

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A.No.449 of 1997

Date of Order :01.3.05

Present : Hon'ble Mr. J.K. Kaushik, Judicial Member  
Hon'ble Mr. M.K.Mishra, Administrative Member

L.P. RUDRA

VS.

UNION OF INIDA AND ORS.

For the Applicant : Mr. P.B. Mishra, Counsel

For the Respondents : Mr. T. D. Roy, Counsel

ORDER

Mr. J.K. Kaushik

Shri L.P. Rudra has filed this original application with the following prayers :

"1. Pay of the applicant should be fixed in the scale of Rs.425-700/- w.e.f. 1.4.80 under FR 22-C as SG CG-I taking Rs.35/- of special pay into account for such fixation, and with all consequential benefits and giving him the benefit of judgments.

2. The order dated 2.6.95 (Annexure-A/4a) reducing his pay and the order contained in the letter dated -5-95 at Annexure-A/4 threatening to recover from salary of retirement dues of the alleged over payments, should be quashed.

3. Interest @ 18% on all dues found payable on the application to the applicant.  
Exemplary cost."

2. The factual matrix of this case as borne out from the pleadings of the applicant indicate that the administration sanctioned special pay of rs.35/- to 10% of the UDC/Sr.Clerk/Clerk Gr.I on seniority and suitability basis performing duties of complicated nature in pin pointed posts. Promotional post for a CG/I in the Accounts Department in the railway was to the post of sub head. The sub head post came to be abolished w.e.f. 1.4.80 and new cadre of selection grade-I was created. The sub head SG and CG-I both were in the pay scale of Rs.425-700/-. Some of the affected staff who were not given special pay from 5.5.79 and the SG and CG-I scale from 1.4.80 jointly filed a case vide OA No.1025 of 88 entitled B.K.Joarder & Ors -vs- Union of

India & Ors. The present applicant was one of the such applicants. Following the judgment of Cuttack Bench in TA 386 of 1986, the Calcutta Bench allowed the said O.A.1025/88 by order dated 30.1.92 extending the benefit of said judgments to the applicants therein with the special pay of Rs.35/- from 5.5.79 along with arrears with 12%. An SLP filed against the said judgment came to be dismissed on 7.10.92. The said order was not implemented despite specific order from the authority. The applicant was paid his dues since the applicant was working as Sr. S.O. Budget Section in the FA & CAO Office at Garden Reach. He received the arrears and interest sometime thereafter. It was only implemented on 7.10.92. Rs. 35/- was treated as personal pay to be absorbed in subsequent annual increments and it was directed not to reckon the same for fixation of pay and the overpayment was to be recovered from salary or through settlement dues as per Annexure-A/4. The pay of the applicant was reduced. His protest did not yield any result. The amount of Rs.11,465.08 was recovered from his DCRG. The applicant has come to learn subsequently that fixation of pay of SG CG-I under FR 22-C on promotion from CG-I whereunder the special pay of Rs.35/- was to be taken into account in the promotional scale by a common order dated 26.2.96 in OA 1121 of 1993 wherein reduction of salary and recovery of alleged over payment was quashed. This order was followed by the order of Calcutta Bench and the similarly situated persons were granted the said benefit. But the applicant has not been granted the said benefit despite the fact that he is also the similarly situated person.

3. The respondents have resisted the claim of the applicant and have filed detailed counter reply refuting the claim of the applicant. Rejoinder has been filed along with copies of certain judgments which came to be passed by various Benches including this Bench of the Tribunal.

4. We have heard Ld. Counsel for the parties and carefully perused the records of the case. Ld. Counsel for the applicant has submitted that the controversy has already been resolved by this Bench as well as by other Benches of the Tribunal and it has been specifically held that while fixing the pay in the promotional post the special pay

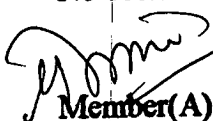
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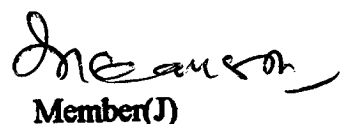
has to be reckoned for fixation of pay. However, it is contended by the Ld. Counsel for respondents that the respondents have made it a matter of policy that the said benefits are to be extended only to the persons who approached the Court of Law and not to them who did not so approach. Per contrary the Ld. Counsel for the respondents has submitted that the particular <sup>the</sup> judgment applies only to the case who approached the Tribunal and not in the case of those who did not approach the Tribunal. However, we have tried to carry out close analysis of facts of their case and we find that there is no dispute to this effect that the applicant is similarly situated person and had he earlier approached the Tribunal, the similar relief would have been allowed to him.

5. On perusal of the various judgments which have been placed before us, we find that the controversy was resolved as well as covered on all fours and we refer to the judgment dated 8.2.2002 wherein the proposition of law has been clearly illustrated and the same applies to the instant case. In this view of the matter, we find that there is force in the submissions of the Ld. Counsel for the applicant. Therefore, we are of the considered view that the respondents have treated the applicant as a separate class without their being intelligible differentia for such separate classification and also there is no nexus with the object sought to be achieved. Therefore, the action of the respondents does not satisfy the twin test of reasonable classification. The same can safely be construed as violative of article of 14 and 16 of Constitution of India.

6. In the result, there is ample force in the original application and the same must succeed and we do order accordingly. The impugned order i.e. Annexure - A/4 is hereby quashed. The applicant shall be entitled to all consequential benefits. The arrears on the amount which have been withheld shall be paid to the applicant along with interest at the rate of 8% per annum within a period of three months from to-day.

No costs.

  
Member(A)

  
Member(J)