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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. 2804/92

DATE OF DECISION 3.8.1993

Sh. B.K.Jain ..... Applicant

V/s

U.O.I. & Ors ..... Respondents

FOR THE APPLICANT ... Sh. S.K. Gupta, counsel

FOR THE RESPONDENTS ... Sh. M.L. Verma, counsel

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Hon'ble Sh. B.S. Hegde, Member(J)

JUDGEMENT

(delivered by Sh. B.S. Hegde, Member(J) )

This petition is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for direction to respondents to re-fix the pay of the applicant in the grade of Assistant after taken into account the special pay drawn by him as U.D.C. in accordance with the O.M. dated 22.5.1989 with all consequential benefits.

2. The applicant joined Government service as a lower Division Clerk on 2.12.1971. He has promoted as an U.D.C. on 13.1.1976 while working as U.D.C. he was granted special pay of Rs 35/-per month vide order dated 28.11.81 (Annexure A-1) in accordance with the Ministry of O.M. dated 5.5.79. Further the

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applicant was promoted as an Assistant on adhoc basis vide order dated 23rd April, 1983, thereafter, the applicant was promoted as an Assistant on regular basis vide order dated 10th January, 1984. His pay consequent upon the promotion as Assistant was fixed at Rs 425/-p.m. in the minimum of the pay scale of the Assistant viz 425.800 plus a personal pay of Rs 14/-w.e.f. 26.4.1983 which is to be absorbed in a subsequent annual increment in the grade in terms of instructions contained in FR-23(b) Govt. of India decision No.6 under FR-22.

3. The learned counsel for the applicant submitted that the special pay was granted under the provision contained in the Ministry of Finance O.M. dated 5.5.79 which was intended for complex and important nature of work performed by him. The special pay granted on the basis of the award of the Board of Arbitration. Accordingly, a sum of Rs 35/- paid to UDCs as special pay granted under Ministry of Finance O.M. as referred to above shall be taken into account for fixation of pay on promotion. subject to the conditions that the incumbent was substantive holder of post to which the special pay was attached. This award was to take effect w.e.f. 1st September, 1985. The applicant was promoted to higher post prior to 1.9.85 and who fulfilled all the conditions mentioned

in Ministry's O.M. dated 1st September, 1985

hence his pay may be refixed on notional basis from the date of his promotion taking special pay into account and actual benefit may be allowed to him w.e.f. 1.9.85. The applicant made a representation in this respect vide dated 6.11.90 requesting the Respondents to refix his pay in the light of the said O.M. dated 22.5.89. His representation alongwith the recommendation of the same by the Respondent No.2 forwarded to Respondent No.1. It is also mentioned that Respondents gave the benefits of special pay to Smt.Rukmani, Vijay K-umar and S.C.Bakshi who were similarly placed as that of the applicant. Nevertheless, no action has been taken in his case. Aggrieved by the order of the respondent vide their letter dated 30th April, 1992, he filed this petition for redressal of his grievance.

4. The respondents in their reply have not disputed the contention of the applicant but only stated that the applicant was promoted as on regular basis w.e.f. 10.1.84. The pay of the applicant is further enhanced from Rs 440- to 455 w.e.f. 1.1.85 in accordance with his representation dated 5.3.85. At the time of stepping up of his pay

*[Handwritten signature]*

vis-a-vis to that of his juniors, applicant did not point out to exercise his option under FR 22(C). The benefit of steeping up of pay has already been given to him vide letter dated 24.4.85 and accordingly his representation dated 6.11.90 was forwarded to Ministry for further consideration. Ministry of Finance has rejected his case vide letter dated 30.4.92 on the ground that the post of Assistant is an inter-mediatory level, therefore, there is no question of taking the special pay into consideration for fixation of pay on promotion from UDC to Assistant. Hence no useful purpose will be solved even if he is given an option to exercise at this belated stage and stated that payment of special pay will not be counted for further pay on promotion.

5. Further, in their reply respondents have stated that further clarification issued by the Ministry of Finance was not available with the Directorate and no such instructions were received in their Directorate regarding payment of special pay of UDC be taken into account at the time of fixation of pay on promotion as Assistant. Hence they further contend by saying that the question of complying instructions contained in O.M. No.7(35) E.III/87 dated 1.9.87 does not arise. Therefore, the

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applicant is not entitled to the benefit of the special pay on his promotion and thus his case does not call for review.

