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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn. No. OA 381 of 1988

Decided on 22.9.1988

Smt. Vipin Gujral

Applicant

vs.

1. Union of India through
the Secretary, Ministry of
Health & Family Welfare
(Department of Health),
Nirman Bhavan, New Delhi.
2. The Director General,
Directorate General of Health Services, ... Respondents
Nirman Bhavan, New Delhi.
3. The Director, Food Research and
Standardisation Laboratory,
Navyug Maarket, Ghaziabad.

PRESENT

Mrs. C.M. Chopra Advocate for the applicant.

Shri N.S. Mehta Sr. Standing Counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Mrs. Vipin Gujral, Senior Scientific Assistant in Food Research and Standardisation Laboratory, Ghaziabad, against the impugned order No. FRCL/709/3841 dated the 24th October, 1986, passed by respondent No.3 against fixation of the salary of the applicant in the revised pay scale of Rs. 1640-60-2600-EB-75-2900.

2. ~~RELEVANT~~ facts of the case are that the applicant was appointed as Senior Scientific Assistant, Group 'B' (non-gazetted) on the recommendations of the U.P.S.C. on 13.1.1986. She was earlier working as a Technical Assistant. At the time of recruitment, the pay scale of the Senior Scientific Assistant was Rs. 550-900 and she was given two increments on the recommendations of the U.P.S.C. on account of her experience. The case of the applicant is that the scale of the post of Senior Scientific Assistant was revised by the Government of India to Rs. 1640-60-2600-EB-75-2900 with effect from 1.1.1986, on the recommendations of the 4th Pay

Commission. The Government of India accepted the recommendations of the 4th Pay Commission and with a view to give the maximum benefit to the employees, the revised scales were made effective from 1st January, 1986. As the applicant joined service as Senior Scientific Assistant on 13.1.1986 only, the revised scale of pay of Rs. 1640-2900 should be applicable to her and she should be allowed two increments in that scale and her initial salary should have been fixed at Rs. 1760.00 as against Rs. 1640.00 fixed by the respondents.

3. On 1st April, 1986, the pay of the applicant was as follows:

Basic Pay	Rs.600.00
D.A. (272 points)	Rs. 255.00
ADA (608 points)	Rs. 648.00
Interim Relief	Rs. 129.00
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<u>Rs. 1623.00</u>	

It has been stated by the applicant that according to Rule 7 of Notification No. F.15(1)-IC/86 dated 13th September, 1986 of the Ministry of Finance (Department of Expenditure), the initial pay in the revised scale has to be fixed in the following manner:-

- (a) in the case of all employees, --
 - (i) an amount representing 20 per cent of the basic pay in the existing scale, subject to a minimum of Rs. 75/-, shall be added to the "existing emoluments" of the employee;
 - (ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.

According to the applicant, keeping in view the above principle

and the Pay Commission's recommendations, the pay of the applicant as on 1st April, 1986 should be as follows:

Basic Pay as on 1.4.1986	Rs. 600.00
D.A.(272 points)	Rs. 255.00
A.D.A.	Rs. 648.00
Interim Relief	<u>Rs. 120.00</u>
	Rs. 1623.00
Add 20% of basic pay	<u>Rs. 120.00</u>
	<u>Rs. 1743.00</u>

but in the revised scale of Rs. 1640-2900, it should be Rs. 1760.00. Instead of fixing her salary at Rs. 1760.00, the respondents fixed her salary at Rs. 1640.00 which is the minimum of the revised pay scale on the basis that her pay was fixed initially at Rs. 600.00 after giving her the benefit of two increments in the scale of Rs. 550-900, The respondents have then revised her salary on the basis of Rs. 600.00 in the previous scale and her salary has been fixed at Rs. 1640.00 which is also the ^{stage} ~~scale~~ given to those who ^{were drawing} ~~had started at~~ Rs. 550.00. In other words, no advantage has been given to her for the two increments recommended by the U.P.S.C. and accepted by Government.

4. In their reply the respondents have stated that the applicant was selected by the UPSC against the direct recruitment vacancy of Senior Scientific Assistant in the scale of Rs. 550-25-750-EB-30-900 in a temporary capacity. She was appointed on 13.1.1986 and her pay was fixed at Rs. 600.00 as per the terms and conditions of the offer of appointment. The applicant's revision of pay scale is covered under Explanation 2 of Rule 5 of the Central Civil Services (Revised Pay) Rules, 1986 since her appointment to the post of Senior Scientific Assistant was made after 1.1.1986, the applicant was not in service as Senior Scientific Assistant before 1.1.1986 and as such, she cannot rely on Rule 7 of the above Rules. It

has also been stated in the reply that the explanatory memorandum appended to the Central Civil Services (Revised Pay) Rules, 1986 will have no application to fresh appointments made immediately after 31st December, 1985. As far as the applicant is concerned, she will be governed by Rule 5 which has been framed to cover ~~up~~ fresh appointments made on or after 1.1.1986. The applicant was not denied the benefit of two increments as alleged by her. The applicant was allowed two increments in the scale of pay as was prevalent at the time of her appointment and she could not be given the benefit of 20% of the basic pay as she was not serving prior to 1.1.86.

