

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . . : 262 of 1997.

Dated this Friday, the 28th day of July, 2000.

P. M. Samuel. Applicant.

Shri Ramesh Ramamurthy. Advocate for the applicant.

VERSUS

Union of India & Others. Respondents.

Shri R. K. Shetty. Advocate for the respondents.

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

Hon'ble Shri Govindan S. Tampi, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

No


(B. S. JAI PARAMESHWAR)
MEMBER (J).

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Hon'ble Shri Govindan S. Tampi, Member (A).

P. M. Samuel,
Office Superintendent Grade-I
(Retired),
O/o. Defence Estate Officer,
Mumbai Circle, Colaba,
Mumbai - 400 005.

.... Applicants.

(By Advocate Shri Ramesh Ramamurthy)

VERSUS

1. *Union of India through
The Secretary,
Ministry of Defence,
New Delhi - 110 001.*
2. *The Director General,
Defence Estates,
Government of India,
Ministry of Defence,
West Block IV, R.K. Puram,
New Delhi - 110 066.*
3. *The Director,
Defence Estates,
Ministry of Defence,
Southern Command,
Pune - 1.*
4. *The Defence Estates Officer,
Mumbai Circle,
Colaba,
Mumbai - 400 005.*
5. *The Controller of Defence Accounts,
Southern Command,
Pune - 1.*
6. *The Chief Controller of
Defence Accounts (Pension),
Drupati Ghat,
Allahabad (U.P)* ... Respondents.

(By Advocate Shri R. K. Shetty)

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OPEN COURT ORDER

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Shri Ramesh Ramamurthy, the Learned Counsel for the applicant and Shri R. K. Shetty, the Learned Counsel for the respondents.

2. The applicant herein is a retired Office Superintendent Grade-I.

3. While the applicant was working as ^{Cashier} ~~U.D.C.~~, he was allowed to draw special pay of Rs. 40/- per month for the duties performed by him. He was promoted to the post of Technical Assistant by the DG DE New Delhi and CDA HQ New Delhi. While fixing his pay in the cadre of Technical Assistant, the authorities took into consideration the sum of Rs. 40/- which was paid to him as special allowances for performing the duties as a Cashier.

4. The Audit Authorities raised an objection regarding fixation of pay of the applicant in the cadre of Technical Assistant taking into consideration the sum of Rs. 40/- which was allowed to him for performing the duties of a cashier. On the basis of the objections raised by the Audit authorities, the respondent department attempted to recover the excess payment made to him. At that time the applicant approached this Tribunal in O.A. No. 1170/93. The said O.A. was decided on 08.11.994 with the following directions :

"O.A. is partly allowed. The respondents are restrained from making any recovery of over payment from the applicant on account of wrong fixation of pay made on promotion of the applicant as Technical Assistant in 1981. Respondents, however, are at liberty to re-fix the scale of the Government employee as per rules after giving an opportunity to him to be heard."

5. After disposal of the O.A., the respondents refixed the pay of the applicant in the cadre of Technical Assistant without taking into consideration the sum of Rs. 40/- which was drawn by him as a Cashier. Thus, his pay was fixed at Rs. 2,150/- from Rs. 2,250/- with effect from 31.01.1989.

6. The applicant submitted a representation to DG DE, New Delhi requesting not to recover the amount drawn for over thirteen years and requested to fix his pay for granting the special pay of Rs. 35/- which was being granted to the U.D.Cs. for performing the duties of complex nature. In substance, the applicant wanted to have his pay refixed atleast taking into consideration the sum of Rs. 35/- which was being allowed to the U.D.Cs. The representation is dated 07.02.1995. He was informed by letter dated 06.03.1995 as under :

"The matter detailed by the applicant therein and on which the remarks/recommendations have been offered by you vide your letter quoted at reference do not warrant any audit remarks of this office as they are purely the matter seeking administrative benavialance. Hence, one copy of each of the enclosure is returned herewith for your further action please."

7. The respondent authorities had not taken into consideration the sum of Rs. 35/- which was being paid to the U.D.C. while fixing the pay of the applicant in the cadre of Technical Assistant.

8. His pay was further fixed on the basis of fixation of pay in the cadre of Technical Assistant. He was promoted to Office Superintendent Grade-I and in that grade he retired from service.

9. By letter dated 08.11.1996, Exhibit 'A' page 17 to the O.A., the applicant was informed that the case was forwarded to

the Ministry for promotion for exercising a substitute option. The same was returned by the Ministry. It is intimated that the option once exercised is final and there is no provision in the rules for a change in the option earlier exercised.

