

(14)

Central Administrative Tribunal
Principal Bench

O.A.No.602/95

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 30th day of October, 1996

1. Radhey Shyam
r/o 64 - G
Type A, Aram Bagh
New Delhi.

2. Kishan Kumar
250, Sector VII
R.K.Puram
New Delhi.

3. Vas Dev
47, Chitra Gupta Road
Pahargunj
New Delhi.

4. Amar Singh
7/852, Sector VII
Pushp Vihar
New Delhi.

5. Ram Singh
2176, Lodhi Colony
New Delhi.

6. Jagbir Singh
95 - B, Sector IV
Pushp Vihar
New Delhi.

7. Sher Singh
F - 204
Seva Nagar
New Delhi.
(By Shri Naresh Kaushik, Advocate)

.... Applicants

Vs.

1. Union of India
through the Secretary
Ministry of Home Affairs
North Block
Central Secretariat
New Delhi.

2. Central Bureau of Investigation
C/o Director
North Block
Central Secretariat
New Delhi.
(By Shri M.M.Sudan, Advocate)

... Respondents

O R D E R

The applicants, who originally belonged to different State Police Services, firstly, came on deputation to Central Bureau of Investigation (CBI), as Constables and have later been

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absorbed. On absorption, their pay was sought to be refixed in the relevant central pay scales which resulted in reduction of their basic pay in parent cadres. Some colleagues of the applicants' approached the Bangalore Bench of this Tribunal which held in Original Application No.673-676 of 1986 decided on 13.9.1990; that the basic pay cannot be reduced and directed the respondents to refix the pay of the applicant on that basis. Since respondents did not extend the benefit of that Judgment in favour of all the similarly situated employees, present applicants' who also approached this Tribunal in OA No.1684/89. Vide orders dated 10.5.1991, the Principal Bench allowed the OA. In the mean while, as the Madras Bench of this Tribunal in a similar case, had taken a different view and rejected the application, the matter went before the Supreme Court, which in its order dated 22.10.1992 set aside the judgment of the Madras Bench by holding that the basic pay of an employee cannot be reduced on absorption. The applicants submit that as the respondents did not implement the Judgment of the Tribunal in their favour, they were forced to file a Contempt Petition (CCP No.310/92).

2. During the pendency of the contempt proceedings, the judgment was partially implemented, according to the applicant, by revising their pay fixation upto 31.12.1985. But for the period after 1.1.1986 the respondents stand was that this was not an issue before the Principal Bench or before the Bangalore Bench. The contempt proceedings were disposed of on the basis that the matter could be agitated in original proceedings and not in contempt proceedings. The issue was taken up by the applicants before the Supreme Court and the Apex Court in its order dated 14.7.1994 allowed the applicants to pursue the other

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remedies as had been observed by the Tribunal in its order dated 29.4.1994. It is in this background that the present OA has been filed.

3. The applicants allege that the respondents issued their orders of pay fixation in two parts, one upto 31.12.1985 and the other for the period from 1.1.1986 onwards, as per Annexures 9 and 9A. However, for the latter period, the respondents have not, been given the protection of their basic pay nor the benefits of the recommendations of Fourth Pay Commission to the applicants as enjoined by the Tribunal's order. The applicants therefore, seek a direction to the respondents for refixation of their pay by giving them benefit of 20% or Rs.75/- whichever is more on the basic pay and to give them all the consequential benefits of pay, and to arrears thereof along with interest at 18%.

4. The respondents controvert the contentions of the applicant and submit that the pay for the period 1.1.1986 onwards has been correctly fixed in accordance with the judgment of this Tribunal and the CCS Revised Pay Rules, 1986. The emoluments drawn on the pre-revised pay by the applicants have been duly protected and there is therefore, no claim to refix the pay.

5. Arguing the case, the learned counsel for applicant drew my attention to the pay fixation orders in respect of the first applicant, Shri Radhey Shyam to highlight the case of the applicants. A copy of the order No.246/92 dated 20.10.1992 is at page 45 of the Original Application. The pay scale of Shri Radhey Shyam in the state was Rs.400-660 and his pay on the date of absorption, 1.1.1983 was Rs.570/-. The corresponding central pay scale of Constables on that date was Rs.210-270/-. The applicant was entitled to a special pay of Rs.15 and departmental allowance Rs.50/- and special increment of Rs.15/- giving a total

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of Rs.650/-. In the central pay scales, the pay of Radhey Shyam was split into two parts, pay at the maximum of the Central Scale at Rs.270/-, special pay Rs.15/- and Personal Pay of Rs.365/- giving a total of Rs.650/-. More importantly it was noted that personal pay will qualify for all compensatory allowances, dearness allowances, etc. prior to 1.1.1986.

