

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 140/86

DATE OF DECISION : 11.3.87

All India Audit and Accounts
Association . . . Applicants

Vs

Union of India & Others . . . Respondents.

Shri K.R.R.Pillai . . . Counsel for Applicants

Shri P.H.Ramchandani . . . Counsel for Respondents

CORAM

The Hon'ble Mr.S.P. Mukerji, Administrative Member

The Hon'ble Mr.H.P. Bagchi, Judicial Member

JUDGMENT

The All India Audit and Accounts Association through its Secretary General, the All India Postal Accounts Employees Association also through its Secretary General and Smt. Roma Banerjee, Senior Accountant in the office of the Chief Controller of Accounts, Ministry of Finance have collectively moved this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to fix the pay of all Accountants in the scale of Rs.1400-2600 under the provisions of F.R.22.C and to place Senior Accountants in the old scale of Rs.425-700 in the revised functional scale of Rs.1400-2600 and to declare that all those in the non functional old selection grade of Rs.425-700 should be taken over in the revised scale of Rs.1400-2600 and not in the revised scale of Rs.1400-2300. Finally they have prayed that the portion of the C.C.S.(Revised Pay) Rules 1986

which prescribes the scale of Rs.1400-2600 as personal selection grade to the selection grade incumbents subject to the condition that juniors who have been allowed the non functional selection grade will be placed in 1400-2300 as personal to them and that the persons in the revised scale of Rs.1200-2400, or in the scale of Rs.1400-2300 and Rs.1400-2600 will cease to be eligible for special pay should be declared null and void.

2. The brief facts of the case are as follows. The first two petitioners have come up before us in their representative capacity being associations of groups C and D employees and Assistant Audit Officers working in the Indian Audit and Accounts Department and postal Accounts Wing of the Department of Posts respectively. The third applicant, however, is a directly affected Senior Accountant in the Ministry of Finance. The revised pay scales have accrued as a result of the Government's acceptations ^{once} of the recommendations of Fourth Pay Commission. The main contention of the petitioners is that the Fourth Pay Commission had recommended that the posts in the Accounts Wing of the various departments in the scale of Rs.425-700 should be given the revised scale of Rs.1400-2600 like those in the old scale of Rs.425-800, but the Government even after accepting the recommendations allowed them a lower pay scale of Rs.1400-2300 but allowed higher scale of Rs.1400-2600 to the functional scale of

Rs.425-800. The applicants have also challenged the amplificatory circular dated 30.9.1986 issued by the Administrative Officer in the office of the Comptroller and Auditor General of India (Annexure V to the application) to give effect to the decisions of the Government referred to above as also the similar instructions issued by the Director in the Department of Posts, Postal Accounts Wing by its circular dated 13.11.1986 (Annexure VI to the petition) denying the benefits of special pay and benefit of pay fixation in accordance with FR 22(C).

3. A preliminary objection has been raised by the learned counsel for the respondents to the effect that the applicants have not exhausted the departmental remedies available to them. Thus, the application is barred by Section 20(1) of the Administrative Tribunals Act, 1985. It was also been argued that the associations being not directly affected by the impugned orders, have no locus standi in this case.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The application is admittedly made under Section 19 of the Administrative Tribunals Act, 1985, the sub section (1) of which reads as follows.

"19. Applications to Tribunals-(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation - For the purpose of this subsection, "order" means an order made :

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society, owned or controlled by the Government: or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in clause (a):"

The above will show that an application has to be made by a person who is directly aggrieved by the impugned order. The impugned order in the instant case does not affect the Associations as such but some of its members. Since the Associations have individual and separate entities and are distinct from those of the individual Members, technically speaking the impugned circulars not being directed against the Associations cannot be agitated against by the Associations before the Tribunal. However, since the applicant no.3 is a Senior Accountant directly affected by the impugned rule and circulars we are inclined to take a less technical view of the matter and waive the objection and consider first two applicants to be before us in their representative capacity.

