
(2006) 05 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) 10848, 10849 and 10850 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Narinder Kumar

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Citation : (2006) 131 DLT 244 : (2006) 111 FLR 659 : (2007) 3 SLJ 501

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; D.R. Gupta and B.B. Raval, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition by the Union of India challenges the order dated 29-10-2004 passed by the Central Administrative Tribunal(hereinafter referred to as "CAT") in OA No. 45/2004 regarding the claim of the respondent who was the applicant in the tribunal for merger of Rs. 140/- in the basic pay for the fixation as well as for the grant of retiral benefits. It is not in dispute that the respondent was granted special pay of Rs. 140/- and since by an order dated 2-5-01 the special pay had been withdrawn w.e.f. 30-3-01 and had not been made a part of the basic pay, while fixing it for the purpose of retiral benefits the respondent approached the CAT. By the impugned judgment dated 29- 10-04 the tribunal held that similar benefits as claimed by the respondent were granted to one S.S. Yadav by the order dated 22-11-03 and he was granted benefit of the special pay of Rs. 140/- for fixation of pay. The learned Counsel for the petitioner submitted that that S.S.Yadav was junior to the petitioner and could not have been differently treated. It has also been held that subsequent advice of the DOPT could not be acted upon retrospectively.

3. The learned Counsel for the petitioner Mr. Bhardwaj has relied upon Rule 16 which reads as follows:

(16) Treatment of special pay granted to UDCs in non-Secretariat Administrative Offices on promotion.-Pursuant to the Award of the Board of arbitration, it has been decided that Rs. 35 per month paid to UDCs as special pay under Ministry of Finance (Department of Expenditure), O.M. No. F.7(52)-E. III/78, dated 5-5-1979 shall be taken into account for fixation of pay on promotion subject to the conditions-

(i) that the incumbent is a substantive holder of the post to which the special pay is attached;

OR

(ii) 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 take effect from 1st September, 1985.

[G.I., M.F., O.M. No. 7(35)-E. III/87, dated the 1st September, 1987.]

4. It is thus contended that the petitioner was not entitled to the benefits of the fixation of pay by relying upon the said amount of special pay as on the date of his appointment to the higher post he was not officiating in the lower post to which the special pay was attached continuously for a period of not less than three years. In reply the learned Counsel for the respondent Shri D.R. Gupta has rightly urged that reading of the Rule clearly discloses that the two requirements shown in the circular i.e. (1) that the incumbent should have been a substantive holder of the post to which the special pay was attached and (ii) that the incumbent should have been officiating for at least three years on the lower post to which the special pay was attached, are both in the alternative, and since the respondent satisfied the requirement of the incumbent being a substantive holder of the post to which the special pay was attached, the fact that he did not serve continuously for a period of not less than three years in the lower post to which the special pay was attached is of no relevance. Having perused the contents of the aforesaid Rule we are satisfied that since the petitioner was admittedly holding the post of UDC substantively and had got the special pay of Rs. 140/- attached to that post and since the requirement of holding the post to which the special pay was attached for 3 years was only in the alternative, there is no merit in the plea of Mr. Bhardwaj. The writ petition is accordingly dismissed and stands disposed of.