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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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O.A. NO.3029/91

DATE OF DECISION: 17/11/92

B.D. BAILEY

....APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

SHRI N.S. VERMA

....COUNSEL FOR THE APPLICANT

SHRI P.H. RAMCHANDANI with

SHRI J.C. MADAN

...COUNSEL FOR THE RESPONDENTS

J U D G E M E N T (ORAL)

Both are heard finally.

In this application, the applicant has requested for issue of directions to the respondents to make the payment to the applicant of special pay @ Rs. 35 per month from 5.5.1979 to 31.12.1985 with interest thereon. He has further prayed that the respondents be directed to refix his pay from 1.1.1986 taking into account the special pay.

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2. It is found that the representation of the applicant was rejected by order dated 8.12.1989, the order of rejection said that the request of the applicant was carefully considered by the CGDA. Other aspects were also explained in the order. By another letter dated 6.2.1991, the respondents rejected a further representation of the applicant dated 24.7.1990. This order also said that the matter has been considered by the CGDA. Therefore, the letter of the respondents dated 6.2.1991, is in effect the repetition of the order of rejection dated 8.12.1989. Law is well settled that repeated representations or repeated rejections do not confer a fresh ground for consideration under the clause of limitation. The representation of the applicant having been rejected first by order dated 8.12.1989, the application is barred by limitation.

3. However, we have gone into the merits of the case also. We find that the respondents' letter dated 13.6.1984 (Annexure A-5) granted a special pay of Rs.35 to auditors attending the work of important and complex nature. The special pay was to be given to not more than 10 per cent of the posts in the cadre of auditors including SGA. The remaining persons of lower seniority were to be transferred to other offices.

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4. The learned counsel for the respondents contended that the applicant could not be accommodated within the 10 per cent quota. He was not willing to be transferred outside and the respondents have further averred that no person junior to the applicant has been given the special pay in the main office. The learned counsel for the applicant at this stage drew our attention to para 2.6 of the respondents' letter dated 5th May, 1984 where it has been mentioned that

'The seniormost eligible person will be accommodated in the same office where posts are available and the persons of lower seniority will be offered post in office at other stations or in other organisations at the same or different station strictly in order of seniority.'

The words used, namely, 'strictly in order of seniority' will imply that if a person is senior and cannot be accommodated at the main office, he has to be first offered a post elsewhere before a junior is given. It does not imply that he has to be accommodated at the same station, though not in the

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same office. The discretion lies with the respondents to offer post 'in office at other stations or in other organizations at the same or different station'. The reference to the words 'strictly in order of seniority', as explained above, will only mean that before offering a post to a junior, the seniormost be offered but not necessarily at the same station.

5. At this stage of the dictation, the learned counsel for the applicant stood up and started arguing again.

6. The learned counsel for the applicant raised issues such as

- i) The second representation was in the form of an appeal to a higher authority, namely, financial advisor;
- ii) The limitation clause has to be given benevolent construction;
- iii) The pay re-fixation from 1.1.1986 should be done keeping in view the special pay and the special pay should be deemed to have been sanctioned;

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iv) The seniority has to be taken on All India basis and if an employee junior to the applicant could be accommodated at the same station, though not in the same office, the applicant should have got the first preference.

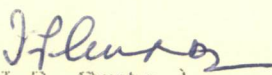
We shall deal briefly with all these contentions. The second representation can be treated as an appeal if statutory remedy is; the available. When asked, where the statutory remedy is, counsel for applicant invited our attention to the provisions of the CCS (CCA) Rules, which obviously do not have any relevance in regard to the grant of special pay. Doubtless, the Bench is to take a benevolent construction of the clause of limitation but if a stale claims are rigged up and allowed, this will disturb settled conditions which are not viewed with favour in law. The question of refixation of pay which from 01.01.86 by taking into reckoning the special pay is not sanctioned nor is directed to be sanctioned does not arise. As regard the last contention, that he should have first been accommodated in another office at the same location, we have already dealt with the matter earlier. It was within the discretion of the respondents to transfer an applicant to a post

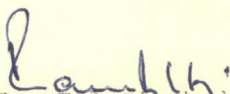
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carrying the special pay to the same station or other station, if he was beyond the percentage of 10, prescribed for the special pay. The learned counsel for the respondents had averred that even on All Indian seniority basis, none junior to the applicant was given the special pay at the main office.

8. If the applicant had refused to go outside, he forfeited his claim for one year and even thereafter the grant could not be automatic but has only to be reviewed. Even after such review, according to the learned counsel for the respondents, none junior to the applicant on All India basis was given special pay of Rs.35 at the main office.

9. In view what has been said above, the application is dismissed both on the grounds of limitation and on merit. There is no order as to costs.


(I.P. Gupta)
Member (A)


(Ram Pal Singh)
Vice Chairman (J)