5. The learned counsel for the applicant stated that the U.P.S.C. had recommended two advance increments to the applicant because of her experience and additional qualifications. By fixing her salary at the minimum of the revised scale, she has not been given the advantage of her additional qualifications and treated at par with persons who were not given this benefit. The intention of the 4th Pay Commission was to give higher salaries to Government employees and a liberal interpretation of the rules has to be made to allow maximum benefit to the Government employees under the rules. She said that Rule 9 of the CCS (Revised Pay) Rules provided for fixation of pay in the revised scale subsequent to the 1st day of January, 1986—"Where a Government servant continues to draw his pay in the existing scale and is brought over to revised scale from a date later than the 1st day of January, 1986, his pay from the later date in the revised scale shall be fixed under the Fundamental Rules and for this purpose his pay in the existing scale shall have the same meaning as of existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, of sub-rule (1) of rule 7 except that the basic pay

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to be taken into account for calculation of these emoluments will be the basic pay on the later date aforesaid and where the Government servant is in receipt of special pay or non-practising allowance, his pay shall be fixed after deducting from those emoluments an amount equal to the special pay or non-practising allowance, as the case may be, at the revised rates appropriate to the emoluments so calculated."

It is very unfortunate that because the applicant was not in service prior to 1.1.1986, she could not be allowed the advantage of 20% of the basic pay and at the same time not allowed the advantage of the revised scale.

6. Shri N.S. Mehta, Sr. Standing Counsel, stated that the pay has been fixed according to rules. While he agreed that the case of the applicant was rather unfortunate, he said that the court could not go according to ~~rules of~~ equity but only according to rules and the court could not give additional pay outside the rules. He cited letter No.F.1/739/^{from UPSC to} 84-R.II dated the 24th August, 1987 addressed the D.G.H.S. In that case, the Commission observed that these matters were of a purely administrative nature, but in the particular case of recruitment to the post of Senior Scientific Assistant in the DGHS, the Commission had recommended two increments in the pre-revised scale and they recommended that the pay should first be fixed in the pre-revised scale and thereafter should be converted into the revised scale of pay. Shri Mehta said that the intention of the UPSC was to give two increments was in the pre-revised scale only, which/ done by the respondents when fixing the pay of the applicant in the revised scale. Shri Mehta also referred to judgment in **OA 1552/87 - R. Srinivasan & Others Vs. Union of India** - passed by the Principal Bench of the C.A.T. on 5.1.1988. In this case the applicants were promoted to the cadres of Section officers in the Central Secretariat from the grade of Assistants/Stenographers Grade 'C' of the Central Secretariat where they were getting a mini-

mum of Rs. 710.00 after getting the advantage of two increments in the scale of Rs.650-1200, but when the pay scale of Section Officers was revised to Rs.2000-3500, they were not allowed the benefit of two increments in the revised scale. The Tribunal in that case held that in the absence of any violation of any rule or constitutional provision, the petitioners who had been given a higher pay scale in the place of the earlier pay scale could not claim for a Mandamus to compel Government to fix their minimum initial pay at Rs. 2120.00 by allowing two increments, as was done in the pre-revised scale.

7. The point to consider in this case is whether having got the advantage of two increments in the pre-revised scale, the applicant should be allowed the same advantage in the revised scale. The case of Shri R. Srinivasan & Others Vs. Union of India is slightly different as Government had allowed two increments in the old scale of Rs. 650-1200 without any such provision having been made when the scales were revised. In the present case, had the applicant been in the pre-revised scale, she would have been entitled to the revised scale of pay and her pay would have been fixed at the appropriate stage. Persons getting Rs. 550.00 or Rs. 600.00 will both get the minimum of Rs. 1640.00 in the revised scale. The applicant cannot evidently get advantage of the 20% of the not basic pay in the revised pay as she was in service prior to 1.1.1986, but the only scale of pay in her case would be Rs. 1640-2900. Once the Government revised the scale with effect from 1.1.1986, as far as the applicant is concerned, the old scale did not exist. Since she joined service on 13.1.86, the scale applicable to Senior Scientific Assistants on that date should be applicable in her case and this scale is Rs. 1640-2900. Explanation 2 under Rule 5 of the CCS (Revised Pay) Rules, 1986, makes it clear that she would be entitled to pay

only in the revised scale. I would, therefore, hold that as far as the applicant is concerned, because of the revision of pay scale from 1.1.1986, she would be entitled to all the benefits of the revised scale of pay and, therefore, the two increments recommended by the U.P.S.C. and accepted by Government can only be in the scale applicable to her and, therefore, her salary should be fixed at Rs. 1760.00, after giving her the advantage of two increments in the scale applicable to her. It cannot be said that the U.P.S.C. had intended to give her the benefit of Rs. 50.00 only. The U.P.S.C. had recommended the benefit of two increments and if the Government revised the pay scale, she must get this benefit in the revised scale. She cannot be made to lose the advantage of 20% extra pay as well as fixation of pay in the revised scale as applicable on the date of her joining. Once Government revised the pay scale with effect from 1.1.1986, this scale alone is applicable in her case. The old scale of Rs. 550-900 would be deemed to be non-existent after 31.12.1985 and the applicant must get advantage of two advance increments in the revised scale of Rs. 1640-2900.

8. The application is allowed. The respondents are directed to fix her pay, giving advantage of two increments in the revised scale of pay. The respondents should refix her salary accordingly and pay her revised salary, including the arrears, within a period of three months. In the circumstances of the case, there will be no order as to costs.

B. C. Mathur
(B.C. Mathur)
Vice-Chairman