RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.
****

Allahabad this the 10 th day of December 1996.

Original application No. 1008 of 1994.

Hon'ble Mr. D.S. Baweja, AM

Sri P.R. Kakkar, S/o Late Sri Jagat Ram Kakkar, R/o 71/2 Bakralwala, Dehra Dun at present working as Assistant in the office of the Director, Northern Circle, Survey of India, Post Box No. 3, Dehra Dun.

..... Applicant.

C/A Sri A.K. Gaur

Versus

1. Union of India through the Secretary, M/o Science & Technology, New Mehrauli Road, New Delhi.

2. The Surveyor General of India, Survey of India, Hathibarkala, Dehra Dun.

3. The Director, Northern Circle, Survey of India, 17-E.C. Road, Dehra Dun.

..... Respondents.

C/R Sri N.B. Singh

ORDER

Hon'ble Mr. D.S. Baweja, AM

Through this application, the applicant has prayed for quashing the order dated 3.8.93 and to direct respondent to fix up the pay on promotion as Head Clerk taking into consideration special pay of Rs. 35/- and to pay arrears from 8.4.80 onwards with 12 per cent interest per annum.

2. The applicant joined as Lower Division Clerk under Surveyor General of India. He was promoted as Upper

Contd...2...

Division Clerk(UDC) from 15.6.64. He was appointed to work as cashier with a special pay of Rs. 50 per month from 1.4.77. The applicant was selected to work on a post identified as involving duties and responsibilities of complex nature and granted special pay of Rs. 35/- per month from 9.11.79 in terms of Ministry of Finance's letter dated 5.5.79. The applicant was promoted as Head Clerk with effect from 8.4.80. However the special pay of Rs. 35/- had not been taken into account for fixing his pay as Head Clerk but only his pay was protected.

3. The applicant has based his case on the following grounds:-

(a) The applicant was drawing special pay of Rs. 50/- per month as a Cashier prior to posting as U.D.C. with special pay of Rs. 35/- handling cases of complex nature. The applicant accepted the post with Rs. 35/- per month special pay with a loss of Rs. 15/- per month with full belief that he will get benefit in pay fixation as one of the similarly placed colleague was provided this classification by his appointing authority. On the Principle of Promissory Estoppel, the respondents are bound to take Rs. 35/- special pay into consideration for fixation of his pay on promotion as Head Clerk.

(b) In terms of Ministry of Finance Memo dated 22.5.89, the applicant was entitled to have his pay notionally fixed taking into account special pay of Rs. 35/- with actual benefits from 1.9.85.

(c) A similarly situated colleague, Sh. Charanjeet who was also drawing special pay of Rs. 40 as U.D.C. cum Cashier accepted the post of U.D.C. with special pay of Rs. 35/- per month. He was not allowed fixation of pay

Contd...3...

as Head Clerk taking into account special pay of Rs. 35/-p.m. He filed an application No. 428/1988. The said application has been allowed vide judgement dated 23.3.93 (Annexure-A-10). This judgement is as much applicable to the applicant's case and he is entitled for the same benefits.

4. The respondents while filing counter reply have opposed the application. It is submitted that the scheme of special pay of Rs. 35/- to U.D.Cs. handling work of complex nature was not applicable to the U.D.Cs. of Surveyer General of India as there are posts of Assistants above U.D.Cs, who handle the duties of complex nature. This was clarified vide Ministry of Science and Technology's letter dated 15.1.83 and 9.6.83 (CA-1, CA-2). Special pay was allowed on misunderstanding and subsequently it was stopped and in respect of those who were promoted prior to 29.11.82, it was decided not to recover the payment. The applicant was alowed the benefit of fixation of pay taking into account Rs. 35/- per month special pay interms of Ministry of Finance's Memo dated 1.9.87 read with Memo dated 22.5.89 (CA-4). However later on in view of the clarifications furnished at CA-1 and CA-2, the benefit was withdrawn and recovery of excess payment was passed. The applicant has since refunded the excess payment. His representation dated 30.11.92 was replied vide letter dated 3.8.93 based on the instruction contained in CA-1 and CA-2. In view of these facts and circumstances stated in the counter reply, the applicant is not entitled for any relief and the application deserves to be dismissed.

5. The applicant has filed the rejoinder reply controverting the contentions of the respondents and

Contd...4...

reiterating the grounds taken inthe application.

6. I have heard the learned counsel of the parties. I have given careful consideration to the pleadings and arguments advanced during the hearing and also the material placed on record.

7. From the facts brought out above, it is noted that the applicant first made representation for fixation of pay on promotion as Head Clerk taking special pay of Rs. 35/-p.m. into account in 1980. Thereafter he kept quiet and made representation only on 11.4.91 giving reference to Ministry of Finance's Memo dated 22.5.89. It is also noted that the respondents allowed the applicant the fixation of pay taking into account special pay of Rs. 35/- vide order dated 8.5.91 at (CA-3). However from CA-5, it is seen that this approval was withdrawn and excess payment for the month of May and June was ordered to be recovered. As per the averment of the respondents, this payment has since been refunded by the applicant. This fact however has not been brought out by the applicant in his application. The applicant did not agitate the matter thereafter for legal remedy. ~~and~~ Actually the cause of action arose in 1980 and . The applicant had brought on record a number of representations showing that he has been following up the matter, which are from 1991 onwards & He decided to file the present O.A. on 24.6.94 impugning the reply dated 3/8.7.93 to his representation by the respondents.

