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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.

716/92

Transfer Application No.

Date of Decision 29-9-95

Mrs. Asha Ramkrishna Bandekar

Petitioner/s

Dr. R.S. Kulkarni

Advocate for
the Petitioners

Versus

Union of India

Respondent/s

Shri R.K. Shetty

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 716/92

Mrs. Asha Ramkrishna Bandekar

... Applicant.

V/s.

Union of India.
Ministry of Textiles
through Textile Commissioner
Bombay.

... Respondent.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Dr. R.S. Kulkarni, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 29-2-95

{ Per Shri M.R. Kolhatkar, Member (A) }

In this O.A. the applicant has challenged the order dated 4.1.88 of the respondents by which the representation of the applicant regarding protection of special pay of Rs. 35/- consequent on her promotion to the post of Assistant was rejected. vide Exhibit 'G' page 16 of the application. The applicant seeks a direction to the respondents to pay the special pay and also the arrears thereof and to direct the respondents to take the special pay into account and give credit to the same for the fixation of the applicant's pay from the date of promotion with effect from 1.9.85.

2. The facts of the case are as below:

The applicant was promoted as Upper Division Clerk with effect from 1.4.81. By order dated 31.3.84, Exhibit 'A', the applicant was granted special pay of Rs. 35/- p.m. for handling work of complex nature. The section where the applicant

was working was shown as " Art Silk Branch." Subsequently, the applicant was transferred to Accounts Section by the order dated 22.10.84, Exhibit 'B'. Actually, she took the charge on 22.12.84. Even before she took charge in the new section, she has represented on 26.11.84 against her transfer to a section where she will lose special pay of Rs. 35/- increased to Rs. 70/- but the same was rejected by memorandum dated 17.1.85 Exhibit 'D'. The applicant contends that she was promoted to the cadre of Assistant on 8.2.85 but no reference to this order is seen on record. Exhibit 'I' is the order dated 26.3.87 purporting to promote the applicant on adhoc basis against the short term vacancy with effect from 24.3.87. It appears that the applicant was promoted as Assistant on regular basis on 1.8.87.

3. The respondents have opposed the prayer of the applicant. According to the respondents, the U.D.Cs in the non-secretariat Administrative offices attending to work of a more complex and important nature may be granted a special pay of Rs. 35/- p.m. 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 discernible duties and responsibilities of a complex nature, higher than those normally expected of U.D.Cs. The orders were to take effect from the date of issue viz. 5.5.79, R1 to the written statement. According to the respondents, a clarification was issued by the order dated 29.12.82, that grant of special pay of Rs. 35/- is related to posts of Upper Division Clerks as such, and not to individual Government employees. Earlier the special pay of Rs. 35/- p.m. granted to the U.D.Cs in the non-Secretariat Administrative Offices was not in lieu of a higher scale of pay. However

subsequently by the order dated 1.9.87, R3, the special pay of Rs. 35/- to U.D.Cs in non-Secretariat Administrative Offices shall be taken into account for fixation of pay on promotion subject to the conditions:

- a) that the incumbent is a substantive holder of the post of which the special pay is attached.
- b) that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

According to the respondents, the applicant was not holding the post identified as carrying discernible duties and responsibilities of a complex nature. Her case is not covered by the orders in R3. First of all the applicant ceased holding the identified post with effect from 12.10.84. Therefore she is no longer eligible any special pay. As on 1.9.85 she was working in Accounts Section not holding an identified post and therefore the question of grant of special pay did not arise. Thirdly when the applicant was promoted namely on 1.9.87, she was not holding the post identified as carrying discernible duties and responsibilities of a complex nature, therefore fixation of her pay on promotion did not arise. The respondents also raised the question of limitation namely the representation was rejected by memorandum dated 4.1.88 but the application was filed as late as 17.7.92. The respondents also relied on the ratio laid down in Shri Teja Singh V/s. G.M. N.F. Railway, Malegaon Gauhati, 1987(1)SLJ 647.

4. In the rejoinder the applicant has taken the stand that when an employee is transferred from one section to another in the same capacity, his/her entire pay is protected. Therefore on transfer of the applicant from "Art Silk Section" to 'Accounts Section", her entire pay including special pay was protected. Non protection of pay is a major punishment; therefore it could not have been effected without proceeding according to due process of law. The applicant has also referred to O.M. of Textile Commissioner dated 26.8.85 wherein it has been stated that when once a person eligible for special pay is identified, the person would be transferred to the sections where the vacancies of such complex nature / seat exist and there should not be any difficulty either in relieving the person or accepting the person by the section concerned. So far as the limitation is concerned it is argued that the final reply was received by the applicant on 10.10.91 and the application is filed on 17.7.92. Grant of monthly special pay is a recurring cause of action.

5. We are not inclined to reject the O.A. on the ground of limitation. Although there has been a delay with reference to the original O.M. dated 4.1.88, the delay is short and we are inclined to ignore it especially when the applicant was making further representations. On merits we have to consider the FR & SR and executive instructions there under. FR 9(25) defines special pay as below:

Special pay means an addition of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of

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a) the specially arduous nature of the duties.

b) a specific addition to the work of responsibility.

6. It is clear that special pay is attached to a post in connection with the duties and responsibilities of that post. Grant of special pay cannot be claimed as a matter of right. The instructions quoted by the department at R2 dated 29.12.82 clearly bring out that grant of special pay of Rs. 35/- p.m. is related to posts of U.D.Cs as such and not to individual Government employees, which posts are to be identified as carrying discernible duties and responsibilities of complex nature. In terms of the instructions the applicant did draw the special pay for the period from 1.4.84 to 22.10.84. Thereafter, the applicant was transferred to a section as U.D.C. which post did not carry discernible duties and responsibilities of complex nature. We are, therefore, unable to concede the prayer of the applicant for grant of special pay and arrears thereof.

7. So far as taking into account of special pay for fixation of pay from the date of her promotion is concerned, she was promoted to the post of Assistant on 1.8.87. She did not fulfil the conditions laid down by the memo dated 1.9.87 for taking into account of special pay drawn by her for fixation of pay. Therefore her prayer for fixation of pay as Assistant by taking into account of special pay is also not maintainable. The reference by the applicant in her rejoinder of office order dated 26.8.85 is of no

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avail not only because it is issued after her transfer but also because it is an internal office order which fails to distinguish that it is not the person but it is the post which carries the special pay. We are, therefore of the view that the O.A. is without merit and accordingly dismiss the same. There will be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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