

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALIAHABAD BENCH

....

Registration O.A. No. 1192 of 1988

N.G. Dhavalikar ..... Applicant

vs

Union of India and others ... Respondents

Hon' Mr Justice Kamleshwar Nath, V.C.

Hon' Mr K.J. Raman, Member (A)

This application under section 19 of the Administrative Tribunals' Act of 1985, is for direction to the respondents to accord the senior time pay scale Rs.1100 - 1600/- to the applicant and consequently revise his pensionary benefits.

2. The facts are not in dispute. The applicant while working as a Permanent Accounts Officer in the office of Controller of Defence Accounts, was promoted w.e.f. 23-12-1971, as Assistant Controller of Defence Accounts(A.C.D.A.) in a vacant post by Annexure-A-1, dated 27-5-1972, read with Annexure-A-2 dated 23-12-1971. The pay scale of the post of A.C.D.A. at the time was Rs.400 - 1250. With the application of Pay Commission Report w.e.f. 1-1-1973 that pay scale was bifurcated by Annexure-A-3 dated 11-7-1974 into two scales of pay Rs.1100/- - Rs.1600/- and Rs.700/- - Rs.1300/-. However, by a notification dated 15-12-1975, Annexure-A-4, under the Central Civil Services(Revised Pay) Rules, 1973, another scale of Rs.1100 - 50 - 1500 was carved out by revising the old scale of Rs.400 - 1250/- and by order Annexure-A-5 dated 16-1-1976, the applicant's salary was fixed

at Rs.1250/- w.e.f. 1-1-1973 in the carved out scale of Annexure-A-4.

3. The applicant's grievance is that under Annexure-A-3, the scale was Rs.1100 - 50 - 1600/-, which applied to Assistant Controller of Defence Accounts, on which post the applicant continued to work, it was not permissible for the respondents to create a lower scale of Rs.1100- 50 -1500 by Annexure-A-4. The contention is that all persons working as A.C.D.A. were entitled to one uniform scale of pay i.e. Rs.1100-50-1600/- and it could not be discriminated against by awarding the lesser scale of pay of Rs.1100-50-1500 only to some of them. The respondents in their counter reply state that the applicant was given a temporary ad-hoc officiation in the original scale of Rs.1100-50-1500, that is why he was given a replacement scale of Rs.1100-50-1500 <sup>stat.</sup> on the bifurcation of the scales in contradiction <sub>to</sub> from the regularly appointed A.C.D.As.

4. There is no rationale in according a lower scale of pay to a person who is actually appointed to and discharges the functions of a post which carries a higher scale of pay. It is not a case of person appointed to a lower post required to hold <sup>a charge of</sup> a higher post <sub>in addition to his own duties.</sub> It is a case of an appointment to the higher post and it makes absolutely no difference whether the appointment is temporary, ad-hoc or regular. That is the view, which has also been taken by the Bangalore Bench of this Tribunal in O.A. No. 672/86 M.V. Narayanaswamy vs. Union of India and others decided on 20-1-1987, whose copy of judgment is Annexure-A-6.

(P.M. 3)

5. Shri K.C. Sinha learned counsel appears on behalf of the respondents says that the application has been grossly delayed and is barred by time. The applicant retired on 30-11-1975. According to Shri Sinha, the claim must have been made much earlier than the institution of this petition on 11-10-1988. What Shri Sinha says is not without substance, but the substance has a qualification, and that qualification is to be found in the decision of Jodhpur Bench of this Tribunal in Laxman Das vs Union of India and ors (1988) 6 A.T.C. 609. The Jodhpur Bench has held that where an employee waits for the final decision of the Tribunal of a petition filed by other colleagues and then instituting the case after favourable decision of the Tribunal, there is sufficient ground for condonation of delay in filing the original application. The judgment of the Bangalore Bench was rendered on 20-1-1987. This case was filed on 11-10-1988, we think that what-ever delay has taken place in filing of this application, it deserves to be condoned. It also appears that the applicant made a representation which was rejected by Annexure-A-8 dated 17-8-1988.

6. In view of what we have stated above, the petition is allowed and we direct that the respondents shall give the scale of pay of Rs.1100-50-1600 to the applicant w.e.f. 1.1.1973 and on that basis, shall pay the arrears admissible to the applicant till he retired on 30-11-75 and also to further revise the pensionary benefits on that basis. The respondents will comply this direction within a period of four months from the date of receipt of a copy of this judgment.

(S.D.W.A.)

10/8/90.A11d. MEMBER(A) VICE CHAIRMAN