8. The applicant has filed this O.A. mainly on the support of the judement dated 23.3.93 in O.A. 428/1988 of this Bench in "Charanjeet Vs. U.O.I.". His claim is that he is similarly placed and therefore entitled to the same

Contd...5...

benefits. From the averments of the respondents, it is observed that the respondents had challenged this judgement through S.L.P. No. 2326 of 1994 before Hon'ble Supreme Court. The operation of this order was stayed and subsequently the S.L.P. has been decided vide order dated 15.5.96. While admitting the S.L.P., Hon'ble Supreme Court vide order dated 1.2.1994 ordered as under:-

> "Issue notices returnable within six weeks. The notice will however be limited to the question regarding the payment at the rate of Rs. 35/- from 15.2.83 to 1.9.85."

The final order of the Hon'ble Supreme Court covers only the payment of arrears on account of fixation of pay for the period from 15.2.83 to 1.9.85 and the same was not allowed in terms of Ministry of Finance Memo dated 1.9.87. From these details, it is apparent that Hon'ble Supreme Court did not go into merit of the order of Tribunal with regard to fixation of pay on promotion as Head Clerk taking into consideration the special pay of Rs. 35/- p.m. and allowed the decision to stand.

9. Keeping the above background in view, now the main question is whether the applicant is entitled the benefit of the judgement dated 23.3.93 in O.A. 428/88 on being similarly placed? We have carefully gone through this judgement. In this case the applicant was working as a Cashier with a special pay of Rs. 50/- and accepted the post of U.D.C. with special pay of Rs. 35/- per month after obtaining clarification from the promoting authority that the special pay will be considered for pay fixation for the next promotion. On this basis, he did not accept the promotion as Head Clerk on adhoc basis first in 1980 and then

Contd..6...

regular promotion in 1981 on the consideration that he could get the benefit of pay fixation taking into account special pay after completion of three years. He ~~finally~~ was promoted as Head Clerk on 15.2.83. However the payment of special pay was stopped from 29.11.82 and recovery of excess payment of special pay was ordered. Being aggrieved, he filed the O.A. under reference. This application has been allowed, applying the Principle of Promissory Estoppel, as is clear from para 6 of the judgement. Keeping these facts of the case in view, we are unable to accept the contention of the applicant that the judgement dated 23.3.93 is in 'rem' and not in 'personam'. From the material placed on the record, the applicant has not made out a case for application of Principle of Promissory Estoppel. We have gone through the first representation dated 26.11.80 brought on record at annexure A-4. This representation does not talk of any promise being made to him before accepting of the post of U.D.C. special pay of Rs. 35/-. In none of the subsequent representations dated 11.4.91(A-6), 30.11.92(A-8) also there is any mention of this aspect that the applicant had sought clarification with regard to taking special pay of Rs. 35/- into consideration for fixation of pay on the next promotion before accepting the post. There is also no mention of the clarification given to one of his colleagues (Applicant in O.A. 428/88 referred to above) earlier in any of the representations. If the applicant was given promise or to one of his colleagues, then it is not clear as to why he did not agitate the matter if he was aggrieved by denial of fixation in 1980 with special pay on promotion to the post of Head Clerk for which he had also represented. The plea of application of Principle of Promissory Estoppel perhaps has been raised taking cue from the judgement in O.A. 422/1988 referred to above.

Contd...7...

10. In addition to the above facts, on perusal of the rules brought on the record by the parties, I fail to understand that how any promise of counting special pay of Rs. 35/- for fixation of pay on promotion could be held out in 1979 when the applicant was appointed as U.D.C. with special pay of Rs. 35/-. In this connection, I refer to Ministry of Finance Memorandum dated 22.5.89. The matter with regard to taking special pay of Rs. 35/- into consideration for pay fixation was referred to Board of Arbitration which gave its award on 28.4.87. Pursuant to this award instructions have been issued to take special pay into consideration and this is made effective from 1.9.85. Those who are promoted before 1.9.85 are to be given notional fixation of pay and arrears to be paid only from 1.9.85. From this, it is clear that the scheme came into existence only from 1.9.85 based on award given on 28.4.87. How then in 1979, when there was no such scheme or rule, the concerned authority could hold promise or the applicant could claim fixation of pay taking into account the special pay. Keeping the above background in view, I am unable to persuade myself to accept the plea of application of Principle of Promissory Estoppel in applicant's case.

11. I have also gone through the letters dated 15.1.83 and 9.6.83 brought on record at CA-1 and CA-2 respectively. These letters clearly lay down that scheme of special pay of Rs. 35/- to U.D.Cs. was not applicable to office of Surveyor General of India as there were posts of Assistants and work of more complex and important nature was to be attended by them. It was also directed to recover overpayment. The applicant has not offered specific comments in the rejoinder with regard to these

Contd...8...

circulars and has simply submitted non admissibility of the special pay to the U.D.Cs. of Surveyor General of India is violative of Article 14 and 16 of the Constitution of India. However this has been so challenged in the application. Further if the applicant was aggrieved, then he should have challenged at the appropriate time. In fact the applicant in his representation at CA-6 (a) admits that special pay was not allowed to U.D.C.s since 1982. The letter dated 2.12.83 brought on record at RA-1 clearly lays down the recovery of the overpayment. It is however stipulated that no recovery of overpayment is to be made from those who were paid special pay before 29.11.82. However the letter is very emphatic that the scheme of special pay of Rs. 35/- was not applicable to the U.D.C.s of Surveyor General of India. With these facts before me, I cannot help but to conclude that special pay of Rs. 35/- was not admissible. This being so the question of ~~application~~ entitlement of the benefits as per the Ministry of Finance Memorandum dated 22.5.89 does not arise.

11. In view of what has been discussed above, I am unable to find any merit in the application. Accordingly the application is dismissed with no order as to costs.

Member -A

Arvind.