6. The pay scale of the Constable was revised from Rs.210-270/- to Rs.950-1400/- w.e.f. 1.1.1986. On that date, Shri Radhey Shyam was drawing total emoluments of Rs.1753/- out of which Rs.345/- was his personal pay and it came to Rs.643/- with Dearness Allowance, etc. In the new pay scale his pay was fixed at Rs.1130/-, basic pay with his personal pay at Rs.603/- which along with special increment of Rs.20/- gave a total of Rs.1753/-. For the succeeding years the basic pay increased and the personal pay was reduced and as on 1.4.1990 the status was that the total emoluments remained Rs.1745/- i.e. Rs.1225/- as basic pay, Rs.20/- as special increment and Rs.508/- personal pay. In other words that total emoluments of Radhey Shyam remained at the same level as of 1.1.1986 in the pre revised scale. The applicant obtained no advantage whatsoever of revision of pay scale as the personal pay got absorbed in the increments of the new pay scale.

7. The learned counsel for the applicant submits that this was entirely contrary to the letter and spirit of the order of this Tribunal in OA No.1680/89, wherein it was held that the basic pay of the applicant could not be reduced on absorption in the central government service. According to the learned counsel the pay revision should have been so effected that personal pay was a part of the basic pay of the applicant.

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8. The contention of Shri M.M.Sudan, learned counsel for respondents, that Note 5 of Rule 7 of the Revised Pay Rules of 1986 specifically provides that the Personal Pay drawn by an employee prior to 1.1.1986 will be protected but will be absorbed in future increases in pay. Therefore, the pay fixation has been done strictly in accordance with the Revised Pay Rules, 1986. The applicants were entitled to protection of the pay scale as per the orders of this Tribunal at the time of their initial absorption. However, when the time came for revised pay scale on 1.1.1986, then they were Central Government employees and it is in that capacity that they were to receive the benefit of the Fourth Pay Commission.

9. I have carefully considered the pleadings on record. One view could be that the benefit which the applicant received on their absorption because of pay revision in the states got duly absorbed when the pay revision was made in the Central Pay Scales. Since there was no reduction in the total emoluments after 1.1.1986, they have no ground for complaint. This would be an erroneous conclusion since the question of any unintended benefit to the applicant at the time of absorption through the protection of the basic pay last drawn by their had been gone into. In fact, the reasoning of the Madras Bench on this score had not met with approval when the matter went before the Apex Court. I also do not agree with the contention of Shri M.M.Sudan, learned counsel for respondents that for the benefit of Fourth Pay Commission the applicants cannot hark back to the situation at the time of their absorption. The direction of this Tribunal in OA No.1680/89 was that their basic pay ~~pay~~ in the State Pay scale could not be reduced on absorption. This view of the Tribunal was upheld by the Apex Court. However, the maximum of the pay scale in the Centre was well below the pay already drawn by the applicants. Thus, Shri Radhey Shyam was drawing a

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basic pay of Rs.568/- in the state pay scale when the maximum central pay scale was only Rs.270/-. It was in these circumstances that the respondents adjusted the differential as Personal Pay. In case the central pay scale had the same maximum, then the respondents would have had no occasion to fix part of the pay of the applicants as Personal Pay. Therefore, for the purpose of any refixation of pay the component of personal pay, which was specifically made eligible for all compensatory allowances and Dearness Allowances had to be taken into account while fixing the pay in the new pay scale after 1.1.1986. The applicants were therefore, entitled to the benefit of 20% or a minimum of Rs.75/- on fixation of their pay on 1.1.1986. Any other interpretation, such as that adopted by the respondents would clearly be contrary both to the spirit of the pay revision as also to the orders of this Tribunal in OA No.1680/89 since otherwise the applicants would be reduced to stagnation at whatever pay they were drawing at the pre revised scale on 1.1.1986, for virtually all times to come unless they were in the mean time promoted to a higher post.

10. In the light of the above discussion, I allow the appeal. The respondents are directed to refix the pay of all the applicants w.e.f. 1.1.1986 in the revised pay scale after giving the benefit of 20% also on the personal pay and DA, etc. thereon as per the Revised Pay Rules, 1986. The applicants will also be entitled to all the consequential benefits including payment of arrears. Normally payment of such arrears would be confined to a point of time one year prior to filing of the Original Application. However, it is seen that the applicants were continuously agitating their case, first in Contempt Proceedings then before the Apex Court before filing this Original Application. In these circumstances, I direct that the

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applicants would be entitled to the payment of all the arrears but without payment of interest thereon. The application is disposed of accordingly. There shall be no order as to costs.

R. K. Ahooja
(R.K.AHOOJA)
MEMBER(A)

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