4. In so far as the objection that the Applicants have not exhausted the remedies available to them and therefore the application is barred under Section 20(1) of the Administrative Tribunals Act, 1985 is concerned, we see considerable force in this objection. The learned counsel for the applicants

has admitted before us that no representation or appeal has been made against the impugned rule and circulars as no statutory remedy has been provided for in the service rules. Section 20(1) of the Administrative Tribunals Act reads as follows.

"20. Applications not to be admitted unless other remedies exhausted. (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

The point is whether the service rules provided any remedy against the impugned rule and circulars. Our attention has been drawn to Section 23(iv) of the Central Civil Services (CCS) Rules 1965 which reads as follows.

"23(iv) an order which -

- (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
- (b) interprets to his disadvantage the provisions of any such rule or agreement"

Since the impugned circulars are in interpretation or application of the CCS(Revised Pay) Rules, 1986, at least ~~the~~ applicant no.3 could have represented against the impugned circulars to the competent authority. There is nothing in the Service Rules ~~even~~ ^{even} ~~anyhow~~ to prevent the ~~petitioners~~ ^{the} no. 1 and 2 also to move the competent superior authority against the impugned rules and circular in the same manner in which they have come up before us.

5. The learned counsel for the petitioners has argued that since the Revised Pay Rules were issued by the President of India no appeal can lie to the President. Be that as it may, an appeal can definitely lie against the impugned circulars which were issued

8

in pursuance of the Revised Pay Rules and in that appeal the validity of the Pay Rules could have been challenged. Since admittedly no such appeal has been filed by the applicants and the applicants rushed to the Tribunal without exhausting the remedies we feel that the application is premature and has to be excluded under Section 20(1) of the Administrative Tribunals Act.

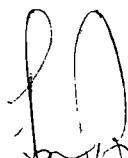
6. In so far as declaring the impugned note below the Revised Pay Rules as null and void is concerned, since the Revised Pay Rules are not ^{by their} ~~in~~ nature and character, ~~in~~ the form of an order contemplated under Section 19 of the Administrative Tribunals Act, the vires of the rule cannot be challenged except as incidental to challenging an order issued in pursuance of the impugned provisions of the Rule. The explanation below Section 19(1) of the Act as quoted above does not comprehend a direct challenge of a statutory rule under that section without the medium of an impugned order issued in pursuance of the rules, by which the applicant feels aggrieved.

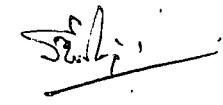
7. In the instant case, therefore, the maintainability of the application cannot be established while ^{solely} challenging ^{as} certain provisions of the Revised Pay Rules in isolation from orders issued thereunder. The application has primarily to be based on challenging the impugned orders and circulars. Since the impugned orders and circulars, as discussed above cannot be challenged before us without exhausting the remedies available through departmental

appeals/representations, the vires of the revised pay rules also cannot be challenged at this stage without exhausting remedies in challenging the impugned orders and circulars issued by the authorities subordinate to the President.

8. We are conscious of the fact that the Tribunal has been bestowed with all the powers of the High Courts of India where the vires of the rules could have been challenged. However, since in the instant case the Tribunal has been moved under Section 19 of the Administrative Tribunals Act and that Act refers only to an order and not any rule, to our mind the rules *per se* cannot be challenged unless and until the orders issued thereunder are ~~impugned~~ challenged in the application. If that were not so, the Tribunal would be flooded with applications challenging the various provisions of the Service Rules without reference to the orders by which the person has been aggrieved or even before any such ~~order~~ order is issued. Since the Tribunal is not expected to take up common interest litigation comprehending 'en masse' various categories of Government servants without any specificity of impugned orders, we feel that the instant application cannot be admitted by us at this stage unless and until the petitioners have exhausted the remedies available to them against the impugned circulars. We therefore, do not find ourselves in a position to admit the application at this stage and reject the same under Section 20(1).

read with Section 19(3) of the Administrative Tribunals Act, 1985. The applicants, however, will be at liberty to approach this Tribunal or any other forum, if so advised in accordance with law at an appropriate stage on the same cause of action.


(H. P. BAGCHI) 11.3.82
JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER