P.Poi Vs. UOI & others to show that the above Benches had directed the respondents to count the pay received by an employee on ad-hoc promotion for pension. The issue in this case is not the same as involved in those cases. In those cases, the applicants before the Benches were holding higher posts on ad-hoc basis. In this case as stated earlier, the applicant has not held the post. Learned counsel of the applicant then referred to a decision of the Principal Bench of the Tribunal in OA No. 232/89 Rajpuram Shankar Garde Vs. UOI. In that case the special pay granted to the Assistant Foreman (Non-Technical) in lieu of higher scale was directed to be counted for pension. In that case on account of clubbing of two posts, the Assistant Foremen who were drawing higher pay scales started receiving the pay on par with juniors and therefore for compensating such relief, a specific order was issued to grant them a special pay in lieu of higher pay scales. Here the facts of the case are not identical.

6. Shri Khokha then referred to a ruling of the Ernakulam Bench of the Tribunal in OA No. 83 of 1994 M.D. Paul Vs. UOI & Others reported in (1995) 29 Administrative Tribunals Cases 461. In that case, a Group-D employee was put to work as a driver and when he was not given the pay of the post of Driver, the Tribunal held that this was unjustified and as the applicant before the Tribunal was holding the entire duties of Driver, there was no justification for denying the pay on principle of equal pay for equal work. Here the order by which the applicant was entrusted with charge of the post of Deputy Director




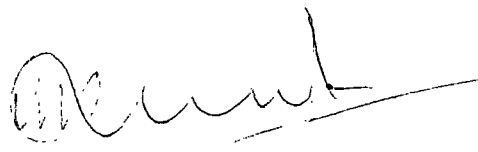
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clearly excluded the statutory duties. The applicant was prohibited from exercising the statutory duties. Therefore, it cannot be said that the applicant was ^{not, doing it} holding the entire duties of the post.

7. In the light of what is stated above, we are of the considered view that though the applicant may have a reason for ^{this is not a grievance} some grudge, he does not have a legitimate grievance to be redressed. Rules do not permit counting of the special pay in his case for the purpose of pension. The authorities cannot be faulted for taking the decision.

8. In the result, the application fails and the same is dismissed, leaving the parties to bear their own costs.


(B.K.Singh)
Member (A)


(A.V.Haridasan)
Vice Chairman (J)

Ashraf