



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Regn. No. TA-1136 of 1986

Decided on 1-5-1988

Aditya Rao Singh

.... Applicant

Versus

Union of India

... Respondents.

Coram: Hon'ble Justice J.D.Jain, Vice-Chairman.

Hon'ble Shri Birbal Nath, Administrative Member.

For the applicant : S hri R.J.Tiwari, Advocate.

For the respondents : Shri K.C.Sinha, Advocate.

JUDGEMENT: (Judgement delivered by Hon'ble Justice
J.D.Jain, Vice-Chairman).

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The undisputed facts of this case are that the petitioner is employed as a Civilian Officer in the Ordnance Equipment Factory, Kanpur, on the post of Chargeman Grade-II, the said factory being under the overall control of the Ordnance Factory Directorate, Ministry of Defence, Government of India. On 1st of January, 1973 he was holding the post of Rate

Fixer in the pay scale of Rs. 150-240 and his basic pay was Rs. 194/- . His next annual increment fell due on 24th February, 1973 and consequently his pay was raised to Rs. 199/- per month. He was promoted to the grade of Senior Rate Fixer with effect from 30th March, 1973 and his pay was fixed at Rs. 212/- per month in the pay scale of Rs. 205-280.



Subsequently, the Govt. revised the pay scales of Civilians in Defence Service, vide Civilians in Defence Services (Revised Pay) Rules, 1973 (hereinafter referred to as "^{Rules}Revised Pay^{vide}"), published in Gazette Notification dated 29th December, 1973 (copy annexure 'C').

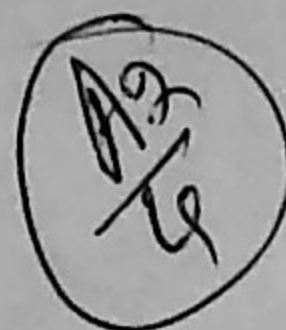
The revised pay scales were introduced with effect from 1st of January, 1973. However it transpired that revised pay scale had not been fixed/determined as regards the post of Senior Rate Fixer. As explained by the respondents, the pay scales of Supervisory staff and Senior Rate Fixer were still under consideration of the Ministry of Defence and the same were not finalized and introduced as per Ministry of Defence letter No. F.32(5)/75/US-II/D(Fy.-II) dated 10th May, 1973, which were effective from 1-1-73. According to the said revision of pay scales of the Supervisory staff in the Ordnance Factory, two scales were introduced, one with effect from 1-1-73 and the other with effect from 1-3-77 which in the case of Senior Rate Fixer were 380-12-500-EB-15-560 and 425-15-560-EB-20-640 respectively. Accordingly the individual employees were called upon to exercise their options whether they wanted to be fitted in the revised scales or to continue in the existing/pre-revised pay scales within the prescribed period of 90 days. Vide Ministry of Defence Corrigendum of even number dated 2nd November, 1977, the second revised pay scale of Rs. 425-640 was further revised to Rs. 425-15-500-EB-15-560-20-700 (Copy annexure 'A') and the concerned employees were again called upon to exercise their options afresh within a period



of 90 days from the date of issue of the said letter.

The applicant exercised his option for being given the revised pay scale with effect from 1-3-1974, which was the date of ^{his} first increment in the grade of Senior Rate Fixer. Accordingly, the pay of the petitioner was fixed in the revised pay scale at Rs.440/- as on 1-3-1974 vide Ordnance Equipment Factory Kanpur order Part II No. 248 dated 3.2.1978 (copy annexure 9). Accordingly he was paid the entire arrears of pay with effect from 1-3-1973. Still later due to merger of certain posts and re-designation of the same, the petitioner was re-designated as Chargeman Grade II(T), which post carried the scale of Rs. 425-15-500-EB-15-560-20-700 with effect from 1-1-1980 as per order published in the O.E. Factory Kanpur Part II No.524 dated 13-3-80. However, vide a subsequent order dated 27th of October, 1980 (published in O.E. Fy. Kanpur Factory Order Part II No.2320), the pay of the petitioner was reduced and re-fixed in the revised pay scale with effect from 1-1-73 instead of 1-3-74. He was also called upon to refund the excess amount recovered as arrears on account of his salary having been fixed at a higher amount erroneously.

Feeling aggrieved by the said order, the petitioner filed a Civil suit being suit No.1628 of 1982 in the court of Munsif City, Kanpur challenging the legality and validity of order dated 27th October, 1980 vide which his pay had been re-fixed and reduced



with effect from 1-1-1973 instead of the pay as fixed earlier. He asserted that he had a right to opt for the revised pay scale with effect from any date of his choice and, therefore, he had rightly exercised his option to avail of the revised pay scale with effect from 1-3-1974, under the provisions of revised pay rules and the same having been accepted and duly acted upon by the respondents by issuing revised pay order dated 3rd February, 1978 with prior approval and concurrence of the Controller of Defence Accounts Factory, Calcutta, it was no longer open to the respondents to wrongfully re-fix and reduce his pay unilaterally with effect from 1-1-1973. Hence a decree for declaration that the order of General Manager, O.E. Factory, Kanpur passed vide his Factory order Part II No. 2320 dated 27th October, 1980 (i.e. the impugned order) is illegal, null and void and is, therefore, ineffective and inoperative, has been sought. On the coming into force of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"), the said suit has been transferred to this Tribunal by virtue of section 29 of the Act.