10. The applicant has filed this O.A. for the following reliefs :

- "(a) To declare that the impugned order No. 110/36/ADMN/DE dated 8.11.1996 issued by the DG DE New Delhi is incorrect and bad in law and consequently be pleased to quash and set aside the same.
- (b) To direct the respondents to give instructions to the CDA SC Pune to accept the DG New Delhi sanction No. 110/36/ADMN/DE dated 28.04.1995 granting Rs. 35/- w.e.f. 31.1.1989 on notional basis without payment of arrears w.e.f. 1.7.1981 to 30.1.1989 in case sanction issued by the DG DE New Delhi waiving the disallowance of Rs. 40/- cannot be carried forward to pay fixation, pension, gratuity, etc. in audit for removing hardship and to maintain parity with my juniors who got the benefit after my pay fixation because of the Government Order dated 25.5.1989.
- (c) Time limit of 3 months may be given to settle the pay fixation and pension/gratuity settlement as the applicant had retired on 31.10.1995 and has no means to continue in Mumbai any longer."

11. The respondents have filed a reply. They submit that the applicant is attempting to get benefits of special allowance of Rs. 35/- and Rs. 40/- per month in the cadre of U.D.C. as well as in the cadre of Cashier. They submit that they have taken into consideration the directions issued in O.A. No. 1170/93 while refixing his pay in the cadre of Technical Assistant. Thus, they submit that there are no grounds to interfere with the impugned order.

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12. During the course of argument, the Learned Counsel for the applicant submitted that the applicant is not claiming any benefit of Rs. 35/- and Rs. 40/- as contended by the respondents, but he is only asserting the respondent authority to refix his pay in the cadre of Technical Assistant taking into consideration the sum of Rs. 35/- attached to the post of U.D.C. In support of his contention, he relied upon the letter dated 12.06.1995, exhibit 'F'. The first para of that letter reads as under :

"As per Min. of Fin. (Dept. of Expenditure) OM No. 7(29)E.III/89 dt. 25.5.1989 and dt. 1.7.1987 the special pay of Rs. 35/- pm paid to UDCs under Min. of Fin. (Dept. of Expenditure) O>M> No. 7(52)/E.III/78 dt. 5.5.79 should be taken into account for fixation of pay on promotion though they may not be actually in receipt of the same on date of promotion as they were functioning the duties of cashiers on the date of promotion. In the present case Shri P.M. Samuel could not be given this benefit when he was promoted to higher post as TA wef 1.7.81 as these order took effect from 1.9.85. However, his pay can be fixed notionally in the post as TA wef 1/7/81 and subsequent fixation in the post of OS Grade II and OS Grade I provided if there is any change."

13. Further, he relied upon the O.M. of the Ministry of Finance dated 25.05.1989 which is at exhibit-'G' page 29 and 30 of the O.A. Para 2 of the said O.M. is reproduced below :

"As the above cited orders dated 1st September, 1987 were not applicable to those UDCs who, while drawing special pay of Rs. 35/- p.m. were promoted to higher posts prior to 01.09.1985, their pay on promotion was fixed without taking into account the special pay of Rs. 35/-. A number of such Upper Division Clerks filed petitions before CAT claiming that with the implementation of the above decision of the Government, they have been put to disadvantage because their juniors promoted to higher posts on or after 1-9-1985 while drawing special pay of Rs. 35/- have got their pay fixed at a higher stage as the special pay of Rs. 35/- has been taken into account in such pay fixation. The Central Administrative Tribunal have delivered judgements that pay of those Upper Division Clerks drawing special pay of Rs. 35/- and

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promoted to higher posts prior to 01.09.1985 may be refixed on notional basis from the date of their promotion by taking into account special pay of Rs. 35/- and actual benefit be given from 1.9.1985 without payment of any arrears. This will be subject to fulfilment of the conditions mentioned in Ministry of Finance O>M> No. 7(35)/E-III/87 dated 1st September, 1987. It was decided to implement the judgements of CAT in respect of the petitioners only."

14. Considering the above two letters and O.M., we feel that the respondents had not properly refixed his pay in the cadre of Technical Assistant as per the directions given in O.A. No. 1170/93. Further, those instructions clearly indicated that a sum of Rs. 35/- attached to the post of U.D.C. have to be taken into consideration while fixing the pay on promotion.

15. In that view of the matter, we are directing the respondent authority to refix the pay of the applicant in the cadre of Technical Assistant taking into consideration the sum of Rs. 35/- attached to the post of U.D.C. This benefit shall be provided to him only from the date of refixation.

16. Accordingly, his pay in the cadre of Office Superintendent Grade-I shall be fixed.

17. Thereafter, the respondents shall re-fix the pension and pensionary benefits payable to the applicant.

18. Time for compliance is four months from the date of receipt of a copy of this order.

19. No order as to costs.

(GODFREY S. TAMPI)
MEMBER (A).

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(B.S. JAI PARAMESHWAR)
MEMBER (J)

28/7/2002