

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 951/93
Transfer Application No.

Date of Decision : 18/2/95

R. H. Bora

Petitioner

Shri. S.M. Dharap

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri. Suresh Kumar

Advocate for the
respondents

C O R A M :

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

The Hon'ble Shri //

(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)

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 951/93

R. H. Bora

.. Applicant

Vs.

1. Union of India
Ministry of Finance
Dept. of Economic Affairs
New Delhi - 110 001.

2. General Manager
India Government Mint,
Fort, Bombay 400 023. .. Respondents

CORAM : 1. Hon'ble Shri.M.R.Kolhatkar, Member (A)

Appearance

1. Shri.S.M.Dharap
Advocate
for the applicant

2. Shri. Suresh Kumar
Advocate
for the respondents

JUDGMENT

DATED : 18-7-95

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

The relevant facts so far as this Original Application under section 19 of the Administrative Tribunals Act 1985 is concerned, are that the applicant worked as assistant to Cashier for the period 26.4.1982 to 1.8.1985, when he was promoted as head clerk. In the meanwhile, he was transferred to Establishment (C) Section on 28.12.1984 " to carry-out discernible duties and responsibilities of a complex nature in that section w.e.f. 1.1.1985". But this order was cancelled, almost immediately, namely on 1.1.1985 and the applicant continued to work as assistant to cashier till 1.8.85 as mentioned above. During this period, he was drawing a Special Pay of Rs.40/-. It may be noted that the post of

U.D.C in Establishment (C) Section to carry-out discernible duties and responsibilities of a complex nature would have involved grant of special pay of Rs.35/- per month. The main case of the applicant is that in the case of his juniors, namely T. Durairaj and P.S.Malondkar who were drawing Rs.35/- per month as special pay, which special pay has been subsequently increased to Rs.70/- per month, their pay was fixed in the revised pay scale after taking into account this special pay at Rs. 1,560/- with effect from 2.5.86 and Rs.1,600/- with effect from 13.4.87. It further appears that the Department had made a proposal on 11.10.1989 (Exhibit 'D') to step-up the pay of the applicant keeping in view the pay fixation of his juniors referred to above and keeping in view the circumstances mentioned above. This proposal of the Department, however was turned-down by the Ministry of Finance, by their letter dated 6.9.91, at Exhibit 'F'. Subsequently, the applicant made a separate representation on 25.2.92, but the same was also turned-down by the Department by their letter dated 17.12.92. The C.A was filed on 1.9.93. It is clear that the applicant ought to have filed this O.A within one year from 6.9.91 when the proposal in this regard was first turned-down. All the same, the case was argued before us not on the point of limitation, but on merits and we propose to proceed to dispose of the same on merits.

2. The counsel for the applicant argues that his case is two-fold. First of all, the applicant had not actually done the work of a Cashier. It is well settled by rules and orders that the special pay given to the cashier is to be treated as being in lieu of higher pay-scale and therefore does not count for pay fixation on promotion to a higher post vide Government of India, Ministry of Finance, O.M

No. F.6(2)-E.III/76, dated 30.10.1976 and F.9(10)-E.III/80 dated 25-9-1980. The relevant circulars in this regard have been examined at great length in N.Unnikrishnan Nair v. Union of India (1991) 18 ATC 539 and we need not quote them.

3. The contention of the counsel for the applicant however, is that since he was only an assistant to the cashier, the above instructions cannot be held to have applicability to his case and the special pay drawn by him may be treated as being in lieu of higher scale of pay and the same may be allowed to be taken into account for fixation of his pay on his promotion.

4. The applicant has, in his rejoinder, specifically made it clear that his case was for fixation of pay and not for stepping-up his pay with reference to his juniors, as was proposed by the Department, which however was not allowed by the Ministry of Finance. The counsel for applicant, however, pressed the case as one of stepping-up also.

5. The counsel for applicant has in this connection relied on the case of K.Krishna Pillai v. Union of India (1994) 26 ATC 641 which held that a senior is entitled to stepping-up of his pay equal to the pay received by his junior due to fortuitous circumstances except when senior's pay has been reduced as a disciplinary measure. He further relied on A.D.Bhamburkar v. Union of India & Ors. (O.A. 235/94 decided on 30.11.94), C.M. Pradhan & Ors. v. Union of India & Ors. (O.A. 1071/92 decided on 24.8.94), and D.G. Ranade v. Union of India (O.A. 139/89 decided on 19.8.1994).

6. The respondents on the other hand, relied on the case of N.Unnikrishnan Nair v. Union of India decided on 30.11.1990, Alakh Niranjan Roy & Ors. v. Union of India and Ors. (1993) 25-ATC-689), M.Gajamohan & Ors. v. Secretary, Department of Telecommunication (1993) 23-ATC-915).

7. In our view various orders and judgments relating to government instructions for grant of special pay to U.D.C in non-secretariat administrative office, attending to the work of a complex and important nature have no applicability to the present case because the applicant had never held such a post. He was only working as assistant to cashier and drawing a special pay of Rs.40/- per month. We are also unable to accept the contention of the applicant that the work of assistant to cashier was not the work of a cashier. In our view the work of assistant to cashier in substance is required to be treated as that of cashier and keeping in view the ratio in N.Unnikrishnan Nair case, we are not persuaded that the applicant is entitled to counting of special pay drawn in that earlier post, for fixation of his pay on promotion. So far as stepping-up of his pay is concerned, the applicant is required to fulfill the conditions for stepping-up. No case has been made out before us that the applicant fulfills the prescribed conditions of stepping-up in terms of FR 22-C. Statutory Rules, especially of a financial nature, have to be construed strictly and non-fulfillment of the conditions will not entitle the applicant to any relief. The O.A is without merit and accordingly dismissed, with no orders as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)