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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 22nd day of February, 2006.

Original Application No. 109 of 2005.

Hon'ble Mr. D.R. Tiwari, Member(A)

Hon'ble Mr. K.B.S. Rajan, Member (J)

B.L. Misra, aged about 64 years, S/o late Babu Lal Misra, R/o H.No. 117/Q/90/A Sharda Nagar, Kanpur.

.....Applicant

By Adv: Sri R. Chandra

V E R S U S

1. Union of India through the Secretary, Ministry of Defence (Finance), New Delhi.
2. The Controller General of Defence Accounts, R.K. Puram, New Delhi.
3. The Principal Controller of Finance & Accounts (Fys), 10-A S.K. Bose Road, Calcutta.
4. The Dy. Controller of Finance & Accounts (Fys), Incharge, Accounts Office, Ordnance Equipment Factory, Kanpur.

.....Respondents

By Adv: Sri S. Singh

O R D E R

BY K.B.S. RAJAN, MEMBER-J

Entitlement of Special pay admissible to persons engaged in doing arduous job is ^{the} ~~a~~ main issue involved in this case. According to the applicant, since his juniors were offered and paid Special Pay of Rs. 35/- per month from 15.5.1995, he having not been so offered despite confirmation report regarding his suitability, he has been losing

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~~by requiring~~
~~reckoning~~ to the benefit of special pay not only until retirement, but even thereafter as the special pay is counted as pay for the purposes of pension.

2. The following are the legal issues raised by the applicant.

- (i) Consideration of junior for special pay to the exclusion of senior is illegal.
- (ii) When the Court have issued a particular direction and the decision is a judgment in rem, not extension of the same, on the basis of the fact that the applicant was not one of the parties to the litigation is illegal and against law.
- (iii) Though the applicant's seniority had been re-fixed, as in the case of his juniors, he was not given the option regarding shouldering of higher responsibilities.

3. The respondents have resisted the O.A. According to them, the applicant's seniority had been fixed at sl. No. 1849-A and during his tenure; the individual who was given the special pay had higher seniority than the applicant. As regards, non extension of the benefit of the judgment, the contention is that the judgment of the Court was not applicable to non-applicants. As regards, juniors having been offered to the exclusion of the applicant, the same is denied.

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4. Arguments were heard and documents perused. Admittedly, the applicant had not performed higher responsibilities. Reason for the same is that he was not given any opportunity to exercise his option. The seniority fixed at sl. no. 1949-A cannot pertain to unit seniority, but is the over all seniority. According to the applicant, if the vacancy at the place of posting for en-shouldering higher responsibilities is not available, as in the case of one of his juniors, who was ^{at} roster point 3062 (para 6 of the RA), the applicant ought to have been given the option.

5. This Tribunal in the case of **M.N. Srivasrava & others Vs. U.O.I. (O.A. No. 575 of 1997)** by order dated 20.1.2003 has held as under: -

"We have carefully perused the contents of order dated 20.10.95 (Annexure A-14). Paragraph 'C' of the said order runs as follows:-

h "Cases of senior most Auditor/SGAs appearing in the list from sl. No. 1 to 2040 who were not earlier eligible for the benefit of the grant of special pay as on 15.84 or the date on which they were employed on complex nature of duties due to the reasons that they were already drawing the higher rate of special pay, cashier allowances, deputation allowance etc. and have subsequently become eligible for the said benefit as on 10.7.86, but before 18.9.86. Such cases are required to be

reviewed by CDA and forwarded to Hqrs. Office alongwith detailed statement of each case with specific recommendations for examination of this Hqrs. In terms of para 5(iv) of our circular dated 31.5.1995."

8. A perusal of this paragraph makes it clear that it was intended to grant the benefit of special pay to senior most Auditors/SGAs who had become eligible for the said benefit as on 10.7.86 and before 13.9.86. We find from the para 23 of the Counter reply, filed by the respondents, that grant of special pay to 140 senior most Selection Grade Auditors falling between Roaster no. 588 to 2040 was under sympathetic consideration of the Ministry of Finance, Department of Expenditure. The respondents have also mentioned in para 11 of the Counter reply that seven persons had given their option for transfer to in response to memo dated 4.7.86. This category alongwith the category of those who were earlier not entitled to special pay but became entitled to special pay as on 10.7.86 on account of order dated 20.10.95 were those entitled to be considered for grant of special pay on vacancies which remained after grant of Special Pay w.e.f. 1.5.1986 before the juniors falling between Sl. No. 2041 to 3062 were granted special pay.

9. It is not known whether the applicants belonged to any of the above two categories. In case they belonged to any of the above two categories, they shall individually bring the fact to the notice of Respondent no.4 by means of representation and the respondents shall consider their claims under the scheme applicable to those falling between Sl. No. 1 to 2040 for grant of special pay w.e.f. 10.7.1986. The respondents are directed to consider the claims of individual applicants filing their representation in accordance with the principles outlined above."

6. The aforesaid dictum would apply to the facts of this case. Apparently and admittedly too, when certain juniors^{were} given the benefits, the applicant, ^a~~is~~ senior, was left high and dry. That he was not given the duties as ^{that}~~a~~ person

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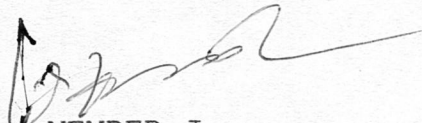
who was allowed the special pay was at sl. No. 1458 cannot be the ground to reject the case of the applicant since the offer should have been made to him as in the case of the employee at sl. No.3062, who was given option to move out. Viewed from any angle rejection of the applicant's case is not justified by the respondents. The applicant has certainly lost valuable rights to be considered for special pay from 1995.

7. The question now is whether the applicant's claim is barred by limitation. According to the respondents vide para 5 of the Counter, the application is time barred as his case from 1995 about which he had full knowledge and also represented, cannot be resurrected as late as in 2005. To that extent, the respondents are right. However, the same will be with reference to pay and allowances, but not with reference to the continuing cause of action, which in this case is difference in pension. The applicant could have an access to the judgment dated 20.1.2003 after its pronouncement and accordingly without wasting time, he has approached the authorities by making representation on 29.11.2004, but the same has not been responded to. Hence, as held by the Apex Court in the case of Amrit Lal Beri Vs. U.O.I. & Ors. (AIR 1975 SC 538) read with K.I. Sheferd Vs. U.O.I. AIR 1988 SC 686) and recommendations of the Vth Pay Commission vide para 126.5, the applicant should be given the benefit of the judgment. However, this benefit may have to be restricted to the terminal benefits and ~~reckoning~~^{recurring} pension only. The applicant is entitled to fixation of pay

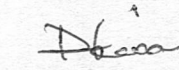
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including therein ^{a sum} ~~some~~ of Rs. 35/- per month as a part of his pay from 15.5.1995, the day his junior was given special pay and this special pay shall be notionally included for the purposes of working out the replacement pay under the Vth Pay commission recommendations and his last pay drawn should accordingly be arrived at, which would constitute the pay for the purpose of working out the pension and other terminal benefits. Once his pay is so fixed, the respondents shall work out on the basis of such pay the extent of terminal benefits due to the applicant and also the monthly pension payable to him, and after deducting the amount already paid from the respective heads, the balance shall be paid to the applicant. In addition, the difference in monthly pension shall be added henceforth and be paid regularly. We order accordingly.

8. This exercise shall be completed within a period of six months from the date of receipt of copy of this order. Costs easy.



MEMBER-J



MEMBER-A

GIRISH/-