

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Allahabad This The 4th Day Of Aug, 2000
Original Application No. 1302 of 1996

CORAM:

Hon' ble Mr. S. Biswas, A.M.

Shiva Kumar Mishra s/o Late Badri Prasad
Mishra r/o 16/24 A, New Sahabatibagh,
Allahabad.

.....Applicant

(By Adv: Sri S.N. Gaur, Sri A.K. Srivastava)

VERSUS

- 1- Union Of India, through Secretary, Ministry
Of Finance Government Of India,
New Delhi.
- 2- Comptroller & Auditor General Of India
10-Bahdur Shah Zafar Marg, New Delhi.
- 3- The Accountant General (Audit) I, U.P. Allahabad.

.....Respondents

(By Adv: Sri S. Chaturvedi)

 D R D E R

(By Hon' Mr. S. Biswas, A.M.)

The applicant seeks the following reliefs:

- 1) Direction to the respondents for refixing his pay by
adding Rs. 35/= as special pay w.e.f. 1-1-86 and pay his arrears.
- 2- The applicant has impugned order dt. 13-12-89 (Annexure-1)

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by which an amount of Rs. 4,110 was ordered to be recovered from the applicant, as due to over payment of special pay of Rs. 35/= w.e.f. 1-1-86. He has also impugned the letter dt. 26-10-94 by which the respondents informed that his representations made for this purpose were turned down. But the applicant has not sought quashing of these orders.

3- The undisputed facts of the applicant's case are briefly as under.

4- The applicant joined as auditor in Oct. 73 and presently working as Asst. Audit Officer under respondent no. 3. The applicant was drawing a special pay of Rs. 35/= p.m. in the old scale (prerevised) upto 30-9-86, while re-fixing the pay of the applicant in the revised pay scale w.e.f. 1-1-86, the adding benefit of re-fixation by special pay of Rs. 35/= was withdrawn by office order dt. 13-12-89 which has been impugned. The applicant has also contended that the contents of O.M. F.I.(a) E III-9 dt. 8-5-89 were not observed in his case. (Annexure- 3 to O.A.). The applicant has alleged that the O.M. dt. 8-5-89 was misrepresented to deny the re-fixation by including special pay w.e.f. 1-1-86 and Rs. 4,110 was wrongly recovered.

5- The applicant has further submitted that "While fixing the pay in the revised scale," it was given to those who have sanctioned the said special pay after 1-1-86 but prior to 13-9-86 (i.e. between 2-1-86 and 12-9-86) vide order dt. 27-11-90 (Annex. 4 to O.A.) .

6- The applicant has also mentioned that subsequent to rejection of his representation, he was informed that by Sri S.K. Das, the Audit Officer of personal claim unit under respondent no. 3 that the letter is of the view that applicant has a case in principle. The matter has been referred to Comptroller and Auditor General of India (Respondent 2) This reference is annexure 5 to O.A.

7- The applicant wants that in disposing of the O.A. the ratio decisions in O.A. 108/88 (S.D. Tyagi vs. U.O.I.) O.A. 109/88 M.M. Gupta vs. U.O.I. and O.A. 110/88 (B.D. Gupta vs. U.O.I.) be applied. A copy of the last mentioned O.A. is annexure-8 to O.A. It is held there "That the basic pay drawn by the applicant as on 1-1-86 is to be taken

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into account for refixation of the pay in the revised scale of pay. There appears no warrant in the proposition that the basic pay as on 31-12-85 is to be made the basic for fixations of the pay in the revised scale of pay. "

8- The learned counsel for the respondents has contested the case among other things on i) limitation, ii) non-admissibility of the claim under order dt. 8-5-89 as cited by the applicant himself, and iii) And non-applicable rulings and notifications cited by the applicant. In all 3 representations were made, all of which have been rejected.

9- Heard both the parties on facts and law points.

10- The applicant has quoted M.F.'s F No. 1(a) E-111/89 (Annexure-3) dt. 8-5-89 in support of the case which itself states :

"The undersigned is directed to refer to this Ministry OM No. 7(52)-E.III/78 dt. 5-5-79 regarding grant of special pay of Rs. 35/= to UDC's in non-secretariate Administrative Offices attending to work of a more complex and important nature. The total number of such posts were limited to 10% of the posts in the respective cadres. These orders were subsequently made applicable in respect of Jr. Accountant/Auditors in the organised Account cadres, viz, IA & AD, Defence Accounts, P&T Accounts, Railway Accounts and CGA. While this special pay of Rs. 35/= has been revised to Rs 70/= with effect from 1-1-86 in case of non-secretariat Administrative Offices, in case of organised Accounts cadres special pay stands abolished, consequent upon introduction of higher functional grade of Rs. 1400-2600 for Accountant/Auditor based on the recommendation of the 4th pay commission. Further, special pay of Rs. 35/4 was also not treated as a part of "existing emoluments" for the purpose of fixation of pay in the revised scale, as per rule 7(1)(B) of the CCS(RP) rules, 1986. A number of Accountants/Auditors working in the organisations like IA & AD, Postal Accounts and Railway Accounts filed petitions before the Central Administrative Tribunal. praying for the treatment of special pay of Rs. 35/= as part of "existing emoluments" for the purpose of fixation of pay in the revised scale.

