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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA No.1986/89

Date of decision: 11.12.1991

Sh.H.K.Dhawan & ors.

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Applicants

Shri B.B.Srivastava

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Counsel for the  
Applicants.

VERSUS

Union of India & anr.

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Respondents

Shri P.P.Khurena,

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Counsel for the  
Respondents

CORAM: THE HON'BLE MR.JUSTICE V.S.MALIMATH, CHAIRMAN  
THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)

JUDGEMENT

( JUDGEMENT OF THE BENCH DELIVERED BY  
HON'BLE MR.JUSTICE V.S.MALIMATH, CHAIRMAN)

This application is by 14 persons. They have a grievance about the fixation of their pay. They were all holding the posts of Accountant in the pay scale of Rs.425-800 with a special pay of Rs.40. When such was the position, there was an upgradation of 29 posts of Accountant fixing the higher scale of pay of Rs.500-900 by appropriate amendment carried out in exercise of the powers conferred by the proviso to Article 309 of the Constitution by Notification dated 29.11.1983.

The applicants were asked if they are willing to make option <sup>not</sup> ~~not~~ for <sup>not</sup> being fitted in the higher

scale of Rs.500-900 but to continue in the lower scale of Rs.425-800 with a special pay of Rs.40. The applicants did not exercise any option in favour of the old scale of pay. The option offered says that they would automatically be fitted in the higher scale of Rs.500-900 if they failed to make the option. The representations of the applicants do not indicate that they opted in favour of the retention of the old scale of Rs.425-800. They have, however, pleaded that while fixing them in the higher scale of Rs.500-900, the special pay of Rs.40 as enjoyed by them should also be taken into account. That request of theirs was turned down. On the basis of the recommendations of the Fourth Pay Commission, there was further revision of the pay scales with effect from 1.1.86. The scale of Rs.425-800 stood revised to the scale of Rs. 1400-2600 and the scale of Rs.500-900 stood revised to the scale of Rs.1640-2900. The authorities have proceeded to fix the scale of pay of the applicants on the assumption that they had exercised option for retaining the old scale of Rs.425-800. This resulted in their being fitted with effect from 1.1.1986 in the revised scale of Rs.1400-2600. They were not fitted in the revised scale of Rs.1640-2900 as the authorities proceeded on the basis that the applicants continued in the old scale of Rs.425-800 and not in the upgraded scale of Rs.500-900.

2. We have no hesitation on the basis of the materials placed before us in taking the view that none of the applicants had exercised their option for retaining the old scale of Rs.425-800. Their

representations which have been produced in this case do not indicate their intention to retain the old scale. On the contrary, they make it abundantly clear that they were pressing for the special pay of Rs.40 to be taken into account while fixing them in the revised scale of Rs.500-900. Therefore, there is an obvious error committed by the authorities concerned in revising the scales of pay of the applicants to Rs.1400-2600 with effect from 1.1.1986 instead of fixing them in the higher scale of pay of Rs.1640-2900. Shri P.P.Khurana, the learned counsel for the respondents also fairly submitted that the applicants are entitled to be fitted in the scale of pay of Rs.1640-2900.

3. The only question that requires adjudication is as to whether the applicants have any right for taking into account the special pay of Rs.40 enjoyed by them while fitting them in the upgraded higher scale of Rs.500-900. The applicants have not been able to rely upon any statutory provision in support of their case. They have only quoted some instances where according to them, special pay has been taken into account in some cases. As the entire matter is governed by statutory provisions, we should consider the case of the applicants in the light of statutory provisions governing such fitment and not on the basis of what was done in other cases. Even assuming for the sake of argument that in some cases, special pay was taken into account, if that is not legally permissible, the applicants cannot on the basis of wrong precedents request this Tribunal to command the authorities to commit a similar mistake

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in their favour. That is not what follows from Article 14 of the Constitution.

4. We shall now examine as to whether the applicants are entitled to the special pay of Rs.40 being taken into account when they are fitted in the higher scale of Rs.500-900. The learned counsel for the respondents invited our attention to F.R. 23 which governs such a situation and reads as under:-

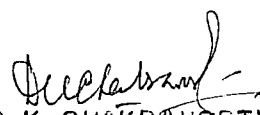
" The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay: provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final."


It is clear from this statutory provision that when the pay attached to a particular post is changed, he is treated as if he was transferred to a new post on the new pay. The statutory provision makes it clear that what he was drawing earlier is not relevant for the purpose of fitting him in the pay scale of the new post. As required by F.R.23 they should be treated as having been transferred to the new post in the new pay scale of Rs.500-900. We, therefore, reject the contention of the applicants that the special pay of Rs.40 should be taken into account while fixing them in the revised scale of pay of Rs.500-900 with effect from 17.12.1983.

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5. For the reasons stated above, this application is allowed in part. The respondents are directed to proceed on the basis that the applicants did not opt for retention of the old scale of Rs.425-800. They are, therefore, directed to fix the applicants in the pay scale of Rs.500-900 with effect from 17.12.1983 and thereafter to fix them in the revised scale of Rs.1640-2900 with effect from 1.1.1986. They shall be entitled to all consequential benefits. Such of those who have retired from service, shall be entitled to all the arrears of emoluments as also to the revised fixation of pension and retirement benefits if that becomes necessary in the light of the directions in this case. It is obvious that this shall not come in the way of the authorities in making adjustments towards dues of the applicants, if any.

There shall be no order as to costs.

  
( D.K.CHAKRAVORTY )  
MEMBER(A)  
11.12.1991

  
( V.S.MALIMATH )  
CHAIRMAN  
11.12.1991