

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.OA 95 of 96

Date of order : 13.12.04

Present : Hon'ble Mr.Mukesh Kumar Gupta, Judicial Member  
Hon'ble Mr.M.K.Mishra, Administrative Member

NISHITH KUMAR BANERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.M.K.Bandyopadhyay, counsel

For the respondents: Ms.U.Sanyal, counsel

O R D E R (ORAL)

M.K. Mishra, A.M.

The applicant Shri Nishith Kumar Banerjee was appointed as Time Scale Sorter in RMS on 9.9.44. The applicant stated that he worked as Head Sorting Assistant in 1980 and got special pay of Rs.45/- in lieu to that post. The applicant was promoted as Sub-Record Officer (HSG-II) in the scale of Rs.650-750/- vide order dated 16.2.83. The applicant retired on 31.1.84.

2. The short question for our adjudication is that his pay should be fixed after taking into account the special pay which he drew as Head Sorter on being promoted to HSG-II scale. Infact his salary was fixed at Rs.725/-. Although his salary was fixed at Rs.725/- after taking into account the special pay of Rs.45/- but his pension after retirement was fixed @ Rs.514/- + pension relief as admissible vide memo<sup>r</sup> dated 13.9.84. Thus there was an over-payment of pay and allowances for the period 21.2.83 to 31.3.84 and over-payment of provisional pension @ Rs.33/- for period 1.4.84 to 30.9.84 (Rs.1654 + Rs.198 = Rs.1852/-). This amount was deducted from his gratuity.

3. In reply to the OA the respondents submitted that the applicant officiated against the post of LSG,HSA with special pay of Rs.45/- per month in lieu of his separate higher pay w.e.f. 7.11.81. The special pay was drawn ;by him up to 20.2.83 i.e. the date of promotion to HSG-II. In other words he neither drew the aforesaid

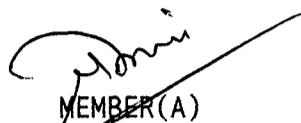
special pay for a period of 3 years or more on the lower post nor he held the lower post of LSG carrying the special pay substantively. On promotion to HSG-II cadre his pay was wrongly fixed at Rs.725/- by taking the aforesaid special pay of Rs.45/- as part of his basic pay at LSG post. He was paid provisional pension and provisional DCRG on wrong fixation. His provisional pension was fixed at Rs.547/- per month and his DCRG was calculated at Rs.17,630/- out of which he was paid Rs.15,000/- provisional DCRG. On verification of the pension papers it was noticed that fixation of pension was wrongly done because of the consideration of his special pay of Rs.45/-. Therefore recovery memo was issued on account of over-withdrawal of emoluments and the over-withdrawal was adjusted against the DCRG. Since the applicant could not officiate on the post for 3 years or above therefore he was not entitled to get the benefit of special pay for the purpose of fixation of pension etc. as per GIO(27) of Appendix-8 of FR, SR Part-I.

4. We have heard the 1d.counsel for the parties and perused the pleadings and materials available on record. We observed that wrong fixation of pension will not stop the disbursing authority to carry out the correct fixation of pension, etc. The consideration of special pay is to be made only when the employee is authorised to draw the same for minimum period of 3 years or more and in this case it is less than 3 years. The fixation of pay/pension is by virtue of rules provided under FIO(27) of Appendix-8 of FR/SR Part-I vide O.M. dated 18.1.68. As regards Sri T.K.P.Sinha, it is contended that he was drawing Rs.640/- per month in LSG cadre w.e.f. 1.10.81 whereas the applicant was drawing Rs.640/- in LSG cadre w.e.f. 21.1.82 and therefore Sri Sinha was drawing higher salary than the applicant from time to time on lower post. Therefore the question of stepping up of the pay of the applicant with the pay of T.K.P.Sinha does not arise. It is also observed that recovery of dues etc. from the amount of

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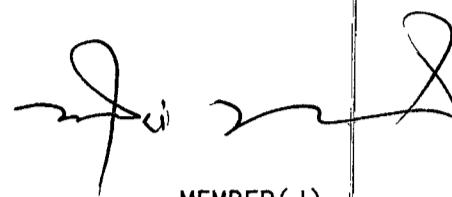
DCRG is permissible under Rule 73 of CCS (Pension) Rules, 1972.

5. In view of the above discussion the application is bereft of any merit and hence is dismissed. No order as to costs.



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