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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(1) O.A. 21/1989 DATE OF DECISION : April 19, 1991

Shri Fateh Bahadur & Ors. ... APPLICANTS

V/s

Union of India & Anr. ... RESPONDENTS

(2) O.A.27/1989

Shri Ram Deo Prasad & Ors. ... APPLICANTS

V/s

Union of India & Anr. ... RESPONDENTS

CORAM : Hon'ble Shri P. C. Jain, Member (A)
Hon'ble Shri J. P. Sharma, Member (J)

Shri K. L. Bhatia, counsel for the applicants.
Shri M. L. Verma, counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their lordships wish to see the fair copy of the judgment ? No.
3. To be circulated to all Benches of the Tribunal. No.

( J. P. Sharma )
Member (J)

( P. C. Jain )
Member (A)

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Shri M.L. Verma, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).

JUDGMENT

All the 36 applicants in O.A. 21/1989 are stated to be working as Dairy Mates in the Central Dairy of the Delhi Milk Scheme for the last 10 - 20 years. Similarly, in O.A. 27/1989, all the 21 applicants are stated to be working as Semi-skilled Operators in the Central Dairy of the Delhi Milk Scheme for the last 10 - 20 years. The number of 22 applicants as shown in O.A. 27/1989 is obviously incorrect as only 20 persons have sent the letter of authorisation in favour of applicant No.1 and the list at Annexure I bears the signatures of only 21 applicants. As the point raised in both the aforesaid O.A.s involves the same question, it is felt that it would be convenient to dispose of both the O.A.s by a common judgment and we accordingly do so.

2. Relevant facts, in brief, are as below: -

All the workers in the Cold Storage of the Central Dairy of the Delhi Milk Scheme were granted

a special pay of Rs.10/- per month, vide Government of India, Ministry of Food, Agriculture, Community Development & Cooperation (Department of Agriculture) letter dated 17th May, 1966 (Annexure I to the counter reply of the respondents). The rate of special pay of Rs.10/- per month was increased to Rs.20/- per month to each of the workers placed on duty in the Cold Storage at the Central Dairy of the DMS, vide Department of Agriculture letter dated 23.9.1975 (Annexure-II to the counter reply). The Fourth Central Pay Commission, in para 10.11 of Chapter 10 of Part I of their Report, recommended as below: -

> "10.11. Cold storage workers in the DMS, who are required to work in rooms kept at low temperature, are paid a cold storage allowance of Rs.20/- per month. This allowance was introduced in 1966 at Rs.10/- per month which was raised to Rs.20/- in 1975. Ministry of Agriculture has proposed that the rate may be increased to Rs.30/- per month. The ministry has further suggested that boiler house workers who are paid a special allowance at Rs.10/- per month may be paid Rs.30/- per month. We accept these suggestions and recommend that the rates of cold storage and boiler house allowances may be raised to Rs.30/- per month. "

In view of the above recommendation, vide Office Order dated 13th January, 1987 (Annexure III to the counter-reply), it was ordered that the Cold Storage Allowance to each of the workers placed on duty in the Cold Storage of DMS will be paid @ Rs.30/- per month with effect from 1.1.86 in place of special pay of Rs.20/- per month. The then Chairman of the DMS, in his D.O. letter dated 29.4.1987 addressed to Joint Secretary (DD), Department of Agriculture & Cooperation (Annexure IV to the counter reply), raised two points, i.e.,

