

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 138 1992

DATE OF DECISION 23.10.92

K. Sivan Nair _____ Applicant (s)

Mr. G. Sukumara Menon _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the Ministry of Defence, New Delhi and others

Mr. V. Krishnakumar, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

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1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

Applicant is aggrieved by the wrong fixation of his pay in the post of Office Supdt. Grade-II in the pay scale of Rs. 1400-2300.

2. Applicant while working as UDC was promoted to the post of Office Supdt. Grade-II as per order dated 23.1.87 w.e.f. 13.5.87. After the promotion, his pay in the post of Office Supdt. Grade-II was fixed as per Annexure-A dated 9.8.88 after taking into consideration the special pay of Rs. 70 drawn by the applicant in the post of UDC. His pay was fixed at Rs. 1680 in the post of Office Supdt. Grade-II w.e.f. 13.5.87. The fixation has been given approval by the Audit, and he was drawing the pay at the rate shown in Annexure-A upto 1.4.91, on which date he was given Annex. B communication dated 1.4.91. As per Annexure-B the pay of the

applicant was fixed at Rs. 1640 from 13.5.87. According to the applicant this was issued in supersession of Annexure-A without giving notice or affording an opportunity of hearing to the applicant. Aggrieved by the wrong fixation in Annex-B and the consequent recovery, he filed Annexure-C representation on 20.5.91 before the competent authority which was disposed of by Annexure-D dated 11.6.91. Further appeal filed by the applicant was also turned down as per Annexure-F dated 22.10.91. The applicant has filed this application under section 19 of the Administrative Tribunals' Act with the following reliefs:

- "a) to set aside Annexure-B pay fixation and Annexure D to F orders
- b) to grant such other and further relief as this Hon'ble Tribunal may deem fit and proper."

3. The learned counsel for the applicant relying on judgment of the Tribunal submitted that Annexure-B order is violative of principles of natural justice and hence it is to be quashed.

4. Respondents in their reply statement submitted that under FR 21(a)(i) the pay means the amount drawn by the Govt. employee ~~other~~ ^{than} special pay or pay granted in view of his personal qualifications which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reasons of his position in a cadre. Accordingly, they have given the calculations stating that the applicant was drawing Rs. 1530 in the UDC cadre and his pay was fixed by giving one increment and adding special pay of Rs. 70, at Rs. 1640 in the post of Office Supdt. in the scale of Rs. 1400-40-1800-EB-50-2300. But due to an error, CDA, Madras made corrections in the fixation and treated his pay in the UDC cadre as Rs. 1560 and increment as 40 and wrongly fixed at Rs. 1670/-. Ultimately when the error was noticed, they issued Annexure-B fixing applicant's pay correctly. This being a correction of mistake, no notice

is necessary.

5. Applicant has filed a rejoinder producing Annexure-G with a copy of the letter dated 13.5.91 issued in connection with the appropriate fixation of the pay under FR 22.

6. According to the applicant, he is eligible for fixation of the pay in the Office Supdt. Grade-II under FR 22-C. In effecting fixation Rs. 70 which he has received as special pay should be added with the basic pay of 1530/- which he was receiving as on 13.5.87 in the grade of UDC. In that manner, the total pay would come to Rs. 1600. This amount should be taken into consideration for appropriate fixation under FR 22-C read with Annexure-G issued by the CGDA, New Delhi. The relevant portion of Annexure-G is extracted below:

"While fixing the pay of UDC's on promotion to to the next higher post a doubt was felt whether the special pay of Rs. 35/- (now Rs. 70 drawn by them in terms of Ministry of Finance O.M. No. F-7(52)-III/78 dated 5.5.79 as amended from time to time will be taken into account only at the initial fixation under FR 22(a)(i) at the date of promotion or at subsequent fixation also under FR 22-C where the employees opts for fixation of pay under FR 22-C from the date of next increment as he was not drawing the said special pay on that subsequent date.

The matter was referred to the Ministry of Defence who in consultation with the Deptt. of Personal and Training have clarified that FR 22(a)(i) also refers to pay fixation under FR 22(a)(i) will be within the ambit of the orders which provide for treatment of special pay as part of pay for purpose of pay fixation on promotion. As such, special pay can be reckoned as part of pay while fixing pay under FR 22(a)(i) initially and under FR 22 subsequently in cases of split option."

7. From a perusal of the statement and calculations given in the reply statement and after hearing the arguments advanced by learned counsel for both parties, I am of the view that a fresh fixation of the applicant's pay in the post of Office Supdt. Grade-II is necessary in the light of Annexure-G, which according to me has not been adverted to by the Department while issuing the impugned order. It is also to be noted that after Annexure-A, Government

nearly four years elapsed when the respondents issued the impugned order which is stated to be the correct fixation. It appears that since the respondents have not taken into consideration Annexure-G, while re-fixing the pay of the applicant, the impugned order is unsustainable even if I accept the contention of the respondents that the impugned order being only the result of a correction of a simple mistake in calculation, ^{and who were necessary.} The learned counsel Shri Sukumara Menon submitted that the procedure followed by the Department in Annexure-A is correct if the principle of fixation as stated in Annexure-G⁴ and note (4) below F.R. 22-C are applied. Admittedly the respondents have no case that while issuing the latest order, Annexure-B, the Department had either adverted to note (4) below FR 22-C or applied the principles of Annexure-G. Hence, having regard to the facts and circumstances of the case, I am of the view that Annexure-B does not disclose the correct fixation as contended by the respondents. However, I am not expressing ^{any} final opinion on this issue at this stage for I am leaving this to the wisdom of administrative authority for a refixation of the pay since I am of the view that the fixation of pay of the applicant in the grade of Office Supdt. Grade-II requires a fresh consideration by the competent authority. Accordingly, I set aside the impugned orders Annexures-B, D and F and direct the 4th respondent to fix the pay of the applicant in the post of Office Supdt. Grade-II in accordance with the relevant rules.

8. The application is accordingly allowed with the above directions.

9. There will be no orders as to costs.

N. Dharmadan
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JUDICIAL MEMBER
23.10.92