6. I have heard the arguments of both the parties and perused the pleadings and records. The short question for consideration is whether the applicant is entitled for special pay to be added while fixing his pay when he was promoted as Assistant from UDC. Learned counsel for the applicant Sh. S.K. Gupta, drew my attention to annexure-6 referred, which reads as follows:-

" It has now been decided that pay of those Upper Division Clerks who were drawing special pay in terms of this Ministry's O.M. No.7(52)E.III/78 dt.5.5.79(G.O.I.(23) above) and promoted to higher posts prior to 1.9.85 and who fulfil the conditions mentioned in this Ministry's O.M.No.7(35) E.III/87 dated the 1st September, 1987 order 28(b) above) may be refixed on notional basis from the date of their promotion by taking special pay into account and actual benefit may be allowed to them only from 1.9.85.

No benefit of these orders, whatsoever, will accrue to Upper Division Clerks not in receipt of special pay or not fulfilling conditions contained in O.M. dated 1.9.87, irrespective of the date of their promotion to higher posts".

( G.I. M.F. O.M. No.7(29)E.III/89 dated the 22nd May, 1989)

7. According to the learned counsel for the applicant that the applicant in pursuance of the above circular O.M. was promoted to the post of Assistant prior to 1.9.85 and there is nothing on records that

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the O.M. dated 5.5.79 has been superseded by subsequent O.M. Therefore, the respondents cannot deny the benefit accrued to him on his promotion to the post of Assistant. He drew my attention to annexure A-8 dated 2/9-5-91 wherein the respondents under whom applicant is working, had written a letter to the Ministry of Finance stating that in the order dated 10.1.84, the provision of option provided in the M.H.A. O.M. dated 26.9.81 was inadvertently not mentioned. Due to this reason, applicant has represented that he could not exercise his option for fixation of his pay from the date of his next increment in the lower grade which was due to him w.e.f. 1.1.84. Therefore, the applicant has made a representation to the respondents urging them to exercise the option now relaxing the time limit prescribed for the purpose of re-fixing his pay in the grade of Assistant by giving him the benefit of special pay as per Ministry's order dated 22.5.89 which provides that the UDC's drawing special pay of Rs 35/- per month prior to 1.9.85 are also eligible for benefit of special pay in fixation on promotion as Assistant.

*Agreed*

8. The contention of the respondents, that the post of Assistant is intermediary level, does not appear to be tenable and it is not

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on record. The fact is that the applicant has been drawing the special pay of Rs 35/- while he was holding the post of UDC and in pursuance of the O.M. dated 22.5.89 it is not made out that the applicant is not eligible to draw the same benefit to the post of Assistant when he was promoted. It is an un-disputed fact, that the Respondents gave benefits to others who were similarly situated as that of the applicant, such as in the case of Smt. Rukmani, Vijay K-umar and Sh .S.C. Bakshi.

9. In their counter reply the respondents has stated that the case of Smt. Rukmani, V.K-umar and Sh.S.C. Bakshi are being reviewed and it is clear from the para 6 of the reply to the O.A. that those UDCs who were drawing special pay in terms of the Ministry O.M. dated 5.5.79 and promoted to higher post prior to 1.9.85. The contention of the Respondents that their pay will be reviewed, such a contention is not tenable and on that ground, the Respondent cannot deny the benefits accrued to applicant. In this connection, Learned counsel for the applicant also drew my attention to the decision's of this Tribunal (1) OA No. 42/91 dated on 19.11.91 (All India Postal Accounts Employees Association and others V/s

Pls see

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U.O.I. & Others) and O.A. No.794/89 decided  
on 30.11.90(Prahlad Kumar Johar V/s U.O.I.  
& Others(1991) 18 ATC 707.

10. In both these cases, the Tribunal has  
held in favour of the applicants and directed the  
respondents to refix the pay of the applicant on  
promotion by taking into account the special pay of  
Rs 35/-for the purpose of fixation of pay on promotion.

11. In the light of the above, I am of the  
view that there is considerable force in the applicants  
case and the Respondent's has not made out any  
cogent reasons for not refixing his pay in the post  
of Assistant, the benefit of special pay is not  
tenable and accordingly quashed and set aside the  
order of the respondent vide dated 30.4.92 regarding  
non inclusion of special pay while fixing the pay  
in the cadre of Assistant. The application is, therefore,  
allowed and the Respondents are directed to refix his  
pay in the post of Assistant granting special pay for  
the purpose of fixation of pay on promotion. In the  
circumstances, I hereby quash and set aside the order  
dated 30.4.92 and direct them to dispose of the same  
in the light of the above. No order as to costs.

*B.S. Hegde* 2/5/93  
(B.S. HEGDE)  
MEMBER(J)