

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED THURSDAY THE TWENTYFIFTH DAY OF MAY  
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

O.A. No. 600/87

C. K. Rajappan

Applicant

Vs.

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

Respondent

Mr. M. Girijavallabhan

Counsel for the  
applicant

Mr. K. Karthikeya Panicker, ACGSC

Counsel for the  
respondent

ORDER

Shri G. Sreedharan Nair

On 29th June, 1979, the Ministry of Defence  
issued an O.M. incorporating the decision that in  
Non-Secretariat Administrative Offices where the posts  
of Assistants do not exist the Upper Division Clerk  
attending to work of a more complex nature may be  
granted a special pay of Rs. 35/- per mensum. It was  
provided that the total number of such posts should  
be limited to 10% of the posts in the respective cadre  
and these posts should be identified as carrying

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discernible duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks. On the basis of this O.M., the respondent, the Flag Officer Commanding in-Chief, Headquarters, Southern Naval Command, Cochin, prepared a panel of UDCs on 21.9.1987.

2. The applicant, a UDC under the respondent alleges that though he well falls within the norms, his name has not been included in the panel and prays for setting aside the same and for granting him the special pay retrospectively.

3. In the reply filed by the respondents, it is contended that since no duties and responsibilities have been prescribed for the post of UDCs either in the Recruitment Rules or in the Promotion Rules, and that the duties differ from office to office, it was decided that the special pay should be granted by the Appointing Authority on the basis of seniority subject to fitness adjudged by the appropriate Departmental Promotion Committee, as clarified by the O.M. dated 29.4.1980 issued by the Ministry of Defence. It is stated that the impugned panel was prepared in accordance with the aforesaid instructions and hence, it cannot be assailed.

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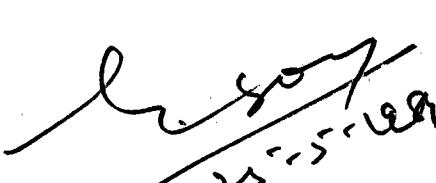
4. It is clear from the admission of the respondent in the reply that the impugned panel has not been prepared following the directions in the O.M. dated 29.6.1979, which ordains the identification of the posts carrying discernible duties and responsibilities of a complex nature higher than those normally expected of UDCs. Evidently, the respondent has proceeded upon the clarification contained in the O.M. dated 29.4.1980 that the Appointing Authority may assign the duties of complex nature to such UDCs who are selected by a DPC on the basis of seniority subject to fitness, if not already engaged on such duties. The aforesaid clarification is patently against the spirit of the O.M. of June, 1979. That must be the reason that in the corrigendum that was issued on 31.3.1983, the O.M. dated 29.4.1980 has been clarified stating that the selection is to be made by the Controlling authority on the suitability of a particular officer to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature and that seniority cum fitness would not be the criterion for filling up such posts.

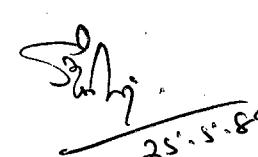
5. The respondent has no case that any identification of the posts have been made before the preparation of the impugned panel. As such, the panel cannot be ~~sustained~~ considered as validly prepared

6. This question had come up for consideration in O.A. 599 of 1987 which was decided on 30.9.1988. That decision proceeds on the aforesaid view.

7. As it is seen that the period of operation of the panel has already expired, there is no point in quashing the same at this stage which will have the effect of calling upon the UDCs whose names were included therein and who were allowed the special pay to pay it back. None of them is on the party array. As such, we do not propose to do so. Moreover, it was submitted by the counsel for the applicant that the name of the applicant has actually been included in the next panel. In the circumstances, apart from the ~~fact the panel dated 21.9.1987 has not been validly prepared~~ declaration, no further relief can be allowed in this application.

8. The application is disposed of accordingly.

  
25.5.89  
(G. Sreedharan Nair)  
Judicial Member  
25.5.1989

  
25.5.89  
(S. P. Mukerji)  
Vice Chairman  
25.5.1989

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