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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.1534 of 1988
30th day of November, 1993

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

Hon'ble Mr. B.K. Singh, Member (A)

Indian Foreign Service (B) CCB Association
(Through its President),
C30 Ministry of Ministry of External Affairs,
South Block, New Delhi ... Applicants

By Advocate: Shri A.K. Sinha

VERSUS

Union of India,
Through, the Foreign Secretary,
Ministry of External Affairs
South Block, New Delhi. Respondents

By Advocate: Shri N.S. Mehta

ORDER

(By Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.1534/88 has been filed by IFS(B) CCB Association through its President Vs. Union of India through Foreign Secretary, Ministry of External Affairs as respondents. The application has been made against the order No. Q/PC/684/1/88 dated 27th June, 1988.

2. The Ministry of External Affairs is having a separate cadre of Cypher Assistants and as a class they are designated as IFS(B). They have separate recruitment rules as compared to other IFS(B) service under the Ministry of External Affairs. Since 8.2.77 the Cypher Assistants, vide administrative instructions contained in O.M. No.Q/PC/571/2/74 CAD(EAI)/77/1/70 dated 8.2.77, were allowed to draw three advance

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increments on successful completion of their probation in the scale of Rs.425-800 (pre-revised). By implication they started with a pay of Rs.500/- after they were confirmed in IFS(B) as Cypher Assistants. Thus three advance increments were sanctioned to them in terms of the recommendations of the Third Pay Commission.

3. When the recommendations of 4th Pay Commission came, it was discovered that they had suggested replacement of scale of pay for these Cypher Assistants of Rs.1400-40-1600-50-2300-60-2600. The 4th Pay Commission maintained silence about grant of three advance increments as was admissible to them on the basis of the recommendations of the 3rd Pay Commission.

4. In the reliefs sought the applicants have made a prayer that the respondents be directed to allow them the benefit of three advance increments as was admissible to them vide O.M. No.Q/PC/571/2/74 CAD(EAI)/77/1/70 dated 8.2.77 and that the Tribunal should quash and set aside the respondents circular No.Q/PC/684/1/88 dated 27.6.88 which did not agree to their demand of the three advance increments; and award the cost of this litigation.

5. A notice was issued to the respondents who filed their reply and contested this application and grant of reliefs prayed for by the applicants.



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6. Heard the learned counsels, Shri A.K. Sinha for the applicants and Shri N.S. Mehta for the respondents and also perused the record of the case.

7. The learned counsel for the applicant's argument was that the three increments were granted to attract persons to join the IFS(B) as Cypher Assistants because the pay structure sanctioned was not attractive. The 3rd Pay Commission introduced this incentive scheme of giving three advance increments after successful completion of the probation with a view to attract people to join the Service. It was further argued that the quality and work-content of the Cypher Assistants cannot be compared to other Assistants working in the Secretariat or field services. These Cypher Assistants are required to work round the clock onshift basis and they are also required to work at odd hours. Their job is to maintain the secret code language, decode messages coming from foreign embassies and to send coded messages to them. The codes also change practically every month to maintain secrecy and confidentiality and it was in appreciation of this kind of arduous work that Presidential sanction was issued as contained in O.M. referred to above for grant of three advance increments. It was further said that they put in six hours duty with half-an-hour break in between. The applicants filed a collective representation against the orders dated 27.6.1988 (annexure 'O' of the paper-book).



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8. The applicants also protested against the discrimination as contained in the order No. Q/PC/78/87 dated 30.12.87. The Annexure 'J' is the select list prepared on 19.6.87 of the Cypher Assistants who were denied the benefit of three advance increments and were just given replacement scale as recommended by the 4th Pay Commission. The learned counsel for the applicants also argued against the cut-off date where a set of officers prior to 1.1.86 were allowed 3 advance increments w.e.f. 8.2.87 and were denied the benefit from 1.1.86. He argued that this attracted Art.14 and 16 of the Constitution as discrimination amongst the same set of officers has been done. A set of officers who came ten years earlier have got away with the three increments and those who came in 1986 onwards have been denied the benefit of these increments.

9. The learned counsel for the respondents admitted that they were granted three advance increments as per the recommendations of the 3rd Pay Commission and that after obtaining the concurrence of the Ministry of Finance, Department of Expenditure, orders were issued on 8.2.87. This has the Presidential sanction. He categorically stated that the 4th Pay Commission did not recommend the grant of three advance increments to the Cypher Assistants in view of new replacement scales which took into consideration their quality and content of work and gave a running pay-scale of Rs.1400-2600. There has been no violation of any rules, regulations and that there is no discrimination or violation of principles of natural justice or of the Art. 14 and 16 of the Constitution.

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It was further pointed out that the Cypher Assistants who were appointed till the end of 1985 were given the benefit of 3 additional increments in accordance with the rules as were invogue at that time. Three additional increments to Cypher Assistants were discontinued since 4th Py Commission suggested a new replacement scale but was silent about any additional increments being given to them. The rules did not provide it and the 4th Pay Commission did not recommend it, and as such the Ministry of Finance, Deptt. of Expenditure in spite of recommendation of the Ministry of External Affairs did not accept the grant of three advance increments to them. The previous instructions for grant of advance increments after obtaining Presidential sanction, ^{in which the} ~~the~~ Ministry of External Affairs and Ministry of Finance both concurred, and that is why these administrative instructions supplemented the rules regarding fixation of pay having force of subordinate legislation as provided in proviso to 309 of the Constitution. The previous administrative instructions contained in the O.M. dated 8.2.77 supplemented the rules. No O.M. to that effect has been issued after the 4th Pay Commission and as such it has been discontinued. The Department of Expenditure, Ministry of Finance was duly consulted by the Ministry of External Affairs and since the Finance Ministry did not concur ⁱⁿ ~~with~~ the proposal the Ministry of External Affairs had no option but to shoot down the same.