The question regarding extension of the benefit of the judgement of the CAT to similarly placed person has also been under consideration of the Government. The president is now pleased to decide

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that the benefit of the judgements of the CRT in this regard may be extended to similarly placed persons in the organised Accounts cadres by treating of special pay of Rs. 35/= drawn by them in the pre-revised scale as part of "existing emoluments" for the purpose of fixation of pay in the revised scale of pay under Rule 7 (1) (B) of CCS (RP) Rules, 1986.

As a result of application of these orders, there may arise cases where juniors performing complex nature of function in the pre-revised set up and consequently getting special pay of Rs. 35/= may get their pay fixed in the revised scale at a higher stage than the seniors who were not performing the complex nature of functions and were, therefore, not getting the special pay. Such cases if any, can not be treated anomalous because juniors will be drawing higher pay than seniors by virtue of having performed duties of complex nature and drawn special pay. Thus, there will be no question of stepping up of pay of seniors on this account."

11- The respondents have disposed of the representations by the applicant without clearly stating if the instructions of the Ministry Of Finance dt. 8-5-89 were considered, factually. In order to be considered for the benefit spelt for some who were performing complex duties in audit functions and already getting "Special Pay" by including the same in "existing emoluments" for the purpose of refixation, it was made incumbent that only similarly placed persons who are in the organised Accounts Cadres.- doing arduous and complex duties, drawing the special pay in the old pre-revised scale would be entitled, to add it up in the existing emoluments, *Not otherwise.*

12- The applicant has not submitted any such details of his case, or if he is just one of those seniors, not getting special pay, hankering after equity in pay on the ground of seniority only. It is, therefore, necessary that the representations which were disposed of without giving necessary details to show that these materials and clarification dt. 8-5-89 were considered need to be ^{reviewed} removed for reconsideration. The latest rejection dt. 7-10-94 communicated by Sri S.L. Kapoor Sr./ Audrah offices is also silent and far from speaking.

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13- In para 4.5, the applicant has mentioned that the respondents no. 3 had acknowledged in principles the ^{views} ~~views~~ of the applicant- subsequently referred to respondents No. 2 for SM approval which, if awaited also need to be decided before disposal of the application either way.

14- The citation of the CAT's order relates to fixation of pay in a case where the basic pay as on 31-12-85 was in dispute and hence, it is not factually relevant to the present issue.

15- The applicant has also contended that according to circular No. NGI/62/90 dt. 27-11-90. Certain clarifications on this issue have been circulated by comptroller of Auditor General's office. One of these clarifications is:

" As under this office circular letter No. 538-M/65-86 dt. 29-9-86, the special pay of Rs. 35/= was allowed to be continued to those who were drawing pay in the old scales, there is no objection to the element of special pay of Rs. 35/= being treated as a part of the existing emoluments for the purpose of fixation of their pay in the revised scale of pay under Rule 7(i)(a) of the CCS (RP) Rules 1986 from the date of their next increment occurring after the date of sanction of special pay in terms of M/Finance OM dt. 8-5-89. Consequent upon their pay having been fixed at a higher stage in the revised scale of pay of the lower post, there is not objection to their being allowed another opportunity in regard to the mode of fixation of their pay in higher promoted post provided a revised option in this regard is exercised by them within a period of 90 days from the date of issue of this circular. "

16- The facts required to fulfil the conditions/^{we} preconditions are not adequately given the O.A. not the same is possible to investigated by this Tribunal. The applicant obviously did not raise these points in his representations which have been disposed of. The petition is substantially premature, as he evidently did not exhaust the deptt. channels in full.

17- The learned counsel for the respondents has contended that the case is grossly time barred, as the applicant has sought relief

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in case which was decided in 1986- at the most in 1989, ^{it} nearly after 10 years and has not even mentioned about limitation. In this case, the last rejection reference is dt. 7-10-94.

18- The applicants' case is still pending before respondent no. 2 .

19- The applicant has not observably asked for quashing any impugned letter or order hurting his interest.

20- In view of the foregoing the case is disposed of with the following direction.

Respondents no. 2 before whom the case ^s said to have been referred by respondent No. 3 as per averment made in letter dt. 3-8-92 (annex 5 to O.A.), shall dispose of the same within 4 months of receipt and a reasoned order be passed. _{y m}

No order as to costs.

B. B. B.
Member-A

Abhishek/