(1) that the Pay Commission has inadvertently named the special pay as cold storage allowance, and (2) that the DMS had sent a proposal that they should be permitted to apply the general orders for enhancement of special pay from Rs.20/- to Rs.40/- and for ignoring the recommendation of the Fourth Central Pay Commission with respect to the cold storage allowance of Rs.30/-. In reply to the above D.O. letter, approval of the competent authority to the proposal to change the nomenclature of cold storage allowance paid to workers deployed in the DMS Cold Storage, as special pay, was conveyed, but the proposal to increase the amount from Rs.30/- to Rs.40/- per month was not agreed to, after consideration in consultation with the Ministry of Finance, Department of Expenditure, as the Pay Commission had made a specific recommendation for payment of Rs.30/- per month. A copy of this communication dated 29.12.1987 has been filed as Annexure V to the counter-reply. The applicants, in both these O.A.s are aggrieved by the decision of the Government not to increase the special pay of Rs.20/- to Rs.40/- per month. They are also aggrieved by the fact that the special pay is now not treated as pay for purposes of grant of Dearness Allowance and other additions to pay, while earlier the special pay was stated to have been reckoned as pay for purposes of Dearness Allowance and other additions to pay. They have prayed for the following reliefs: -

"(i) That the Respondents may be directed to fix the amount of special pay at the rate of Rs.40.00 per head per month with effect from 1.1.1986, the date of implementation of Fourth Pay Commission

(ii) That the Respondents may be directed to

reckon the entire amount of special pay for purposes of Dearness Allownace and other benefits as it was treated before the implementation of Fourth Pay Commission.

(iii) In case (ii) is not agreed to special pay may be fixed at Rs.70/- p.m.

(iv) Such other relief as this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case in the interest of justice.

3. We have perused the material on record and also heard the learned counsel for the parties.

4. The applicants challenge the Government decision as arbitrary, unreasonable and without any rationale. They also allege violation of Articles 14 and 16 of the Constitution. It is contended that the Fourth Central Pay Commission, in para 24.3 of Chapter 24 of their Report, had recommended for doubling the existing rate of special pay subject to the ceiling of Rs.500 per month and that the non-acceptance by the respondents of this recommendation of the Commission in respect of the applicants amounts to discrimination. It is also contended that the reduction in their emoluments, as a result of the special pay not being treated as pay for purposes of Dearness Allowance and other purposes, without an opportunity being given to them to explain their case is against the principles of natural justice.

5. The respondents, in their reply, have stated that the decision of the Government is based on the recommendations of the Fourth Pay Commission, which have been implemented by the Delhi Milk Scheme, and that the nomenclature of cold storage allowance has already been changed to special pay by the Government. It is also stated that in Government of India, Ministry of Personnel

Public Grievances & Pension, O.M. No.2/1/87-PIC-II, dated 14.4.87, the term 'Pay' has been defined to mean the pay in the revised scales promulgated under the C.C.S. (Revised Pay) Rules, 1986, and, as such, the special pay is not taken into account for the purposes of calculation of Dearness Allowance and other allowances. They have also stated that the Delhi Milk Scheme is duly registered under the Factories Act and it is an industry. The matter involved is an industrial dispute and is fully covered under Section 2(X) of the Industrial Disputes Act, 1947, but the applicants have not exhausted the remedies available to them under that Act. Accordingly, the respondents contend that the applications are barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985.

6. Coming to the merits of the case, the main question which falls for determination is whether the recommendations of the Fourth Central Pay Commission in para 10.11 in Chapter 10 of their Report wherein the cold storage allowance of Rs.20/- per month has been recommended to be raised to Rs.30/- per month should be followed, or the general recommendation of the Fourth Pay Commission in para 24.3 of Chapter 24 of their Report on the subject of special pay should be followed. Before proceeding further on this point, the recommendation of the Fourth Central Pay Commission in para 24.3 of Chapter 24 of the Report is reproduced below: -

> "24.3. The Third Pay Commission had observed that the system of special pay could not be discarded in the case of posts where persons had to be attracted for a fixed tenure or for the purpose of compensating genuine and discernible duties, but they were of the view that it should be used as sparingly as possible. While

we recognise the need for granting special pay for compensating certain genuine cases, we think it necessary to limit the number of posts for grant of special pay. We have suggested revised scales of pay inclusive of special pay in some cases. Keeping in view the scales of pay proposed by us, we recommend that the existing rates of special pay, wherever admissible, may be doubled, subject to a ceiling of Rs.500 p.m."

