

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No. 2356/1993

New Delhi, dated the 28th November, 1994

CORAM

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri K.S. Rangaswamy,
A-35/F DDA Flats, Munirka,
New Delhi

...Applicant

(By Advocate Shri Ranganathasamy)

V/s

1. Union of India through the Secy.
Ministry of Finance,
North Block, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Defence Finance,
South Block, New Delhi
3. Controller General of Defence Accounts,
West Block, New Delhi
4. Controller of Defence Accounts,
(Headquarters) G-Block, Duplex Road,
New Delhi-11

,, , Respondents

(None for the respondents)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman(A)

The applicant is an officer of the Indian Defence Accounts Service. He was earlier in the Group B service and he was promoted as Accounts Officer on 7-9-1977. Subsequently, he was promoted to the Indian Defence Accounts Service w.e.f. 28.3.88

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and posted as Assistant Controller of Defence Accounts.

This is the group 'A' service of the department. The applicants' contention is that on such appointment he was not given the charge of any post in the Junior time scale. He was asked to work on the post of Group officer which is normally a senior time scale post. In this regard the applicant has stated as follows in para 4.5. of the O.A.:-

" That during the period he was Assistant Controller of Defence Accounts, he was directed by the respondents to perform duties of Group officer during the period from 28.3.1988 to 31.7.1991 without any break and Group Officer is class-I-officer who receives Senior Pay scales i.e. Rs 3000-4500. The records of Controller of Defence Accounts (Hq) will support the aovernment-orders are issued on the Register which is available with Controller of Defence Accounts (Hq) N/Delhi

Though representations were made by the applicant that in view of the fact that he was discharging the duties of Group Officer which is of the senior time scale, he should be granted senior time scale, this request was not accepted by the respondents.

2. In a letter dated 21.4.1993 (Ann.3) the applicant represented, inter-alia, as follows:-

" Despite my representation no reply was furnished to me as to the progress of the case. Therefore, I represented the case again on 6.12.90 and 21-12-90 which

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representations were forwarded to CGDA under CDA Hqs No. 75011/1/88/AN I K.S.R. dated 7.12.90 and 21.12.90. My representations were returned unactioned under CGDA confidential letter No. AN/1/1402/4/IV(PO) dated 28.1.1991 stating that the matter is still under consideration of the Ministry and no formal amendment has been issued to the IDAS Recruitment Rules and advised me to represent only after the amendment to IDAS Recruitment Rules were published.

Now that amendment to IDAS Recruitment Rules has been issued vide Gazette of India Notification-Part-II Section 4 Ministry of Defence (Finance Division) SRO No.6 dated 12.1.1993. I would request the CGDA to promote me to the Senior time scale of IDAS from the date of the induction to IDAS Cadre, as I was holding group charge and regularise it after completion of probationary period as is done in the Indian Audit Accounts Deptt- under Comptroller and Auditor General. An early reply is requested."

In this regard, the applicant was informed by the Ann-D letter dated 4-5-1993 -which refers to his letter dated 19-4-1993 and not 21-4-1993- that the issue regarding extending the benefit of Govt.letter dated 22-9-92 to the eligible AOs who were promoted to IDAS cadre between 1-4-87 to 31-3-1992 was under examination. However, subsequently by / impugned the Annexure-A letter dated 28.8.93, the

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applicants prayer in his letter dated 21-4-1993 has been rejected on the ground that the amendment to the IDAS (Recruitment) Rules come into force w.e.f. 6-2-1993 and hence the same is not applicable in this case.

3. In the circumstances, the applicant has prayed for a direction to the respondents to fix his pay in senior scale w.e.f. 29.3.1988 and given him arrears of pay and allowances and to refix his pension.

