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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.405/91

Date of Decision: 15.11.91

Shri M.L. Rustogi and Others

Applicants

Shri S.C. Luthra,

Counsel for the applicants

Vs.

Union of India and Others

Respondents

Shri M.L. Verma

Counsel for the Respondents

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The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, 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*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by three Superintendents working in the office of Land Development Officer (L. & D.O. for short) under the Ministry of Urban Development, against the order dated 30.1.91 passed by the L & D.O. rejecting their claims for merging the special pay of Rs.35/- drawn by them while fixing their salaries in the scale of Assistants.

2. The applicants S/Shri M.L. Rustogi, P.S. Jain and V.S. Aggarwal have stated that they had been working as U.D.C.s in the scale of Rs.330-560/- and had completed five years

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regular service for promotion as Assistants on the basis of seniority. To provide relief in such cases, 10% of the posts of U.D.C. which were identified as carrying higher responsibility were upgraded to carry special pay of Rs.35/- p.m. in terms of Ministry of Finance (Department of Expenditure) memorandum dated 5.5.79. At the time of their promotion as Assistants, all of them were receiving this special pay. However this was not taken into account while fixing their pay in the higher scale as shown below:

Name of the applicants	Date from which the Spl.Pay of Rs.35/- drawing	Date of Promotion	Pay fixed on Promotion	Pay reqd. to be fixed
Shri M.L.Rustogi	5.5.79	21.11.84	Rs.595/-	Rs.610/-
Shri P.S.Jain	21.9.79	4.8.84	Rs.515/-	Rs.560/-
Shri V.S.Aggarwal	5.5.79	1.9.84	Rs.530/-	Rs.560/-

3. The applicants have prayed that directions be issued to the respondents to refix their pay from the date they were promoted to higher posts taking into account the special pay of Rs.35/- p.m.

4. The respondents do not dispute the above facts but have referred to the explanation given in the impugned order dated 30.1.91 to the effect that special pay of Rs.35/- p.m. is admissible only in those offices where there are no higher posts of Assistants. Since the posts of Assistants exist in the office of the respondents, the special pay to U.D.C.s

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has since been discontinued on the advice of Ministry of Finance. Hence it has been contended that the claim of the applicants for taking into account the special pay of Rs.35/- drawn by them in the grade of U.D.C. while fixing the pay on promotion as Assistants is not justified.

5. We have gone through the records of the case and have heard the learned counsel for both the parties. So far, the question of special pay to the U.D.C.s in the non-Secretariat Administrative office was concerned, a committee of the National Council (JCM) was set up to consider the request of the staff side that in the non-Secretariat Administrative offices certain percentage of UDCs handling cases of complex and important nature should be upgraded. The grant of a special pay of Rs.35/- subject to a limit of 10% of the posts in the respective cadres of non-secretariat administrative offices came as a result of settlement. The office memorandum No.F.7(52)-E.III/78 dated the 5th May, 1979 clearly states that 10% of the posts in the respective cadres should be identified as carrying discernible duties and responsibilities of a complex nature, higher than those normally expected of UDCs. The office order dated 21.9.79 identifies the seven sections in the L & D.O. involving works of a more complex and important nature. The question whether special pay to UDCs was to be taken into account while fixing their pay in a higher scale on promotion has been subject matter of arbitration and later the respondents accepted this though they stipulated that these orders were to take effect from 1.9.85, irrespective of the date of promotion. This stipulation was challenged by Shri R.K. Ojha in OA.No.543/86 and the Tribunal

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held in its judgement that 1.9.85 was an arbitrary date and that the benefit should be given to all. No where in these orders, the plea now raised regarding non-existence of the posts of Assistants in an establishment as a precondition for giving special pay was ever mentioned.

6. In the facts and circumstances of the case, we hold that the applicants are entitled to the same relief as was given to their colleague, Shri R.K. Ojha. The application is therefore disposed of with the following directions:

(a) The pay of the applicants shall be refixed from the date they were promoted, taking special pay of Rs.35/- as part of substantive pay they were receiving as UDCs.

(b) Their salary should be refixed notionally from the date they were promoted as Assistants and they should be allowed arrears of salary from 1.9.85.

(c) The refixation of pay and payment of arrears shall be completed within a period of three months from the date of communication of this order.

7. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 15/11/81
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN(J)