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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

D.A. No. 428/88

Charan Jeet

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Applicant

vs.

Union of India &
Others.

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Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was working as Cashier in the office of the Surveyor General of India, drawing special pay of Rs. 40/- p.m. He was offered a special of Rs. 35/- p.m. w.e.f. 5-1-79 in lieu of a separate higher scale in pursuance of Finance Ministry's letter dated 5-5-79. This benefit is said to have been offered in view of the fact that he was attending duties of more complex and important nature by the UDCs in the non-secretarial and Administrative Offices and the total number of such post is limited to 10% of the post of respective cadres. Before accepting special pay of Rs. 35/-, clarification was sought by the applicant from his appointing authority and the clarification was to the effect that the special pay of Rs. 35/- will be counted for the purpose of pay fixation on promotion. It was thereafter the applicant accepted the offer of Rs. 35/- and surrendered the cashier's post to his junior with the loss of Rs. 5/- per month as he was drawing a special pay of Rs. 40/- per month, in the full belief that in future he will get the benefit of the same on fixation of pay on promotion. He was offered promotion on adhoc basis as Head Clerk/Assistant in the year 1980 and subsequently on regular basis in the year 1981 which was refused by the applicant as he was going

to complete 3 years in drawing the special pay of Rs.35/- which was to enable him to get the benefit in fixation of pay on promotion in future in view of the letter of the Director referred to above, from whom clarification was taken. The applicant was promoted as Head Clerk u.e.f. 15/2/83 and he requested his higher authority to fix his pay taking into account the quantum of special pay which he was drawing. He made representations also in this regard to the authorities concerned. But the respondents repudiated their promise which they have given vide letter of the Director referred to above. In spite of counting the special pay for fixation of pay on promotion, the same was stopped u.e.f. 29-11-82 and recovery of over-payment was ordered to be made.

2. According to the applicant, Ministry of Finance letter dated 29-11-82 clearly stipulates :-

- "(1) These orders are applicable to UDCs in subordinate offices not participating in the Secretariats scheme and where there is no intermediate relations between the Supervisory grades and UDCs including Technical Assistants, Investigators, etc. and
- (2) Past cases where decisions have been taken in variance to the clarifications made above need not be reopened."

The award on which reliance was placed by the applicant provides that Rs.35/- paid to the UDCs as special pay under Ministry of Finance letter dated 5-5-79 shall be taken into account for fixation of pay on promotion subject to the conditions :-

- (a) that the incumbent is substantive holder of the post to which the special pay is attached.

(b) that the incumbent on the date of his appointment to higher post is officiating in the lower post to which the special pay is attached continuously for a period of not less than 3 years.

3. The applicant, after exhausting departmental remedies in this behalf, has approached this Tribunal that praying/direction be issued to the respondents for counting special pay of Rs.35/- p.m. for the purpose of fixation his pay/on promotion w.e.f. 15-2-83 ~~in~~ pursuant to the Government of India's decision and also prayed for issue of direction for not implementing the order of recovery with ~~retrospective effect~~ ^{and} that they may be further directed to give option to the applicant after final decision of this case for fixation of his pay under fundamental rule 22(a)(i) or fundamental rule 22(c) from the date of his regular promotion viz. 15-2-83 as Head Clerk, as the applicant was forced to draw his pay as U.D.C. The applicant has claimed relief on the ground that the respondents are bound under the principles of promissory estoppel as they made him to part away with special pay of Rs.40/- and to accept the special pay of Rs.35/- with full hope and belief that he will get the benefit of fixation of pay in future promotion in view of the clarification given by them and the action of the respondents are also violative of articles 14 & 16 of the Constitution of India inasmuch as the Income-tax Inspectors who were drawing similar benefits are promoted by the Government when they made a complaint in this behalf and that such protection may be extended to the applicant also. Even if there is no specific provisions of statute, no action can be taken

against a person ^{to} whom an opportunity of hearing was not given and not only recovery was ordered but also his pay was reduced without any rhyme and reason.