4. The respondents have filed a reply in which this claim has been denied. Their reply to para 4.5. of the OA is as follows:-

" The contents are not correct, baseless and are denied. It is, however, submitted that for promotee officers only two assignments are available, either the Section charge or the Group charge. Considering the fact that the promotee officers do have merely (sic- nearly) a decade's experience of holding section charge, they are asked to discharge the duty of group charge post which they voluntarily accepted. At the time of acceptance of such charge, no promotee officer has demanded STS but as soon as four years period during which they remained in JTs is over, they start agitating for STS on the ground of equal pay for equal work. In day to day functioning of the deptt.. in the lower

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•chtones also an LDC is asked to discharge the duty of UDC or selection grade clerk. However, no body asks higher scale for the reason that he discharged the duties which are normally discharged by a UDC or SGC

The applicant was aware of the fact that in case he had raised the issue on the date he was given group charge, he would have been given the section charge. Thus, having already accepted voluntarily the assignment of group charge, which conferred upon him a higher status in the departmental hierarchy without demanding higher scale, he is barred by limitation to file the present O.A. at this belated stage."

5. The matter was heard on 27-10-1994 and the respondents were directed to produce the rule regarding the cadre strength in the junior time scale and Sr.Time scales and furnish particulars of the posts in both these time scales, as well as strength of Jr.time scale on the date when the applicant was appointed to service on 28-3-1988 as we felt that, perhaps, though the applicant was appointed to the IDAS service on 28-3-1988, no post in the junior time scale was available, as such posts might have been appropriated for direct recruits.

6. None appeared for the respondents today and no records have been produced. However, Shri P.H.Ramchandani

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learned counsel appeared after the order had been dictated.

7. On an earlier date, the objection based on limitation was rejected.

8. We have carefully considered the prayer in the O.A. The reply to para 4.5. shows that the department had an option to appoint the applicant either to a section charge, which is in the junior time scale, or to the group charge, which is in the senior time scale. The reply of the respondents that persons appointed to the group charge, but paid on

junior time scale kept quiet and agitated the matter

after they are confirmed. ~~This~~ is an amazing argument to deny the legitimate claims of such persons.

Undoubtedly, the respondents have taken advantage of their dominant position and they had no ~~question~~ ^{qualms} in extracting work out of the applicant for which

they did not remunerate him on the proper scale

of pay. If they intended to be fair to the

applicant, they should have informed the

applicant that a ~~selection~~ ^{section} charge post in

the Junior time scale was available, but that

the respondents intended to give him charge of

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without financial benefits.

a senior time scale. Not having done so, the applicants' claim to the senior time scale cannot be denied on this ground. The respondents have admitted that the applicant was eligible to be appointed ~~as~~ senior time scale, in view of his experience for a decade holding the section charge.

Therefore, it is not a case of an ineligible person having been appointed to a Senior time scale post.

9. The applicant has filed an order of the High Court of Delhi in writ petition No. 1342 of 1972 in the matter of Shri K.G.Menon and Others v/s UOI & Ors (Ann.G) The following findings have been given :-

" In my opinion, therefore, the only reasonable conclusion which can be arrived at is that if an officer is asked to work in a post which is in the senior time scale then he would be entitled to receive the salary in that scale.

In the present case it is admitted that the petitioners have been working as Group Officers which are senior time scale posts. The petitioners would be deemed to have been appointed to those posts at least on ad hoc basis. They would, therefore be entitled to receive pay in the scale of Rs 1100-1600."

10. In the view we take in the matter it is not necessary to refer to the rules. The applicant having been asked to work on a senior time scale post is entitled to remuneration on pay scale, especially in view of our observation in para 8 (supra) and the aforesaid judgement.

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11. In the circumstances, we dispose of this O.A. with a direction to the respondents to fix the pay of the applicant in the senior time scale from the date he was appointed to the IDAS i.e. 28.3.1988, as from that date itself, admittedly, he was asked to work on a ~~position~~ ^{the} post in the Senior time scale, until he retired on 31.7.1991. We further direct the respondents to pay his arrears of pay which are due to him on this account and we also direct them to re-fix his pension on the basis of such re-fixation of his pay. These directions shall be complied within a period of four months from the date of receipt of a copy of this order. In the circumstances of the case, parties are directed to bear their own costs.

Lakshmi Swaminathan

(Lakshmi Swaminathan)

Member (J)

N.V. Krishnan
28/11/84

(N.V. Krishnan)

Vice Chairman (A)

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