

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.321/90.

Date of Judgment 19.11.1991.

E.Krishnan

...Applicant

Vs.

1. The Union of India,
rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Secretary,
Central Board of Excise &
Customs,
New Delhi.
3. The Collector of
Central Excise,
Basheerbagh,
Hyderabad.

...Respondents

Counsel for the Applicant : Shri G.Parameswara Rao

Counsel for the Respondents : Shri N.Bhaskara Rao, Addl.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A).

This application has been filed by Shri E.Krishnan under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, rep. by its Secretary, Ministry of Finance, Department of Revenue, New Delhi and 2 others, seeking a direction to the respondents that the benefit of special pay which he enjoyed while working as UDC Cashier be reckoned for fixation of pay in the next higher post of Dy. Operating Superintendent Level-II.

2. The applicant joined the Central Excise Department on 1.10.1955 as an LDC. Later, he was promoted as UDC in June, 1966. While working as UDC he was posted as UDC (Spl. Pay) from 1.4.79 to 31.3.81 and later he was posted as UDC Cashier from 1.4.81 to 31.3.83. According to the

12

12

Govt. of India, Ministry of Finance Memo No.F.7(52)-E.III/78 dated 5.5.79 a special pay of Rs.35/- p.m. was sanctioned to those UDCs in non-Secretariat Administrative Offices for handling cases of complex nature involving deep study and competence to deal with complicated cases. Later, by O.M. No.7(35)-E.III/87 dated 1.9.87 ~~the decision of the President~~ decided to take the Rs.35/- special pay paid in accordance with the memo dated 5.5.87 into account for fixation of pay on promotion subject to two conditions:

- (a) that the incumbent should be a substantive holder of the post to which the special pay is attached, and
- (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.

These orders were to take effect from 1.9.85. Again, by another order dated 22.5.89 the benefit of the order of 1.9.87 was extended to similar cases prior to 1.9.85 also. It is the case of the applicant that he fulfils the condition required in the memo of 1.9.87 and that his pay in the grade of Dy. Operating Superintendent Level-II should be fixed taking into account the special pay he was getting prior to the promotion. He made representations and his representation was rejected vide their letter F.No.A.26017/123/89-Ad.IIA dated 29.9.89. It is against this that this application is made seeking a direction to the respondents to reckon his special pay in the cadre of UDCs for fixing pay in the grade of Dy. Operating Superintendent Level-II.

3. The respondents have filed a counter affidavit opposing the application. It is contended that while the fixed amount of Rs.35/- p.m. as special pay in terms of the memo dated 5.5.79 was paid for attending to work of a more complex and important nature and that this order does not cover other UDCs who were handling cash called Cashier who were to be paid Cashier allowance at varying rates depending upon the

.....

Lib

22/2

amounts handled by them. Moreover, the post of a Cashier is a tenure post and according to rules the special pay drawn in a tenure post cannot be taken into account for pay fixation in the cadre to which one is promoted.

4. I have examined the case and heard the learned counsels for the applicant and the respondents. The applicant is at pains to establish that the special pay drawn by him as a Cashier is the same as the special pay paid in terms of the Govt. of India memo dated 5.5.79. If this argument is accepted, he fulfils the conditions required in the memo of 1.9.87 which permits special pay to be taken into account for fixation of pay in the next higher cadre. It is seen from the memo dated 5.5.79 that at the time of consideration the demand was actually for a different scale viz: Rs.425-800. Obviously, this was not accepted and the respondents settled for a fixed amount of special pay of Rs.35/- p.m. It is seen that this amount of Rs.35/- was later raised to Rs.70/- p.m. from 1.1.86. In any case these are fixed amounts and no tenure is indicated for a person to be appointed in non-Secretariat Administrative Offices. Against this, the posts of Cashiers are tenure posts and the quantum of special pay is also variable depending upon the volume of cash handled. Govt. of India's Order No.11 listed under F.R.22(c) shows how to treat special pay for purpose of fixation of pay on promotion. Under that, special pay drawn in a tenure post is specifically mentioned as one not to be taken into account for fixation of pay in the higher post. Accordingly, the applicant's tenure as Cashier does not help him in the matter of pay fixation.

5. The applicant has also alleged that when persons were posted in the non-Secretariat Administrative Offices the respondents had not followed the principle of seniority.

25

380

Against this, the contention of the respondents is that the 5.5.79 memo only talked about special pay and they had no idea at that time that this would also ^{lead to} ~~result~~ in benefit of pay fixation. It was only in 1987 that a decision was taken to take into account the special pay for purpose of fixation of pay on promotion. In any case it is not the grievance of the applicant that he was not posted as UDC(Spl.Pay) in non-Secretariat Administrative Offices. His only plea is that the special pay he was drawing as Cashier should be taken into account for fixation of pay after promotion. The rule position being clear that it is not permissible, I do not find any scope for interfering in this case and accordingly dismiss the application with no order as to costs.

R. Balasubramanian
(R.Balasubramanian)
Member(A).

19/11
Dated 19th November, 1991.

4
Deputy Registrar(J)
20/11/91

To

1. The Secretary, Ministry of Finance,
Union of India, Dept. of Revenue, North Block,
New Delhi.
2. The Secretary, Central Board of Excise & Customs,
New Delhi.
3. The Collector of Central Excise, Basheerbagh, Hyderabad.
4. One copy to Mr.G.Parameswara Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.Bhaskar Rao, Addl. CGSC CAT.Hyd.
6. One spare copy.

pvm

19/11/91

(A) ASR
2nd Tiler

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

Single

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANTAN: M(A)

AND

THE HON'BLE MR.

M(J)

DATED: 19 - 11 - 1991

ORDER/JUDGMENT:

Central Administrative Tribunal
DESPATCH
26 Nov 1991
HYDERABAD BENCH.

M.A./R.A./C.A. No.

in

O.A.No.

321/90

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

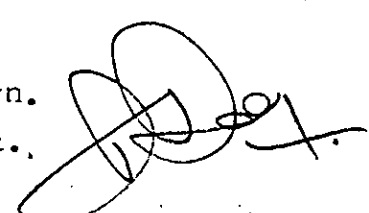
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

in order as to costs.


20/11/91

pvm