

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 64

of 1997

DATE OF DECISION... 29.4.99

Sri Srikanta Choudhury

(PETITIONER(S))

Mr. J.L. Sarkar, Mr. M. Chanda

ADVOCATE FOR THE
PETITIONER(S)

VERSUS-

Union of India & Ors.

Mr. B.S. Basumatary, Addl. C.G.S.C.

RESPONDENT(S)

Mr. B.S. Basumatary, Addl. C.G.S.C.

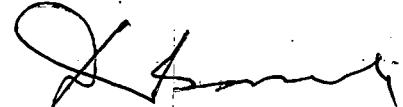
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN.

THE HON'BLE SRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 64 of 1997.

Date of decision : This the 29th April, 1999.

Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman.
Hon'ble Sri G.L. Sanglyine, Administrative Member.

Sri Srikanta Choudhury,
Upper Division Clerk,
Office of the Enforcement Directorate (FERA)
Government of India,
Rajgarh Road, 4 Bye Lane,
Guwahati-781003. ...Applicant

By Advocate Mr. M. Chanda.

-versus-

1. Union of India,
represented by the Secretary,
Government of India,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. Director,
Enforcement Directorate (FERA),
(Foreign Exchange Regulation Act),
Government of India,
Lok Nayak Bhawan, 6th Floor, Khan Market,
New Delhi-110003.
3. Deputy Director,
Enforcement Directorate
(Foreign Exchange Regulation ACT),
Calcutta Zonal Office,
8 Lindsay Street, Calcutta-700087.
4. Assistant Director,
Enforcement Directorate,
(Foreign Exchange Regulation Act),
Government of India,
Rajgarh Road, 4 Bye Lane,
Guwahati-781003 Respondents

By Advocate Mr. B.S. Basumatary, learned Addl. C.G.S.C.

O R D E R

BARUAH J. (V.C.)

This application has been filed by the

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applicant challenging the Annexure-7 order dated 19.11.96 by which the authority refixed the pay and allowances of the applicant. Earlier the applicant was granted Special Pay but that benefit was taken away by Annexure-7 order. The authority also took steps for recovery of the paid amount. Being aggrieved by the action the applicant has approached this Tribunal by filing the present application.

2. In due course the respondents have entered appearance and filed written statement. In paragraph 2 of the written statement the respondents have challenged the claim of the applicant as follows :

"2. According to (a) (ii) above, the special pay in lieu of a higher scale should have been drawn continuously for a minimum period of three years on the date of promotion for it to be treated as part of the basic pay. It is clarified that where such special pay has been drawn for a minimum period three years without break is more than one post within the same cadre or Department, the total period will be taken into account. In cases where the quantum of special pay varies in different posts, the least of the special pay drawn in different posts should be taken into account for the purpose of fixation of pay in the higher post."

3. We have heard Mr. M. Chanda, learned counsel appearing on behalf of the applicant and Mr. B.S. Basumatary, learned Addl. C.G.S.C. for the respondents. Mr. Chanda submits that the applicant used to receive the special pay since 1989 and by Annexure 7 order dated 19.11.96 this was sought to be refused.

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Besides, the authority also had taken steps for recovery of the amount which according to the respondents had been paid in excess. At the time of admission of this application an interim order dated 26.3.97 was passed directing the respondents not to recover the amount and therefore the amount has not yet been recovered except one instalment. According to Mr. Chanda, Annexure-7 order was illegal, arbitrary and also unreasonable in as much as the same was passed without giving any opportunity of hearing to the applicant. Mr. Chanda further submits that the order of recovery was contrary to the decision of Apex Court in the case of Shyam Babu Verma Vs. Union of India & Ors. reported in 1994 (27) ATC 121 and also to the decision in Sunil Baran Mukherjee Vs. Union of India & Ors. reported in 1992(21) ATC 80. Mr. Basumatary on the other hand submits before us that the earlier fixation was not in accordance with the rule and therefore the respondents passed the Annexure-7 order dated 19.11.96.

4. We have perused the Annexure-7 order dated 19.11.96. However, it does not indicate why this order was passed. It only refers that in terms of FR 22 the order was passed. On going through the FR 22 we find that this Rule prescribes the procedure for fixation of pay of Government Servant who are appointed to a post of a time scale of pay. It is not known what was the procedure adopted on the earlier

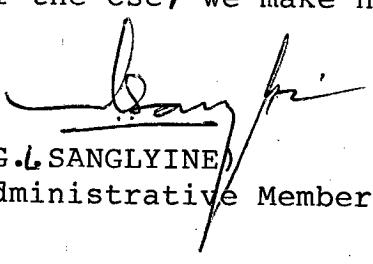


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occasion. The applicant also did not submit any representation before the authority after the Annexure-7 order dated 19.11.96 was passed. It is therefore not very clear to this Tribunal what was the reason for passing that order except what has been stated in the written statement. Therefore we feel it will be expedient if the matter is considered by the authority and for that purpose the applicant may submit a representation giving details of his grievances within 15 days from today. If such representation is filed within the said period the authority shall decide the matter and dispose of the representation by a reasoned order. This must be done as early as possible at any rate within a period of three months from the date of receipt of this order. While disposing of the representation of the applicant the authority shall consider the decision of Apex Court (Supra).

5. With the directions made above, the application is disposed of.

6. Considering the facts and circumstances of the case, we make no order as to costs.


(G.L. SANGLYINE)
Administrative Member


(D.N. BARUAH)
Vice-Chairman