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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1076/93.

Dt. of Decision : 4.7.94.

Mr. M.R. Sridhar

.. Applicant.

Vs

1. The Union of India rep. by the Secretary, Ministry of Finance (Dept. of Revenue), New Delhi.
2. The Collector, Central Excise, Basheerbagh, Hyderabad.
3. The Deputy Collector (P&V), Central Excise, Basheerbagh, Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. G. Paraswara Rao

Counsel for the Respondents : Mr. N.V. Ramana, Addl. CGS.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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JUDGMENT

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) I

The applicant was appointed as LDC in the year 1955 under the Deputy Collector, Central Excise, Hyderabad. At that time he was granted a special pay of Rs.20/- per month. In the year 1975 vide Establishment Order (NGO) No.112/75 dated 4.11.1975 an option was called to those LDCs to give their willingness to work as Special Pay UDC. The applicant opted for the same and he was appointed as a special pay UDC with effect from 4.11.1975. He was promoted as Deputy Office Superintendent (DOS for short) (Level-II) in the year 1983. Subsequently a scheme was formed in the year 1979 vide O.M.No. F7/52)/E-III/78 dated 5.5.1979 wherein 10% of the posts of UDCs were given special pay of Rs.35/- for performing certain complex nature of work. It was further clarified by the letter dated 4.1.1980 that this 10% of the posts with special pay will be over and above special pay UDCs already in operation. By letter No.7(35)/E.III/87 dt. 1.9.1987 it was clarified that the Special pay given to the 10% of the posts will ~~not~~ count for fixation of pay in the higher grade when promoted as DOS. The Special pay UDCs who were appointed as such earlier to the letter of 1979 will not have the benefit of fixation of the special pay for fixation in the higher grade as informed by letter dt. 12.9.1991. In view of this the applicant when retired in 1992 has to pay back an amount of Rs.17,678/- as excess payment paid to him as his special pay which was granted to him when he was promoted as Special pay UDC was not taken into account while fixing his pay as DOS. He had also to forego an amount of Rs.117/- from his pension amount due to the above order.

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2. Aggrieved by the above, he represented his case for taking his special pay granted to him as Special pay UDC when posted in the year 1975 for fixation of his pay in the DOS cadre as was done in the case of those who have been given the special pay against the 10% quota in terms of 1979 letter. His request was rejected by letter No.C.No.II/24/1/92-ACCIS, dated 7.5.1993 stating that his request cannot be considered in view of the letter dt. 12.9.1991. Aggrieved by the above, he has filed this application for quashing the letter of 7.5.1993 issued by the Collector of Customs and Central Excise by holding it as illegal and void and for a further declaration that the applicant is entitled for counting the special pay drawn by him while fixing his pay in the next higher scale consequent on his promotion and for a further direction to the respondents to refund back the amount recovered from him together with interest at 12% p.a.

3. The first contention of the applicant is that withdrawing the pay fixation done in the year 1983 taking into account the special pay granted to him while working as special pay UDC in the year 1992 after a lapse of a decade is illegal.

4. The second contention is that while appointing his juniors as UDCs against the 10% quota in terms of letter dt. 5.5.1979 no option was given to the applicant for coming over against the said 10% quota. As the 10% of the posts of UDCs which were given special pay is stated to be in addition to the posts already in operation as Special pay UDCs, he was not given any option and that he has also not made any representation as he was under the impression that the pay of the special pay UDCs also will be taken into account for

fixation when promoted as DOS. In view of the fact that no option was given to him to come over as UDC against 10% quota, he is entitled for fixation of pay in the higher grade taking into account the special pay granted to him also.

5. The third contention is that his juniors who were appointed against the 10% quota of UDCs were given the benefit of fixation taking into account special pay when promoted as DOS. Eventhough they had worked in the same seat which he vacated when promoted as DOS, they were given this benefit of fixation when promoted as DOS. Hence, the post in which he worked as UDC is a complex nature of post and he should be given the fixation of pay when promoted as DOS taking into account the special pay given to him as UDC.

6. The respondents on the other hand rely on the letter dt. 12.9.1991 wherein it is stated that the 10% quota for which special pay was given were identified posts of complex nature and as the applicant was not engaged against these posts which are treated as posts involving complex nature of duties ~~he is not entitled for fixation~~ his special pay of Rs.30/- when promoted as DOS.

7. We have heard Sri G.Parameshwara Rao, learned counsel for the applicant and Sri N.V.Ramana, learned Standing Counsel for the respondents. It is a fact that no option was given to those UDCs who were working against special pay UDC to opt for the post carrying special pay against the 10% quota as per the scheme evolved in the year 1979. Though the applicant was senior to those who were posted against the 10% quota he was not considered by any committee for his suitability to be posted against that 10% quota of posts of UDCs. His juniors

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were fitted against the 10% quota posts which carried the special pay without considering the claim of the applicant who is their senior. If he is fit to hold the post of Special pay UDC there is no reason to exclude him to consider his case against the 10% quota of UDCs. If the special pay UDC is not over and above the 10% quota of UDCs which were earmarked for special pay he would have automatically come under this 10% quota and would have got the fixation when promoted as DOS taking into account his special pay. As his juniors who worked in that post vacated by him were given the fixation when promoted as DOS taking into account the special pay also, I see no reason why such treatment cannot be extended to the applicant who had been working as special pay UDC right from the year 1975. This distinction made between those absorbed as special pay UDC prior to the year 1979 and those who were fitted against the 10% quota of UDCs after issue of the letter in the year 1979 in the fixation of pay when promoted as DOS taking into account the special pay is unwarranted. The applicant being senior to those fitted against 10% quota of UDCs which carries the special pay should have been first given the choice if required to come under the 10% quota or continue in the special pay UDC. As this opportunity was not extended to the applicant, he is deemed to have been worked against the 10% quota of posts which carries the special pay and which pay is to be taken into account for fixation of the pay when promoted as Deputy Office Superintendent. If this is not done there will be a definite discrimination in the same category of staff. In view of this the applicant is entitled for fixation of pay when promoted as DOS taking into account his special pay also. In the result,

I set aside the impugned order No.II/24/1/92-ACCIS dated 7th May, 1993 passed by the Collector of Customs and Central Excise and declare that the applicant is entitled for counting the pay drawn by him including his special pay while fixing his pay in the next higher scale consequent on his promotion as Deputy Office Superintendent in the year 1983. The respondents are also directed to fix his pension on the basis of the pay fixation done in 1983 when promoted as Deputy Office Superintendent taking into account his special pay when he was employed as special pay UDC and return back the amount of Rs.17,678/- recovered from his Leave Encashment amount as excess payment.

8. The above direction should be complied within a period of three months from the date of communication of

9. The O.A. is ordered accordingly. No costs.


(R.Rangarajan)
Member(Admn.)

Dated 4th July, 1994.
Dictated in the open court.

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Copy to:-

1. The Secretary, Ministry of Finance, Union of India, Dept. of Revenue, New Delhi.
2. The Collector, Central Excise, Basheerbagh, Hyderabad.
3. The Deputy Collector, (P&V), Central Excise, Basheerbagh, Hyderabad.
4. One copy to Mr.G.Parameswar Rao, Advocate CAT, Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC,CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.G RTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHA REDDY
MEMBER(CUDL)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 4-7-1994. ✓

ORDER/JUDGMENT: ✓

M.A./R.A/C.A. NO.

in

O.A.NO. 1076/93

T.A.NO.

(W.P.)

Admitted and Interim Directions
Issued. ✓

Allowed

Disposed of with directions ✓

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered. ✓

No order as to costs. ✓

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