7. It is seen that the recommendations of the Fourth Central Pay Commission in para 10.11 of Chapter 10 of Part I of their Report specifically pertain to the applicants, while the recommendations in para 24.3 (supra) are of a general nature. Where specific recommendation exists, recourse cannot be taken to general recommendations. In the specific recommendation the Commission recommended enhancement of the cold storage allowance from Rs.20/- to Rs.30/- per month. This is at best a typographical error, which does not at all affect on the merits or validity of the specific recommendation made. In any case, the above error has already been corrected by the respondents by changing the nomenclature of cold storage allowance paid to workers deployed in the DMS Cold Storage, as special pay, with retrospective effect i.e., 1.1.1986, and no loss would have been caused to the applicants on the basis of the above error. As regards the related contention of the applicants that the special pay before 1.1.1986 used to be counted for grant of Dearness Allowance and for certain other purposes, but this benefit has since been taken away, which has resulted in reduction in the special pay from Rs.67/- to Rs.30/- per month, it should suffice to say that whether special pay should count as pay for any other purpose is a matter of general policy decision, which would be

applicable to all Government employees who are governed by the orders in regard to emoluments and no exception can be made on that ground in favour of any particular category of employees. The respondents have not filed copy of the O.M. dated 14.4.87, referred to in para 5 above, and, as such, we are unable to say whether special pay admissible to an employee in service counts for any other purpose or not. If special pay does not count for any other purpose in case of any other set of employees, it cannot be held that the applicants have been discriminated against. On the basis of the material on record, we are unable to uphold the contention of the applicants on the point of discrimination in this regard. However, if special pay admissible to other employees under the Government counts for purpose of Dareness Allowance or for any other specified purpose, the applicants shall be entitled to the same treatment in regard to the special pay of Rs.30/- per month payable to them.

8. In the matter of judicial review of the recommendations of an expert body like the Pay Commission or the Government decision on such recommendations, the scope is indeed very limited. In the case of STATE OF ANDHRA PRADESH v. T. GOPALKRISHNA MURTHY (AIR 1976 S.C. 123) where the Government of Andhra Pradesh did not accord approval to the suggestion of the Chief Justice of the High Court of Andhra Pradesh in respect of fixation of the scales of pay of the High Court staff on par with equivalent posts in the Secretariat staff, it was held that merely because Government was not right in not accepting the Chief Justice's view and refusing to accord approval, it is no ground for holding that by a writ of mandamus Government may be directed to accord the approval.

In the case of K. JAGANNATHAN v. UNION OF INDIA (1990 (2) SLJ 151), the challenge was against the action of the Government in not agreeing to the upgradation of the pay scale of a particular category of workers in the Heavy Vehicles Factory so as to make it on par with the scale of pay of certain other semi-skilled categories, and the application was dismissed on the ground that it was after an attempt by the respondents to determine the pay scale on a reasonable and scientific basis that the scale had been fixed. In RANDHIR SINGH v. UNION OF INDIA (AIR 1982 SC 879), their lordships of the Supreme Court observed as below: -

> "We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equalthat is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments."

Similarly, in STATE OF U.P. & OTHERS v. J.P. CHAURASIA & OTHERS (AIR 1989 SC 19), their lordships of the Supreme Court observed as below: -

> " The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

Though the decisions in the above cases are primarily on the subject of 'Equal pay for Equal work', yet the

proposition of law laid down is quite clear that in the matter of emoluments, recommendations of expert bodies like the Pay Commission should be accepted unless these are based on extraneous considerations. In view of the law laid down by the Hon'ble Supreme Court as above, we see no reason for interfering in the decision of the Government accepting the recommendation of the Fourth Central Pay Commission, which, as already stated above, is specific to the applicants. The decision also cannot be said to be arbitrary as it is based on the recommendations of an expert body. It also cannot be held to be discriminatory, as already discussed above.

