

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 418, 2001

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

I agree
C. B. Nayak
6.5.03

KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER
06/05/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 418 of 2001

Jabalpur, this the 7th day of May 2003

Hon'ble Shri R.K. Upadhyaya -- Administrative Member.
Hon'ble Shri J.K. Kaushik -- Judicial Member.

Mahendra Kumar Agarwal, S/o.
Shri M.L. Agarwal, Aged - 52 years,
Occupation - Senior Accountant
(03/3149), O/o. the Accountant
General (A&E)-II, M.P., Gwalior,
Resident of - Daulatganj, Lashkar,
Gwalior (M.P.).

... Applicant

(By Advocate - Shri Anil Agrawal)

Versus

1. Union of India, Through :
The Secretary, Ministry of
Finance, Govt. of India, New
Delhi.
2. The Comptroller and Auditor
General of India, 10, Bahadur
Shah Jafar Marg, New Delhi -
110 002.
3. The Principal Accountant General
(A&E)-I, Madhya Pradesh,
'Lekha Bhawan', Jhansi Road,
Gwalior.
4. The Accountant General (A&E)-II,
Madhya Pradesh, 'Lekha Bhawan',
Jhansi Road, Gwalior.
5. Shri Shanta Prasad Parashar,
Senior Accountant (03/3228),
P.A.O. III Section, O/o. the
Accountant General (A&E)-I,
Madhya Pradesh, 'Lekha Bhawan',
Jhansi Road, Gwalior.

... Respondents

(By Advocate - Shri M. Rao for the official respondents)

ORDER

By J.K. Kaushik, Judicial Member :-

Shri Mahendra Kumar Agarwal has filed this original application praying therein the following reliefs :-

"(i) That, the order rejecting representation contained in Annexure A/1 be declared as illegal, discriminatory and against the provisions of Articles 14, 16 and 39(d) of the Constitution of India;



(ii) That, the applicant be declared entitled to get the benefit of special pay Rs. 35/- to be taken into account in fixation of pay in the revised pay scale like Respondent No. 5 and he is entitled to get the salary equal or more than respondent No. 5 w.e.f. 1.1.86 and arrears thereof since then till the date of payment with interest thereon @ 18% p.a.;

(iii) Cost may also be awarded. "

2. The material facts leading to resorting to filing of this original application are that the applicant was appointed to the post of Clerk on 19/05/1970. He was next promoted as Auditor on 01/11/1977. His designation was changed as Accountant in the year 1984. Options were called for when the composite office of Accountant General was bifurcated into two distinct and separate independent offices. The applicant was treated to go in the office of A.G.(A&E) after re-designation as Accountant. He was promoted to the post of Senior Accountant on 01/04/1987. On bifurcation a manual of instruction of restructuring was published under the order of Finance Department. They created 10% posts which were designated as Identified posts. These identified posts were to have some special and complex nature of duties carrying special pay of Rs. 35/- per month and were to be filled on the basis of seniority.

3. The further case of the applicant is that respondent No. 5 who is admittedly junior to the applicant being initially appointed on 26/06/1971, promoted to the post of Auditor on 05/03/1979 and thereafter as Senior Accountant with effect from 01/04/1987. The said respondent No. 5 also opted the office of A.G.(A&E) and was designated as Accountant. They were assigned their seniority, applicant being placed at serial No. 82 while the respondent No. 5 got his name at serial No. 153. But the case of the applicant was ignored in as much as the respondent No. 5 and several other ^{to} juniors were put to work on the identified post without

following the criteria of seniority as per the rules in vogue. The candidature of the applicant was not even considered and was completely overlooked. Some of the affected persons filed an original application before various benches of this Tribunal including the Jabalpur Bench. A Civil Appeal was also filed against a case which was allowed by the Tribunal, on behalf of the Union of India and others and the appeal was dismissed (in Annexure A/3 reverse). The matter was taken up and representation was made by the applicant but the same was turned down vide order dated 27/06/2000 (Annexure A/1).

