

OPEN COURT

CENTRAL ADMINISTRATIVE TIRUBNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 15th day of April 2005

Original Application No. 529 of 2003

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

Indrasan Prasad Kushwaha,
S/O Suchit Kushwaha, R/o 238, Avas Vikas Colony,
Shushpur, P.O. Geeta Vatika, Gorakhpur,
Retired Dy. Post Master Gorakhpur H.O. in the Distt.
Gorakhpur.

...Applicant

By Adv : Sri A. Tripathi

V E R S U S

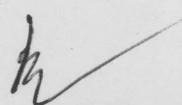
1. Union of India through the Secretary,
Ministry of Communication, Deptt of Posts,
Dak Bhawan, Parliament Street,
NEW DELHI.
2. Chief Post Master General, U.P. Circle,
LUCKNOW.
3. Director Accounts (Postal) UP Circle,
Sector 'D', Aliganj
LUCKNOW.
4. Sr. Supdt. Post Offices, Gorakhpur Dn.
GORAKHPUR.
5. Senior Post Master,
GORAKHPUR.

...Respondents.

By Adv : Sri S. Singh

O R D E R

The short question involved in this case is whether the special pay of Rs. 45/- paid to the applicant alongwith the pay in the scale of Rs. 260-480 in lieu of higher scale of Rs. 380-620 is to be counted as a part of pay for the purpose of working out the terminal benefits including pension. The applicant who had superannuated as on 31.5.2002 has



challenged order dated 24.4.2003 which was passed in supersession of order dated 4.6.2002 and also challenges the order dated 9.4.2003 (Annexure A1).

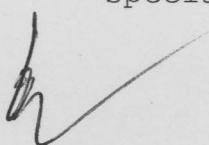
2. Facts leading to the filing of the above OA are as under:-

a. At the material point of time the applicant was working as accountant and the respondents have, in lieu of the higher pay scale of Rs. 380-620 placed the applicant in the scale of Rs. 260-480 plus Rs. 45/- as special pay. This special pay was taken into consideration when the applicant was promoted to the LSG grade of APM accounts in accordance's with provisions contained in OM dated 24.2.1981 which stated, "the pay of PO and RMS/DTO/CTO accountants in the prescribed scale of Rs. 260-480 plus special pay of Rs. 45/- on promotion to LSG may be fixed under FR 22 C.

b. The applicant continued to hold the above post till he was afforded promotion under BCR scheme in HSG Grade II in October 1991. Needless to mention that at this level also the earlier fixation of pay had its own impact.

c. On 3.4.2002 the applicant was promoted as HSG Grade I and posted as Dy. Post Master Gorakhpur. Ultimately, the applicant superannuated on 31.5.2002.

d. The applicant was granted provisional pension and provisional DCRG in June 2002. He came to know that the respondents had an idea of re-fixing his pay and allowances right from 1983 by excluding the special pay of Rs. 45/-, despite the fact that on 07.05.2002, the office of the respondents certified that the applicant would have continued to draw the special pay to the post of accountant but for



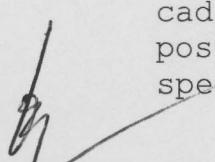
promotion to LSG cadre and thus there is no over payment of pay and allowances.

e. The respondents by the impugned order dated 9.4.2003 held that the applicant is not entitled to get the benefit of special pay of Rs. 45/- at the time of fixation of pay on promotion to LSG cadre on 15.7.1983 due to non completion of three years service as accountant on that date. Consequently the terminal benefits worked out in June 2002 have been reworked vide order dated 24.4.2003. These two orders of 9.4.2003 and 24.4.2003 are under challenge.

3. The respondents have contested the OA. According to them under the provisions of OM dated 8.1.1968 for counting the special pay at the time of fixation of pay on promotion, an individual should have been in receipt of special pay for a minimum of three years.

4. The case has been considered and arguments heard. Relevant portion of the Order dated 8.1.1968 reads as under :-

"Note 2 : (a) The condition of special pay having been drawn continuously for a minimum period of three years as well as the certificate of continued drawl of special pay but for promotion should not be insisted upon in the case of a person holding substantively the lower post carrying special pay in lieu of a separate higher scale. This exemption will not be available to officers with substantive position in a cadre and holding a post carrying a special pay in lieu of a separate higher scale in the cadre, as confirmation of officers in the cadre is not made against individual posts. The condition of drawl of special pay in such posts



continuously for not less than three years should be applied in those cases."

5. The counsel for the applicant, however, invites my attention to the order dated 4.1.1972, which reads as under :-

"Sub : Treatment of special pay for the purpose of fixation of pay on promotion to a higher post – case of P.O. and R.M.S. and D.T.O. Accountants/Assistant Accountant.

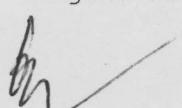
Sir,

I am directed to invite your attention to the invite your attention to the Ministry of Finance OM No. F-6/(1)E. III (B)/68 dated 8.1.1968 circulated by this Directorate's letter No. 211/68-PAP dated 27.1.1968 on the above subject representations have been received in this Directorate that the P.O. and R.M.S. and D.T.O. Accountants/Assistant Accountants should be covered by the exemption provided for in para 1 (a) of the OM dated 8.1.1968. The case has been carefully considered and it is clarified that the exemption will not be available to the aforesaid officials and the post of Accountants/Assistant Accountants are in the cadre of time scale clerks and not in a separate cadre and cannot be held substantively, by the incumbents. Special pay in these cases will be treated as part of basic pay for the purpose of fixation of pay on promotion to a higher post, only if the same has been drawn for at least three years subject to fulfillment of other conditions."

6. Again, he has relied upon paragraph 5 of Annexure A-5 as already extracted above. The applicant has further relied upon the following judgments:-

- (a) *Mahavir Singh Vs. U.O.I. & Ors. (1996) Vol 33 ATC 683.*
- (b) *Arjun Singh Vs. U.O.I. & Ors. – order dated 4.9.1996 in O.A. no. 130 of 1995 (Jodhpur Bench of CAT).*

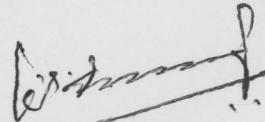
7. In view of the fact that the special pay was granted in lieu of higher pay scale of 380-620/-,



the applicant, in accordance with order dated 4.1.1972 read with para 5 of the order dated 24.2.1981 is fully entitled to count the special pay for fixation of pay in the promotional post of L.S.G. Thus, the order dated 4.6.2002 passed by the respondents does not warrant any change at all. Consequently, order dated 9.4.2003 (Annexure-1) and 24.4.2003 (Annexure-2) being illegal is liable to be quashed and set-aside. It is accordingly ordered.

8. Consequently, the O.A. is allowed. Respondents are directed to restore order dated 4.6.2002 (Annexure-9) and act accordingly in the matter of payment of terminal benefits including pension.

9. Under the above facts and circumstances, there shall be no order as to costs.


MEMBER-J

/pc/