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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 666 of 1993

Allahabad this the 18th day of November 1998

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.K. Agrawal, Member (J)

Om Prakash Mishra, S/o Sri T.N. Misra, Assistant Cashier Now designated U.D.C. Cash Office, Ordnance Clothing Factory, Shahjahanpur, Resident of Qr.No.II/A/77, Double Storey Factory Estate, Shahjahanpur.

Applicant

By Advocate Sri K.C. Saxena

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, Calcutta.
3. The General Manager, Ordnance Clothing Factory, Shahjahanpur.

Respondents

By Advocate Sri Amit Sthalekar

ORDER

By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A., the applicant makes a prayer to grant Cash Handling Allowance as per Fourth Pay Commission report at the rate of Rs.125/- per month to the applicant and to quash the impugned order of Ordnance Factory Board dated 02.2.93, refusing to allow the applicant-Cash Handling Allowance.

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2. The facts of the case as stated by the applicant are that the applicant having been appointed as Lower Division Clerk in the Ordnance Clothing Factory Shahjahanpur was promoted as Assistant Cashier vide Factory Order No. 960, dated 02.5.88 and took the charge of the promoted post on the same date. The duties assigned to the applicant relate to Cash handling work pertaining to imprest account ensuring its upto date position daily, maintenance of cash book pertaining to non-public fund/regimental fund, Labour Welfare Fund, Death Relief Fund and Fine Account, maintenance of soiled currency register as detailed in the order dated 29.12.1989. It is stated that Sri Ram Bhaarose, U.D.C. was transferred from Cash Office vide Factory Order Part II No.93 of 15.1.1992 and the applicant was given the work, posting of assets and liability statement (Balance Sheet) on time every month consequent upon his transfer. The work of the applicant was to the satisfaction of the concerned officers. The applicant made application to the General Manager through proper channel for giving him cash handling allowance from the General Manager's relief fund vide application dated 02.5.92. The W.M. Admin I recommended the case of the applicant to Additional General Manager and Deputy General Manager but ultimately, Ordnance Factory Board vide impugned order dated 02.2.93, refused the special pay/cash handling allowance to the applicant. It is stated that as per the extract of the Fourth Pay Commission report related to pay and allowance of Cashier/Assistant Cashier. Both Cashier and Assistant Cashier are allowed the same revised pay scale plus special allowance ranging Rs.50/- to Rs.125/- per month. The applicant was not allowed

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the same whereas he is entitled to cash handling allowance at the rate of Rs.125/- per month as the monthly turn over exceeded Rs.5 Lakhs in his hand according to instructions contained in Annexure-7. It is also stated that Fourth Pay Commission report was accepted by the President of India on the recommendation of Union cabinet, therefore, Ordnance Factory Board cannot refuse to grant cash handling allowance to the applicant. Therefore, it is requested that this O.A. be allowed and applicant be given special pay/cash handling allowance at the rate of Rs.125/- per month.

3. The counter-affidavit was filed. In the counter-affidavit, it is stated that the applicant was promoted as Lower Division Clerk w.e.f. 01.8.84 and was further promoted as Assistant Cashier w.e.f. 02.5.88 vide order dated 02.5.88 and was re-designated as U.D.C. It is also stated that the applicant has never requested for grant of cash handling allowance before 13.7.92. His application dated 13.7.92 was forwarded to Ordnance Factory Board, Calcutta and the Ordnance Factory Board has given the decision vide its letter dated 28.12.1992, it was communicated to the applicant vide letter dated 02.2.93. The applicant again submitted his application dated 12.3.93 which was examined and considered and was regretted to the applicant vide letter dated 13.7.92. It is stated that only one incumbent(Cashier or Assistant Cashier) in one department/organisation dealing with the cash duties, is entitled for cash handling allowance as per Fourth Pay Commission report as clarified by Ordnance Factory Board, Calcutta. Therefore, the

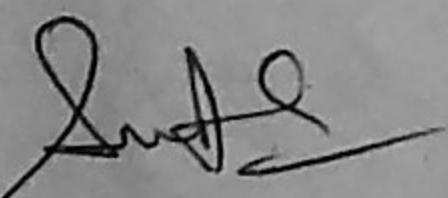
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the applicant is not entitled to any relief sought for as Sri A.K. Mishra, Cashier now redesignated as U.D.C. is already in receipt of cash handling allowance, therefore, the question of allowing cash handling allowance to the applicant does not arise. In this way, on the basis of averments made in the counter-affidavit, the respondents have requested to dismiss this O.A. with cost.