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10. As regards the demand of declaring parity of the Assistants appointed vide order dated 30.12.87 and the argument that there has been a discrimination since they have been denied the benefit of three additional increments, it was argued that there has been no discrimination and no violation of rules. The cut-off date for implementation of the recommendations of the 4th Pay Commission was 1.1.86 and any increment made thereafter in the grade of Cypher Assistants will not be entitled to the benefit available till the end of 1985. It was further argued by the learned counsel for the respondents that this is not the only exception because in case of Technical Assistants in JCB in the Ministry of Defence the provision of three advance increments available to them in the pre-revised scale of pay, does not find place in the new replacement scale of pay i.e. Rs.1400-2600. The Government are well within their right to prescribe a cut-off date for implementation of the recommendations of the various Pay Commissions. The 3rd Pay Commission came into effect w.e.f. 1.1.73 and the Presidential sanction for grant of advance increments was issued on 8.2.77. It is clear that even the 3rd Pay Commission had not recommended advance increments to the Cypher Assistants. It was only with the concurrence of the Ministry of Finance that these advance increments were allowed to them in the pre-revised scale. The Government fixed the date of implementation of the 4th Pay Commission w.e.f. 1.1.86 and that is the reason why the new entrants are not entitled to get these advance

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increments in view of the revised pay structure. The new entrants would be a gainer in the sense that they will initially draw much higher pay than what was admissible to those employees who were recruited till the end of 1985. It is the prerogative of the government to fix cut-off dates and the Courts have no jurisdiction to touch it and there is no discrimination involved in it. Thus it is clear that the applicants have failed to make out a prima facie case in their favour. The balance of convenience also lies in favour of the Government.

11. In another O.A. No.1552/87, R. Srinivasan Vs. Union of India, decided on 5.1.88, the Hon'ble Tribunal has held that no advance increments can be paid. The learned counsel for the respondents has also enclosed a copy of this judgment with the counter as annexure R-1.

12. The charge of arbitrariness in fixing cut-off date has been vehemently rebutted by the learned counsel for the respondents who contended that there was nothing arbitrary in choosing the cut-off date for implementation of the recommendations of the 4th Pay Commission. The 3rd Pay Commission recommendations were implemented w.e.f. 1.1.73 and that is the reason why Government of India decided to implement the recommendations of the 4th Pay Commission from 1.1.86. The Government of India fixed this date for introduction of new pay structure for upward revision of pay for all categories of civil services/Judiciary/armed forces.

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13. In Union of India & Anr. Vs. M/s Parameswaran Match Works Ltd. the Hon'ble Supreme Court (1975 2 SC R 573) held:-

"...the choice of date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is coming forth the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

14. In this case upward revision benefitting millions of employees of Government of India was implemented w.e.f. 1.1.86. This also enabled the civil servants to have a bonanza in the form of arrears since the recommendations were submitted in 1987 but the date of implementation was retrospectively fixed as 1.1.86. There is no attempt to divide the beneficiaries and as such no discrimination or unreasonableness is involved. Thus the contention of the learned counsel for the applicant has no legs to stand in view of the above observation of the Hon'ble Supreme Court.

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15. As regards the argument of the learned counsel for the applicants regarding denial of principles of natural justice for withdrawal of three advance increments without giving opportunity to show cause, it may be mentioned that principles of natural justice are not embodied as statutory principles. In welfare society the aim is to adopt policies of maximum good to maximum number of people. When a change for better in the form of upward revision of pay-scales is effected benefitting millions of people, withdrawal of advance increments given by administrative instructions not incorporated in the 4th Pay Commission cannot be challenged as denial of principles of natural justice. The principles of natural justice are not enshrined in the Constitution as Fundamental Rights¹₂. They are part of procedures laid down for proceedings to be conducted against civil servants under Article 311(2) of the Constitution. Thus no statutory provision or rule has been violated. The replacement scales introduced by the 4th Pay Commission have taken into consideration the quality and work-content of various categories of staff and established parity by clubbing them and giving higher pay-scales and while doing so no undue benefits given to a set of employees were ignored. The Cypher Assistants are required to work only for six hours with a break¹₂ of half-an-hour in between whereas


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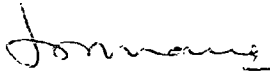
other Assistants are expected to work for 8 hours with a break of half-an-hour in between. This itself recognises the arduousness of their work and takes care of their quality and work-content.

16. The learned counsel for the respondents also cited ruling of J.R. Raghupati Vs. State of U.P. (1988 4 SCC 364) and also AIR 1988 SC 1681. In this the ratio established is that administrative orders unless they supplement the rules and are pieces of subordinate legislations and have the Presidential sanction, cannot be enforced.

17. In the light of the foregoing paragraphs and the rules cited above, we do not find any scope of interference and accordingly the application is dismissed as devoid of any merit or substance.

There will be no order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma) 27/11/73
Member (J)

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