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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 487/89

DATE OF DECISION : 24.7.92

Shri B.S. Arora

...Applicant

Vs.

Union of India

...Respondent

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Sh.M.Chander Sekharan
with Sh.Madhav Panikar

For the Respondent

...Sh.P.H. Ramchandani

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

JUDGEMENT

The applicant was Private Secretary, Group-A, Ministry of Law and Justice, Department of Legal Affairs and since retired on 31.5.1986. He was earlier working in the pre-revised pay scale of Rs.775-1200. The recommendations of the 4th Pay Commission were accepted by the Government on 13.9.1986. The pay of the applicant as per the impugned order dt. 12.1.1987 (Annexure 1) was fixed at Rs.3300, but entitlement has been effected w.e.f. 15.3.1986. The grievance of the applicant is that his pay at Rs.3300 p.m. has been rightly fixed w.e.f. 1.1.1986, but depriving him of these emoluments on the revised pay, fixation from 1.1.1986 to 14.3.1986 is unjustified. He made representations,

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but to no effect. So he filed this application for the relief that the orders dt. 4.1.1989 and 12.1.1987 be quashed and the applicant's pay be fixed regarding his entitlement w.e.f. 1.1.1986 and the arrears of pay on the basis of the revised pay from 1.1.1986 to 14.3.1986 be ordered to be paid to the applicant, and the average emoluments for pension purposes be ordered to be arrived at on the basis of the pay under the Revised Pay Rules for the period from 1.1.1986 to 14.3.1986 also.

2. I have heard the learned counsel for both the parties at length. The short question involved is that the applicant has proceeded on leave on 30.11.1985 and he remained on Earned Leave till 14.3.1986. Before going on leave till 29.11.1985, the applicant was working as Under Secretary on ad hoc basis w.e.f. 1.6.1985. On return from leave, the applicant also worked as Under Secretary on ad hoc basis from 17.3.1986 till 31.5.1986 when he superannuated. The Revised Pay Rules, 1986 were given effect to from 1.1.1986 and the pay of the applicant was fixed in terms of Rule 7 read with Rule 8 of the said Rules and his pay was fixed at Rs.3300 w.e.f. 1.1.1986, but since he was on leave till 14.3.1986, so his entitlement was made w.e.f. 15.3.1986. The contention of the applicant is that he is entitled also to the same scale of pay from 1.1.1986 to

14.3.1986 in view of Rule 12 of the Revised Pay Rules, 1986 because the rule has been given an over-riding effect. The fixation of pay of the applicant at Rs.3300 w.e.f. 15.3.1986 is arbitrary and unjustified. The respondents filed the reply and stated that since the applicant was on leave from 30.11.1985 to 14.3.1986, so in view of Rule 40 of the CCS (Leave) Rules, 1972, the applicant was paid leave salary for the said period of leave which was equal to the pay drawn by him immediately before proceeding on earned leave, i.e., the pay he has drawn on 29.11.1985. On implementation of 4th Pay Commission, the pay was revised from 1.1.1986 and there was no change in the pay drawn by the applicant as on 29.11.1985 and secondly, leave salary paid to him remained unchanged. The respondents have also referred to Note 1 First Proviso of Rule 34 of CCS (Pension) Rules, 1972 that any increase in pay which is not actually drawn shall not form part of the emoluments for the purpose of pensionary benefits and accordingly, the period the applicant was on leave, he was not entitled to the benefit of increased pay on implementation of the recommendation of the 4th Pay Commission for the purpose of pensionary benefits as increased pay has not been drawn by him.

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3. Now going through the arguments of both the parties, I find that there is no substance in the contention of the learned counsel for the respondents that the applicant is not entitled to the actual entitlement of revised pay scale and actual payment from 1.1.1986. In fact Rule 12 of Revised Pay Rules, 1986 has an over-riding effect. Moreover Note 3 to First Proviso of Rule 34 of CCS (Pension) Rules, 1972 is clear on the point and is reproduced below :-

"In the case of a Government servant who was on earned leave during the last ten months of his service and earned an increment, which was not withheld, such increment though not actually drawn shall be included in the average emoluments."

4. On another angle also, the applicant cannot be put to disadvantageous position because the period of leave is taken to be period on duty and a person who has gone on leave and his pay is fixed as per the Revised Pay Rules, then he is entitled to the new pay scales even during the leave period. The respondents cannot discriminate the applicant with other similarly situated persons who were actually on duty. The leave was availed of after it was sanctioned by the respondents. It is nowhere provided that if a Government servant was on leave at the time of the enforcement of the recommendations of the 4th Pay Commission,

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then the implementation of that recommendation in the case of the applicant shall remain suspended till the time such applicant joins after availing of the sanctioned leave.

Rule 12 of the Revised Pay Rules give these rules an over-riding effect so that no one is deprived of the benefits of the revised pay for any other rule technically coming in the way. The respondents themselves have fixed the pay of the applicant w.e.f. 1.1.1986, i.e., the applicant was to get the pay under the new pay scales from that particular date. The deferment of entitlement to 15.3.1986 is not justified nor has the support of any rule or instruction.

The reference to Rule 40 and Note 1 to First Proviso of Rule 34 of CCS (Leave) Rules, 1972 will have no application in the case of the applicant.

5. The application is, therefore, allowed and the respondents are directed to actually pay the applicant from 1.1.1986 in the new pay scales as Rs.3300 p.m. and the revised pensionary benefits shall be calculated on this basis. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this Judgement. In the circumstances, the parties shall bear their own costs.