

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 992 of 2000

Jabalpur, this the 8th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon 'ble Shri Madan Mohan, Judicial Member

B.K. Dixit, Son of Shri J.K. Dixit,
aged about 56 years, by occupation
service - Cashier, Office of the
Accountant General (A&E)II, M.P.,
Gwalior, resident of Type-III/5,
Shastri Nagar, Thatipur, Gwalior (MP). ... Applicant

(By Advocate - Shri Bhagwan Singh on behalf of Shri Rohit
Arya)

V e r s u s

1. Union of India - through the
Secretary to Govt. of India,
Ministry of Finance, Department
of Expenditure, New Delhi.
2. The Comptroller and Auditor
General of India, 10, Bahadur Shah Zafar
Marg, New Delhi.
3. The Accountant General (A&E)II,
Lekha Bhawan, Jhansi Road,
Gwalior, (MP). ... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(a) to quash by a writ of certiorari or any other
writ or order, the order dtd. 4.2.2000 (Annexure A-1)
passed by the respondent No. 3 and also order of
respondent No. 1 vide No. 7(75)C.III/94 dt 'nil'
denying the benefit of fixation of pay by taking into
account the element of Rs. 35/- as part of pay w.e.f.
1.1.1986, as void, illegal and opposed to law.

(b) to issue appropriate writ or order or
directions commanding the respondents to fix the pay
of the applicant w.e.f. 1.1.1986 by treating the
special pay of Rs. 35/- as part of pay with conse-
quential benefits of arrears, increments, option etc
in accordance with rules.

(c) Interest @ 18% on the arrears becoming due."

2. The brief facts of the case are that the applicant

was appointed as UDC on 21.6.1969 which was redesignated as Auditor w.e.f. 1.1.1973, in the Office of the Accountant General, Madhya Pradesh, Gwalior and was confirmed on 1.3.1976. The applicant was promoted to the post of Selection Grade Auditor (non-functional) redesignated as Sr. Accountant (functional) w.e.f. 1.4.1987. The applicant was posted on 28.5.1984 to a seat carrying Special Pay of Rs. 35/- per month for performing the duties of arduous and complex nature, in addition to pay scale of Rs. 425-700/-. The applicant continued to draw this special pay of Rs. 35/- per month till 10.12.1985 when he was selected as Cashier which carried special pay of Rs. 50/-. The applicant is still working as Cashier till date. The special pay of Rs. 35/- was enhanced to Rs. 70/- under the IVth Pay Commission effective from 1.1.1986 in the case of UDC but was abolished in IA&AD alongwith cashier's special pay and was not allowed to be treated as part of pay in terms of Rule 7(1)(B) for the purpose of fixation of pay under CCS (Revised Pay) Rules, 1986. Later on, consequent to award of Board of Arbitration and CAT's orders, the same was allowed as part of pay for fixation of pay under CCS(Revised Pay) Rules, 1986 vide Ministry of Finance orders dated 1.9.87 and 8.5.1989. But the applicant was denied the said benefit on the ground that he was not holding the post carrying special pay on 31.12.1985. The applicant's representation, however, was rejected by the respondents without considering the fact that it was a case of condonation of technical gap of 20 days from 11.12.1985 to 31.12.1985. It is pertinent to mention here that even those persons who were posted on the identified seat after the crucial date 1.1.1986 were also extended the benefit of special pay of Rs. 35/- and got the benefit of the same in fixation of their pay. The applicant filed an Original Application No. 106/1995. The said OA was disposed of with direction to the respondents to examine




whether certain clarificatory orders have been passed on the basis of the advice of Ministry of Finance and then pass fresh orders accordingly. The respondents have again rejected the claim of the applicant vide impugned order dated 4.2.2000 (Annexure A-1) on the ground that the applicant was not holding the post carrying special pay of Rs. 35/- as on 31.12.1985 and that the appointment as Cashier was not a promotion. Aggrieved by this the applicant has approached this Tribunal by filing this Original Application and claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.


4. It is argued on behalf of the applicant that the respondents have rejected the representation of the applicant without considering the fact that it was a case of condonation of technical gap of 20 days from 11.12.1985 to 31.12.1985. Our attention was drawn towards the Rule 7(1)(B) of CCS (Revised Pay) Rules, 1986, through which the applicant is claiming the benefit of special pay of Rs. 35/-. He has also drawn our attention towards the order passed in OA No. 106/1995 by which the respondents were directed to determine and examine the case of the applicant, but the respondents did not examine the same and rejected the claim of the applicant vide impugned order dated 4.2.2000 (Annexure A-1).

5. The learned counsel for the respondents argued that according to the arguments of the applicant himself he was drawing special pay of Rs. 35/- upto 10.12.1985. The learned counsel for the respondents further argued that the scheme of special pay stood abolished in the Indian Audit & Accounts Department w.e.f. 1.1.1986, consequent upon introduction of higher functional grade for



Accountants/Auditors based on the recommendation of the IVth Pay Commission. The Government of India, Ministry of Finance, OM dated 8.5.1989 provided for treating the special pay of Rs. 35/- as part of the existing emoluments for fixation of pay in the revised scale under Rule 7(1)(B) of the CCS (Revised Pay) Rules, 1986. The fixation of pay in the revised scale was to be done with reference to the emoluments drawn by an individual as on 1.1.1986 in the pre-revised scale. The applicant was not in the receipt of special pay of Rs. 35/- on this crucial date because from 11.12.1985 onwards he relinquished the charge of identified seat to hold the post of cashier carrying separate special pay of Rs. 50/- per month. Hence the applicant was not given the benefit of special pay of Rs. 35/- in fixation of his pay in the revised scale from 1.1.1986. The respondents also argued that Rule 7(1)(B) of the CCS (Revised Pay) Rules, 1986 does not support the claim of the applicant. So far as the orders passed in OA No. 106/1995 is concerned, no relief was given to the applicant and the Tribunal simply directed the respondents for reconsidering the matter of the applicant and after reconsideration the respondents rejected the claim of the applicant vide the impugned order. Hence the OA has no merit and is liable to be dismissed.

6. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the applicant was given the special pay of Rs. 35/- upto 10.12.1985 and thereafter he is getting special pay of Rs. 50/- from 11.12.1985. As per the prevalent rules and orders the applicant was not entitled for getting Rs. 35/- as pay for the purpose of fixation with effect from 1.1.1986 as he relinquished the charge of identified seat from 11.12.85 to hold the post of cashier carrying separate special pay of Rs. 50/-.



(M.P. Singh)
Vice Chairman

"SA"

[illegible]

~~Fused~~
~~on~~
~~15.4.1991~~

R. Aryet.
SA Dhammalikee

वप रजिस्ट्रार