4. The respondents have contested the matter and have contradicted the facts and grounds raised in the original application. They have also relied upon the same Annexure A/3.

5. A detailed rejoinder has been filed on behalf of the applicant, wherein a copy of judgment dated 23rd November 2001 passed in OA No. 692/1998 Pradeep Deshmukh and others Versus Union of India and others (Annexure A/7) has also been annexed stating therein that the controversy is squarely covered on all fours and does not remain res-integra.

6. We have heard the learned counsel for the parties at a great length and have carefully perused the pleadings and records of this case.

7. At the very outset the learned counsel for the respondents has submitted that subsequent to the judgment in Pradeep Deshmukh's case supra being strongly relied upon on behalf of the applicant, the Ahmedabad Bench of this Tribunal has adjudicated upon the similar matter ^{and} have rejected



the claim in similar situation vide judgment dated 30/04/2001 in OA No. 721/1995 Shri M.N. Dhagia and others, ^{vs. UOI} the case of the applicant is required to be summarily rejected. We have gone through the judgment which is being relied upon by the learned counsel for the respondents, wherein it has been found that there was nothing to support the contention that the applicant was selected by the controlling authority for being posted to such identified posts and were asked to perform such duties. The OA was mainly rejected on the ground of limitation. Further it has been said that the applicant in that case was only working as a Clerk and not as an Accountant, and he could not be transferred/posted to join in identified posts due to some un-avoidable reasons, circumstances prevailing at that time and as the benefit was not admissible to clerks, the question of special pay of applicant does not arise. In this view of the matter, the facts of the present case are distinguishable from the one on which the respondents have placed on reliance. Hence the contention of the learned counsel for the respondents is devoid of any merit.

8. The learned counsel for the applicant has placed heavy reliance on a judgment in Pradeep Deshmukh's case supra (Annexure A/7) and after going through it, we are of firm opinion that much of the arguments which would have been otherwise addressed to us have been cut short by the decision of this Bench in the said case which is being relied upon by the learned counsel for the applicant. As a matter of fact the controversy involved in the present case is fully covered by the said decision and there is hardly any need to repeat the discussions made therein. Thus the matter is as we have said, covered by the authority and we need say no more except that even it were not, we would have no hesitation in reaching the same conclusion. Thus the contentions of the

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learned counsel for the applicant are well founded and deserves acceptance and we decide this OA on the lines of decision in Pradeep Deshmukh's case supra. However since there has been admittedly delay in filing of this OA we would have to restrict the payment of arrears as per the land mark judgment of the Hon'ble Supreme Court in M.R. Gupta Versus Union of India reported at AIR 1996 SC Page 669.

9. In view of the fore-going discussions the OA is partly allowed with a direction to the respondents to step up the pay of the applicant at par with the pay drawn by his junior from the date of promotion of the junior to the post of Senior Accountant. The applicant would not be entitled for special pay or arrears thereof as made available to his juniors. However the applicant shall be entitled to the proforma fixation of pay and the actual arrears shall be payable only from the date, ^{one year} prior to filing of this OA i.e. 19/06/2000. However there shall be no order as to costs.

JK
(J.K. KAUSHIK)

JUDICIAL MEMBER

RU
(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER

पृष्ठांकन द्वारा/व्या..... जर्जरु, दि.....
संतुलिति द्वारा/व्या.....
(1) राजीव गोपनीय अधिकारी, अधिकारी, अधिकारी
(2) अधिकारी, अधिकारी, अधिकारी, अधिकारी
(3) अधिकारी, अधिकारी, अधिकारी, अधिकारी
(4) अधिकारी, अधिकारी, अधिकारी, अधिकारी

ANil Agarwal, Adm.
M. Rao, Adm. S.W.H

JK
12/5/03

*Issued
on 12.5.03
by JK*