4. The rejoinder has also been filed by the applicant and emphasised that the order issued by the Ordnance Factory Board and orders issued ~~vide~~ O.M.No.6/31/86-Est. (pay second), dated 29.9.86 and O.M.No.4/30/88 (pay second), dated 29.4.89, cannot supersede the order of the President of India.

5. Heard, the learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record.

6. Learned lawyer for the applicant has submitted that non-implementation of the Fourth Pay Commission report after the approval by the Government is in violation of Article 14 and 16 of Constitution of India and any order issued by the Government contrary to the orders issued in pursuance of the recommendation of Pay Commission cannot supersede the original order of implementation of Pay Commission report. In support of his contention, learned lawyer for the applicant has referred 'A.I.R. 1973 S.C. page 1088' and 'A.I.R. 1993 S.C.W. page 4230'.



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7. On the other hand, learned lawyer for the respondents while objecting the above arguments, submitted that the applicant did not challenge the validity of these circulars issued by Government of India, therefore, action of the respondents in not allowing applicant the special pay(cash handling allowance), was perfectly justified.

8. We have given thoughtful consideration to the rival contention of both the parties and perused the whole record.

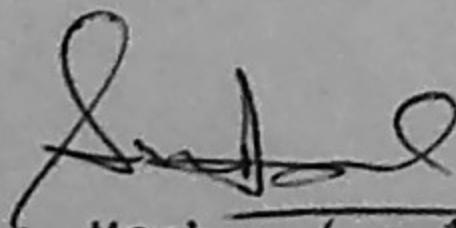
9. On the perusal of the pleadings, it appears that the applicant was promoted as Assistant Cashier vide order dated 02.5.88 w.e.f. 02.5.88 and was re-designated as U.D.C. It also appears that the applicant is working in Cash office as Assistant Cashier. It also appears that the claim of the applicant for special pay(cash handling allowance) was refused on the ground that one incumbent is already in receipt of special pay (cash handling allowance) at the rate of Rs.125/- per month. On the perusal of the orders issued in pursuance of the Fourth Pay Commission report, it also appears that both Cashier/Assistant Cashier are allowed the revised pay scale of Rs.1200-30-1560-EB-40-2040 plus special pay ranging from Rs.50/- to Rs.125/- per month. This means that the person working as Cashier/ Assistant Cashier is entitled to the same pay scale and same scale of special pay as provided in the orders issued in pursuance of the recommendation of Fourth Pay Commission. Special pay cannot be

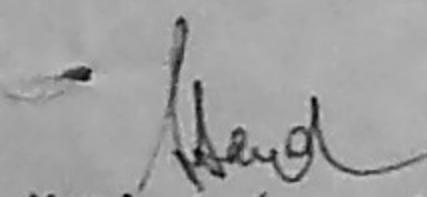
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claimed as a matter of right. The benefit of special pay are admissible only to those employees who are eligible to get the same. For that, special sanction is required. The special pay can only be allowed where employee is entitled as per rules prevalent for the same. The O.M.No. 6/31/86-Est.(second pay) dated 29.9.86 and O.M. No. 4/30/88(pay second), dated 29.4.89 provides that not more than one official is allowed special pay in an office/department. The scale of pay/rate of special pay fixed by the orders in pursuance of the recommendation of Fourth Pay Commission are applicable only when an employee is entitled for the same. In the instant case, the applicant is not entitled to the same as per the circulars issued by the respondents. These circulars have not been challenged by the applicant. It is not also disputed that these circulars are issued under Article 309 of the Constitution of India and have the force of law. Therefore, when these circulars have not been challenged hence-on the basis of the circulars, the applicant is not entitled to any special pay as claimed by him. Therefore, refusing to allow the applicant special pay(cash handling allowance), was perfectly justified and is not in any way in violation of Article 14 and 16 of the Constitution of India.

10. We, therefore, find no merit in the O.A. and the same is dismissed with no order as to costs,


Member (J) 18/11/98


Member (A)

/M.M./