9. As regards the preliminary objection raised by the respondents to the effect that the applicants have not exhausted the remedies available to them under the Industrial Disputes Act, 1947, the applicants have stated in their rejoinder that the Tribunal has concurrent powers to entertain and adjudicate upon the cases of industrial disputes relating to the civil matters of Government servants. Learned counsel for the applicants also cited:

(1) D.M.S. Employees Union v. Union of India and Ors. (S.L.J. 1988 (2)(CAT) 109), and

(2) Judgment dated 10.8.1989 in O.A. 37/88 in the case of Shri Pramod Kumar & Ors. v. Union of India & Ors.

In D.M.S. Employees Union's case (supra), the question of availment of remedies did not arise; as such, that case is not relevant. In the case of Shri Pramod Kumar (supra), a Division Bench of this Tribunal, referring to a Full Bench judgment in S.K. Sisodia v. Union of India (1989 (1) SLJ, CAT 449), held that in the facts and circumstances of the case before them, "It will not be just and proper to insist on the applicants' exhausting available remedies under the Industrial Disputes Act which are not only time-consuming but also not efficacious."

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Learned counsel for the respondents cited the cases of:

(1) D.P. Shrivastava v. Union of India & Ors. (1988) 7 ATC 1000),

(2) Rammoo and Others v. Union of India in O.A. No.354/1987 decided by the Jabalpur Bench, and

(3) A. Padmavalley v. CPWD in O.A. 576/86 decided by the Hyderabad Bench of this Tribunal, along with a batch of other cases.

In D.P. Shrivastava's case (supra), relying on the judgment in the case of Rammoo v. Union of India, the Jabalpur Bench of this Tribunal held that where an applicant is a 'workman' within the meaning of Industrial Disputes Act, 1947, his application cannot be entertained unless he first approaches the authorities under the I.D. Act, 1947. The Hyderabad Bench of this Tribunal in A. Padmavalley's case (supra) disagreed with the decision of the Jabalpur Bench and referred the matter for decision by a larger Bench. A five-Judge Bench of the Tribunal in the decision dated 30-10-90 considered the decisions of the Jabalpur Bench, the Hyderabad Bench and the Full Bench judgment in Sisodia's case and held that an applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act. The decision of the Tribunal in the case of Sisodia in which it was held that the Administrative Tribunals constituted under the Administrative Tribunals Act are substitutes for the authorities constituted under the Industrial Disputes Act, was negatived. It was also held that the powers of the Administrative Tribunals are the same as those of the High Court under Article 226 of the Constitution and the exercise of the discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down

in the case of ROHTAS INDUSTRIES LTD. v. ROHTAS INDUSTRIES STAFF UNION (AIR 1976 SC 425). In Rohtas Industries case, the decision in Premier Automobiles case was cited with approval and it was held:

> "This court has spelt out wise and clear restraint on the use of this extraordinary remedy and the High Court will not go beyond those wholesome inhibitions except where the monstrosity of the situation or exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."

The applicants have not rebutted the contention of the respondents that the Delhi Milk Scheme is registered under the Factories Act and that it is an industry. The further contention of the respondents that the matter involved is an industrial dispute and is fully covered under Section 2(X) of the Industrial Disputes Act, 1947 has also not been rebutted. As such, on the basis of the foregoing discussion of the law on the subject, it can be held that the applicants should have first availed of the remedies available to them under the Industrial Disputes Act, 1947. Nothing extraordinary has been shown to enable the Tribunal to consider using its discetion in exercise of the powers under Article 226 of the Constitution. However, in view of the fact that the O.A. has already been admitted and also in view of the fact that we are deciding the case on merits, we are not inclined at this stage to oust the applicants on the ground of non-availment of the remedies as provided in Section 20(1) of the Administrative Tribunals Act, 1985, which states that a Tribunal shall not <u>ordinarily</u> admit an application unless it is satisfied that the applicant has availed of all the

remedies available to him under the relevant service rules as to redressal of grievance. (emphasis supplied).

10. In the light of the foregoing discussion, we find that both the O.A.s are devoid of any merit and are accordingly dismissed with costs on parties.

(J.P. SHARMA) 19.4.91
Member(J)

(P.C. JAIN) 19/4/1991
Member(A)