

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Dated the thirtieth day of September,  
One thousand, nine hundred and eighty eight.

PRESENT

Hon'ble Shri S P Mukerji, Vice Chairman  
and  
Hon'ble Ch. Ramakrishna Rao, Judicial Member

ORIGINAL APPLICATION NO.599/87

KJ Francis : Applicant

-Vs-

The Flag Officer : Respondent  
Commanding-in-Chief, Headquarters  
Southern Naval Command, Cochin-682004

Mr M Girijavallabhan : Counsel of Applicant

Mr K Karthikeya Panicker, ACGSC : Counsel of Respondent

O R D E R

Ch. Ramakrishna Rao

This is an application filed under Section 19  
of the Administrative Tribunals Act of 1985.

2 The facts giving rise to the application are  
briefly as follows: The applicant <sup>has been</sup> ~~is~~ working as  
Upper Division Clerk (UDC) in the Naval Aircraft Yard,  
Cochin since 8.7.74 under the respondent. According  
to the memorandum dated 3.9.79 (Ext.A-1) issued by  
the respondent ~~by which~~ 10% of the posts of UDC to  
which work of a more complex nature are attached  
should carry a special pay of Rs 70/- per month.

Such posts should be identified as carrying discernible  
duties and responsibilities of a complex nature

higher than those normally expected of UDCs. Pursuant to the instructions contained in Ext.A-1 a panel of 6 UDCs was prepared on 21.9.87 which was to be operative upto 13.9.88. The name of the applicant was not included in the panel. Aggrieved, the applicant has filed this application.

3 Shri M Girijavallabhan, the learned counsel for the applicant contends that the proper procedure was not followed in placing the 6 UDCs on the panel dated 21.9.87 for grant of special pay. He has developed his argument thus: The instructions contained in Ext.A-1 envisage identification of 10% of the posts of UDC which carry duties of more complex and onerous nature than those normally performed by UDCs. After such identification of posts is done, a selection should be made from amongst the UDCs by the respondent on the basis of seniority-cum-fitness and they should be posted against the identified posts. Instead of adopting this course a panel of UDCs was prepared by the respondent for grant of special pay. There is nothing to indicate that the UDCs on the panel were asked to carry out work of a more complex nature than that performed by other UDCs. The post in which the applicant was working involves duties of a more complex and onerous nature such as arrears claims arising out of pay fixation on promotion and re-employed pensioners<sup>and</sup> his name should have been

included in the panel dated 21.9.87.

4 Shri K Karthikeya Panicker, the learned counsel for the respondent on the other hand contends that almost all UDCs working the Southern Naval Command are carrying out discernible duties and responsibilities of a more complex nature. As such, a Departmental Promotion Committee (DPC) was set up for selecting a panel of UDCs eligible for the grant of special pay on the basis of seniority-cum-fitness. Based on the recommendation of the DPC the select list (Ext.A-2) was prepared. The DPC did not consider the petitioner to be fit for being included in the panel. It is not open to the petitioner to challenge the proceedings of the DPC. The action of the respondents in excluding the petitioner from the panel is not vitiated in any way.

5 We have considered carefully the rival contentions. We are of the view that <sup>it is obligatory on</sup> ~~the~~ respondent to identify the posts of UDC to which work of a more complex nature and higher responsibilities are attached and appoint persons selected on the basis of seniority-cum-fitness. The procedure adopted by the respondent in calling upon the DPC to select 6 candidates on the basis of seniority-cum-fitness <sup>in</sup> and ~~treating~~ them as the incumbents of the posts of UDC to which work of a more complex and onerous

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nature are attached is not in conformity with the instructions set out in Ext.A-1. In other words, the first step of identifying the posts has been skipped over by the respondent and the UDCs who were placed on the panel by the DPC were ipso-facto treated as UDCs discharging duties of more complex and onerous nature than others. We have no doubt that the procedure followed by the respondent is in violation of the instructions appearing in Ext.A-1.

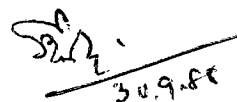
6 We would have normally directed the respondent to consider the applicant for inclusion in the panel dated 21.9.87 (Ext.A-2), but Shri Girijavallabhan brought to our notice that the applicant retired from service on 31.3.88 and his name has also been included in the subsequent panel dated 14.3.88 for grant of special pay<sup>which</sup> will be operative upto 6.3.89, however, the applicant will not be entitled to the benefit because of his superannuation which took place on 31.3.88. In view of this, we ourselves perused the duties performed by the applicant as listed out by the respondent in the allocation of duties dated 14.6.85 (Ext.A-4). We are satisfied that the duties performed by the applicant are sufficiently complex and onerous to justify the grant of special pay to the applicant.

7 We, therefore, consider that the ends of justice would be met if we direct the respondent to treat the applicant as eligible for grant of special pay from 21.9.87 to 31.3.88, when he retired from service and we direct accordingly. He will be entitled to enhanced pension and other consequential benefits, if any, in accordance with rules and orders.

8 We further direct the respondent to pay arrears of special pay due to the applicant and re-determine his pensionary entitlements within two months from the date of receipt of this order.

9 In the result, the application is disposed of on the lines indicated above. There will be no order as to costs.

  
(Ramakrishna Rao)  
Judicial Member  
30.9.88

  
(S P Mukerji)  
Vice Chairman  
30.9.88