

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.341 of 1997

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

Hon'ble Mr. D. Purakayastha, Judicial Member

ANIL BARAN AICH

VS

1. Union of India through
The Secretary to the Government of India,
Ministry of Planning,
Department of Statistics,
New Delhi-110 001

2. The Director General,
Central Statistical Organisation,
Sardar Patel Bhawan,
Samsad Marg,
New Delhi-110 00 1

3. The Joint Director,
Central Statistical Organization
(Industrial Statistics Wing)
1, Council House Street
Calcutta-700 001

... Respondents

For the Applicant : Mr. M.S. Banerjee, counsel
Mr. S.K. Dutta, counsel
Mr. T.K. Biswas, counsel

For the Respondents: Mrs. Uma Sanyal, counsel
Mr. S.P. Kar, counsel

Heard on 1.12.1997

: :

Date of order: 1.12.1997

O R D E R

B. C. Sarma, AM

The limited dispute raised in this application by the applicant is about the alleged wrong refixation of his pay under F.R.22(a)(1) on his promotion to the post of Assistant from the post of Accountant. The applicant was initially appointed under respondents as an Accountant and with effect from 1.3.84 he was promoted to the post of Assistant. He was also confirmed as Accountant with effect from 1.1.85. The respondents had earlier passed an office order dated 7.4.84, whereby his pay was fixed with effect from 1.3.84 in the scale of Rs.425-800/- at the stage of Rs.560/- with reference to his existing pay of rs.500/- plus a special pay of Rs.30/- in the scale of Rs.330-560/- in the post of Accountant. The applicant had retired from service on attaining the age of superannuation on 31.3.97 as

Section Officer. However, by the impugned order dated 17.3.97, as set out in Annexure-A/4 to the application, the respondents had sought to revise the fixation of his pay made as early as in 1984 whereby the benefit of the special pay drawn by the applicant in the post of Accountant has not been taken into account in the matter of refixation. It was also ordered in the said impugned order that excess amount drawn on account of pay and allowances with effect from 1.3.84 be recovered in the light of new refixation. Being aggrieved thereby, the instant application has been filed with the prayer that a direction be issued on the respondents to further refix his pay taking into account the special pay drawn by him in the post of Accountant and also for issuing of a declaration that the decision of the respondents to recover the alleged amount drawn by the applicant with effect from 1.3.84 is illegal and hence, not sustainable.

2. The case has been opposed by the respondents by filing a reply. They have averred that last refixation has been done as per rules since the applicant did not satisfy the criteria for pay fixation made under Rule 9, Appendix 8, G.I.O. 28 on the date of his promotion to the higher post of assistant. They have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit.

3. A rejoinder has been filed by the applicant which we have perused.

4. We have heard the submissions of the learned counsel of both the parties, perused the records including the service ^{book} records of the applicant and considered the facts and circumstances of the case. The applicant has made a categorical averment that no option had been taken at the time of fixation of pay on promotion from the post of Accountant to the post of Assistant. We note that the applicant was confirmed in the post of Accountant and although he was not holding the post for more than three years, the first condition as mentioned in para 2 under Sl.No.5 on the subject of "Special pay - How treated for fixation of pay" in Swamy's Handbook, 1991 has been fulfilled. The said instruction lays down two conditions for the fixation of pay in the higher scale taking into account the

special pay drawn by the employee. These are, holding of the lower post in a substantive capacity, or holding the same or a similar post and drawing the special pay, for not less than three years. Obviously the first condition has been fulfilled in this case. Fulfilment of ^{any one of} these two conditions is essential for taking into account the special pay in the matter of refixation of pay ^{on} promotion, which special pay was granted in lieu of separate higher scale of pay. In Swamy's Compilation of F.R.S.R., Part-I, 9th Edition at p.104 the clarification of FR 22-c runs as follows:

"When the special pay is not in lieu of a separate higher scale. - In cases where the special pay drawn by a Govt. servant in the lower post is not in lieu of a separate higher scale, the provisions of Government of India Order (2) below F.R. 9(23) will continue to apply. The following types of special pay will not be taken into account for fixation of pay in the higher post :-

- (i) Special pay drawn in a tenure post;
- (ii) Special pay granted for service in particular localities on account of remoteness, unhealthiness, severity of climate, etc., like Andamans Special Pay, Inner line Special Pay, etc.
- (iii) Deputation (duty) allowance or special pay drawn in lieu thereof. "

This condition has been stipulated in Government of India OM dated 25.2.1965. We, therefore, find that special pay granted in lieu of higher scale of pay should be taken into account for fixation of pay on promotion in certain cases. It is abundantly clear that the condition necessary for taking into account the special pay drawn by the applicant in the post of Accountant while refixing the pay in the promotional post has been fulfilled and the earlier order dated 7.4.84 was correctly passed. It is, therefore, not very clear to us why the respondents had to pass another order which is the impugned order, in March, 1997 after the applicant had retired and therefore, the said refixation of pay is not sustainable and it has to be quashed.

5. In view of the above the application is allowed. The impugned order is quashed and set aside. The respondents are directed to take consequential actions accordingly within a period of two months from the date of communication of this order. We note that

the applicant had exercised his option in the matter of fixation of pay on promotional post with effect from 1.1.85 in the post of Accountant. We also direct that the amount of Rs.25,000/- which has been deducted from the DCRG of the applicant shall be refunded to him within the same period. No order is passed as regards costs.



(D. Purkayastha)

MEMBER (J)

1.12.997



(B. C. Sarma)

MEMBER (A)

1.12.1997