3. The respondents have denied to have given any promise to the effect that the benefit of special pay of Rs.35/- will be given in fixation of pay in future promotion. According to the respondents, the benefits of Rs.35/- per month granted to the U.D.C. cannot be given in higher scale and as such no benefit in this regard can be given to him on fixation of pay on promotion as Head Clerk/Assistant. The applicant was further informed that special pay of Rs.35/- is not admissible to UDC in the office of the Surveyor General of India, which is not under the control of Central Board of Direct Taxes (CBDT) and any order passed by the CBDT is not binding on the office of Surveyor General of India. Special pay was not granted to the applicant in lieu of separate higher scale but it is an inadvertent mis-interpretation which was later on clarified by the Government and accordingly corrective steps were taken. At the relevant time, the applicant was posted in the office of the Deputy Director, Northern Circle, Survey of India. In that office initially there was a Supervisory post of accountant which carried pay scale which ^{is} admissible to the Head Clerk/Assistant in the department. The said post was later on upgraded and designated as Office Superintendent with higher pay scale. The applicant was never entrusted with the work of more complex and important nature.

4. The above facts make it clear that the applicant, who was drawing special pay of Rs.40/- after getting clarification letter from the Director, has accepted the special pay of Rs.35/- in lieu of Rs.40/- obviously

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with full hope and belief that he will get the benefit of fixation of pay in future promotion as the same may form part of the pay. It is this letter which might have created confusion in his mind which has made him to change the position inasmuch as he has to forego the special pay of Rs.40/- and even promotion to which reference has been made earlier.

He waited for 3 years in order that he may earn promotion which will make Rs.35/- as part of his pay and the same will not be reduced. It may be that the Director is not all in all, but the clarification letter did create some confusion in the applicant's mind which made him to change his decision and part with the special pay of Rs.40/- in addition to his promotion.

5. The applicant contended that in this case the principle of estoppel will apply. May it be that it was not a notification of the Government, but it was by the head of the department, whose powers or clarification in this behalf at no stage was questioned by the department till to-day. The higher authority, to whom the matter was referred, was competent to decide the matter and the said authority has taken a decision in this behalf and thereafter action was taken against the applicant and his pay has been reduced and recovery has been ordered.

6. The applicant was drawing a special ^{pay} of Rs.40/- p.m. and it was in view of the Government Circular that he preferred to accept the special pay of Rs.35/- i.e. Rs.5/- less than that of what he was getting and had also to forego his promotion, as the Circular of Government clearly provided that after 3 years the same will be included in his basic pay on promotion. It was under these circumstances the incumbent had to forego his promotion

earlier also, so that he may complete 3 years. It is not a case of oral assurance, but it is the case of Government's own letter which made the incumbent to change the position and to accept the lower pay for completing 3 years and not to go on promotional post. The principles of Premissary Estoppel will clearly apply in this case. It is the case of express and implied promise of the Government which made the applicant to change his position and it is a well settled principle of law that no one is to suffer because of the promise made by the Government which made the party to change the position. As such the principles of Premissary Estoppel will apply and the applicant cannot be made to lose the special ^{pay} of Rs.35/- and the same is to be counted towards his pay fixation on promotion and it cannot be ordered to be recovered. Even otherwise the special pay has been defined in fundamental Rule 25 which is as under:-

Rule 25 :- "Special pay means an addition of the nature of pay to the emoluments of a post of Government Servant, granted in consideration of :-

(a) which specially orders the nature of duty;

or

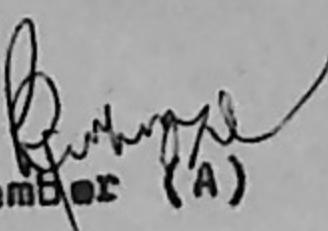
(b) specific additions to the work of responsibilities;

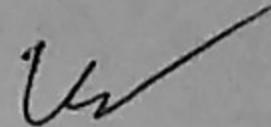
It is because of the specific addition to the work of responsibilities special pay of Rs.35/- was given. As such it is a special pay. The special pay under the Government's own orders was to be counted towards basic pay. Therefore, the applicant's pay was rightly fixed after taking into account the special pay which was being drawn by the applicant, but the applicant was wrongly deprived of the same. Accordingly this application deserves to be

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allowed. The respondents are directed to count the special pay of Rs.35/- for the purpose of fixation of pay of the applicant on promotion w.e.f. 15-2-83 in view of the Government of India's decision referred to above and the order of recovery is quashed and the respondents are directed not to give effect to the same w.e.f. 29-11-82 or in view of the subsequent order with prospective or retrospective effect. The respondents are further directed to fix the pay of the applicant new from the date of his regular promotion taking into consideration the special pay of Rs.35/- which he was getting prior to his promotion and the consequential benefits are also to be given to the applicant. Let this be done within a period of 3 months from the date of communication of this order. No order as to the costs.


Member (A)



Vice-Chairman.

Dated: 23rd March, 1993, Allahabad.

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