

10

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA NO.894/2004**

New Delhi, this the 24<sup>th</sup> day of February, 2005

**HON'BLE MR.JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE MR. S.A. SINGH, MEMBER (A)**

D.K. Tyagi,  
Resident Commissioner,  
Government of Tripura,  
New Delhi.

....Applicant

(By Advocate: Shri S.D. Dobhal)

-versus-

1. Union of India  
Department of Personnel & Training,  
Ministry of Personnel,  
Public Grievances & Pensions,  
Through it's Secretary,  
North Block,  
New Delhi - 110 001.
2. Union of India  
Department of Banking  
Through it's Secretary,  
Jeewan Deep Building,  
Parliament Street,  
New Delhi- 110 001.

...Respondents

(By Advocate: Shri Madhav Panikar)

**ORDER (ORAL)**

**Justice V.S. Aggarwal, Chairman:**

The post of Custodian is a statutory post under the Special  
Court (Trial of Offences Relating to Transactions in Securities) Act,

*ls Aggarwal*

2

1992. Under the provisions of sub-section 1 to section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, the Central Government can appoint one or more Custodian. It is a post in Non-Central Staffing Scheme. According to the applicant, the post of Custodian carries the fixed pay of Rs. 26000/-.

2. Applicant joined the Indian Administrative Service in 1981. In 1997, he joined as Director in the Banking Division, Ministry of Finance on deputation. He was empanelled as Joint Secretary in the Govt. of India and was appointed as Custodian under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on 4.9.2001. The order of appointment of the applicant reads as under:-

"In exercise of the powers conferred by sub-section (1) of Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, the Central Government hereby appoints Shri D.K. Tyagi, IAS (MT:81), presently Director, Department of Economic Affairs, Banking Division, New Delhi as Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on deputation basis in the pay scale of Rs. 18400-500-22400/- from the date of his taking charge of the post till 15.01.2004.

sd/-  
(Shekhar Agarwal)  
Joint Secretary to the Government of  
India"



3. The applicant had represented on 24/25.2.2004 that he should be given the fixed pay of Rs. 26,000/- The request of the applicant has been rejected stating:

**“Subject: Fixation of pay of Custodian appointed for the Special Court (TORTS) Act, 1992.**

I am directed to refer to letter No. F.No.4/3/94-SCS/VIG dated 11<sup>th</sup> December, 2003 of Government of India, Ministry of Finance, Dept. of Economic Affairs (Banking Division) regarding fixation of your pay. I am directed to inform that since your appointment to the post of Custodian was made by the ACC by downgrading it in the pay scale of Rs. 18400-224400/-, you have no claim to the pay scale of Rs. 26000/- (fixed) while working on the said post.”

4. By virtue of the present Original Application, applicant seeks that he should be granted the pay of the post of Custodian i.e. Rs. 26,000/- from 4.9.2001 with consequential benefits.

5. The Original Application has been contested. According to the respondents, the applicant had been appointed in the scale of Rs. 18400-22400/-. He himself wanted his pay to be fixed in the said scale. According to the respondents, applicant cannot draw parity with any other appointment that may have been made. So far as the case of Shri S. Behrui is concerned, respondents point out that he was holding additional charge. When a Government servant is formally

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appointed to hold charge of another post, he shall be allowed pay of the higher post, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months. With the concurrence of the Finance Ministry, even after that period, it could be so done. Shri Behura was allowed to the said scale in the light of the aforesaid facts. So far as applicant is concerned, the respondents contest his claim. It is pointed that he has no right to claim the fixed salary of Rs. 26,000/-

6. Learned counsel for the applicant argued that as per the instructions, that have been issued i.e. revised standard terms and conditions for deputation of All India Services Officers in Public Sector Undertakings etc., the applicant could exercise the option. He exercised the option for the higher scale and, therefore, the rejection of his claim is without any merit.

7. Applicant had joined the post on 4.9.2001. On 6.9.2001, he had written to the Under Secretary (Vigilance), Banking Division, in the following manner:

"I have been appointed as Custodian vide GOI Ministry of Finance (Banking Division) Notification No. F.4/3/94-SCS/VIG dated 4<sup>th</sup> September, 2001 in the scale of pay of Joint Secretary to the GOI (Rs. 18400-500-22400).

2. In this context, I would like to mention that in my State cadre (MT) I was already appointed in the Super-time scale of Rs. 5900-6700 (pre-revised) w.e.f. 25.1.1995

5  
11

(corresponding present scale of Rs. 18400-22400). This may be seen in my Service Book which is available in the Banking Division. Before joining as Director in the Banking Division of the Ministry of Finance I have drawn two increments in the scale of Rs. 18400-22400. The details of salary drawn by me as on the date before joining Banking Division is also available in my Service Book.

3. My pay will now be fixed after taking into account the grant of Super-time grade in the State Government w.e.f. 24.1.1995 on notional basis and after counting annual increments. Therefore, my pay be fixed in the scale of pay of Rs. 18400-22400.

4. Banking Division is requested to issue necessary orders regarding my pay fixed in the post of Custodian in the rank of Joint Secretary to the Government of India.

Sd/-  
(D.K.Tyagi)  
Custodian  
6.9.2001"

This clearly shows that the applicant in the first instance had not opted for the higher post/pay. He clearly mentioned that his pay should be fixed in the scale of pay of Rs. 18400-22400/-. He mentioned about his increment. He wanted his pay to be fixed taking into account the grant of supertime grade on notional basis.

8. Thus, it was too late for the applicant to re-exercise the option. One cannot keep on changing the options or change his mind in this regard. Otherwise also, it is a statutory post and the contract of

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13

appointment clearly indicates that applicant was appointed in the scale of Rs. 18400-22400/-. He accepted the said offer and joined the post. Thus, in terms of the same, the pay had to be paid to him.

9. It is not in dispute that earlier incumbents of the post were being paid at Rs. 26,000/- as fixed basic salary. But we have already reproduced above the letter of rejection of the claim of the applicant, which clearly indicates that the applicant's appointment was made by the Appointments Committee of the Cabinet by downgrading the same in the scale of Rs. 18400-22400/-. Once it is so and applicant had joined, indeed, claim becomes without merit.

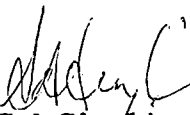
10. In that event, the learned counsel had drawn our attention to the fact that the applicant had been informed on 14.5.2002 about the downgrading of the post while the post, according to the learned counsel, had not been downgraded. We have already referred to above that according to the respondents, the Appointments Committee of the Cabinet had downgraded it and thereafter the applicant had been appointed in a lower scale. Our attention has not been drawn to any order or provisions by which it could not be downgraded. The pay of the post had not been fixed under the provisions of the Act. Necessarily, therefore, in the absence of any other material, contention of the applicant must fail.

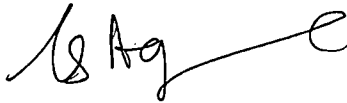
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16

11. No other argument has been raised.

12. For these reasons, the Original Application, being without merit, must fail and is accordingly dismissed.

  
**(S.A. Singh)**  
Member (A)

  
**(V.S. Aggarwal)**  
Chairman

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