The Transferred application is vehemently resisted by the respondents, who in their counter affidavit dated 13th January, 1988 explained that even though it was open to the petitioner to exercise his option from a date later than 1-1-1973 but he could not extend that date beyond the period of his existing scale. In other words, according to the respondents, the petitioner having been promoted from the post of Rate Fixer to that of Senior Rate Fixer with effect from 30th March, 1973, he could avail of the option to be put in the revised

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pay scale from any date between 1-1-1973 to 29th March, 1973. Thus his exercising option with effect from 1-3-1974, which was the date of his increment in the higher post of Senior Rate F-ixer, a post which he was not holding as on 1-1-1973, was absolutely illegal and invalid being contrary to the provisions of revised pay rules. They have also adverted in this context the O.M. No. 2(19)74/D(Civ-I) dated 9th July, 1974 of the Ministry of Defence on the subject of "Civilian in Defence Services (R.P.) Rules, 1973-Fixation of Pay of persons appointed/promoted to a post after the 1st January, 1973". Thus according to the respondents, the pay of the petitioner had been wrongly and erroneously fixed due to inadvertence at a higher amount vide order dated 3rd February, 1978. It was on the mistake being detected by the Audit Department that the same was revised correctly with effect from 1-1-73 because the option exercised by the petitioner with effect from the date which was not permissible under the revised pay rules was absolutely illegal and non-existent in the eyes of law. They assert that the respondents had a right to rectify the mistake committed by its officers inadvertently or by over-sight and there was no necessity to issue a show-cause notice to the petitioner before doing so.

For a proper appreciation and understanding of the rival contentions of the parties in the instant case in correct perspective, it would be necessary to reproduce below certain provisions of the revised pay Rules which have a direct bearing on the point in issue.

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As already stated, the said rules came into force with effect from 1st January, 1973. Under rule 3 which defines certain words and expressions the terms "existing scale" and "revised scale" have been defined as under:-

"Existing Scale": Existing Scale in relation to a Government servant means the present scale applicable to the post held by the Government servant (or as the case may be, personal scale applicable to him) as on the 1st day of January, 1973, whether in a substantive or officiating capacity.

"Revised Scale": Revised Scale in relation to any post specified in column 2 of the First Schedule means the scale of pay specified against that post in column 4 thereof."

Further under rule 4, as from the date of commencement of these rules, the scale of pay of every post specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof, which means the revised pay scale.

Rule 5 specifically deals with drawal of pay in the revised scale. It reads as under:-

"5. Drawal of pay in the revised scales:- Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed.

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Explanation 1:- The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale."

Rule 6 provides the period within which the option is to be exercised namely "within 3 months of the date of publication of the revised pay rules in the Official Gazette, or where an existing scale has been

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revised by an order made subsequent to that date, within three months of the date of such order."

Sub-rule(3) of rule 6 lays down that if the intimation is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scales of pay with effect on and from the first day of Jan-uary, 1973.

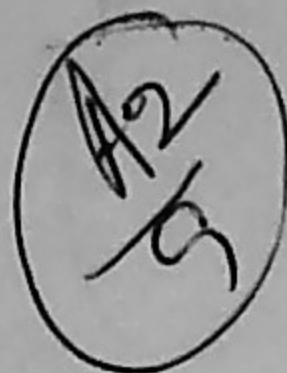
Rule 8 provided that the next increment of a Govt. servant whose pay has been fixed in the revised scale in accordance with sub-rule(1) of rule 7, shall be granted on the date he would have drawn his increment, had he continued in the existing scale. In other words, the original date of in-crement in the existing scale does not ~~under-go~~ any alteration or change because of fixation of his pay in the revised scale.

Rule 9 deals with a case of fixation of pay in the revised scale subsequent to Ist of January, 1973. It clarifies that where a Govt. servant continues to draw his pay in the existing scale and is brought over to the revised scale from a day later than the Ist day of January, 1973, his pay from the later date in the revised scale shall be fixed under the Fundamental Rules or the Civil Service Regulations, as the case may be and for this purpose his pay in the "existing scale" shall have the same meaning as of "existing emoluments" as defined in sub-rule(2) of rule 3 except that the basic pay to be taken into account for calculation of those emoluments will be the basic pay on the later date aforesaid. Obviously, it deals with a situation where an individual officer elects to be put in the revised pay scale from a date later than 1-1-1973 but it states in no ^{un-} certain terms

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that the existing scale shall be the relevant factor, although the basic pay of the incumbent may have undergone some change by the addition of increment etc. In other words, it does not permit the substitution of any other scale of pay than the existing scale as on 1-1-73. It simply differentiates between the pay admissible to a person as on 1-1-73 and the later date from which the individual incumbent may opt for the revised pay scale, but clarifies that the pay revision can be done only on the basis of the existing scale as distinguished from actual pay drawn on 1-1-73. As would be seen from above, rule 5 constitutes the main plank of defence of the respondents and, therefore, it has to be scrutinised and analysed more critically.

On a plain reading of rule 5, it is manifest that its principal clause contains a mandate that a Govt. servant shall draw pay in the revised scale applicable to the post to which he is appointed. However from the words "Save as otherwise provided in these rules" with which the said rule opens, it is crystal clear that it is subject to the exceptions provided in the rules themselves. The proviso to rule 5 obviously carves out an exception to the rule namely that a Govt. servant may elect to continue to draw pay in the existing scale until the date on which he earns his next increment or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. The words underlined by us above clearly emphasise that a Govt. servant may elect to postpone the date from which he would like to be put in the revised pay scale, but such postponement can be only upto the date he draws pay in the existing

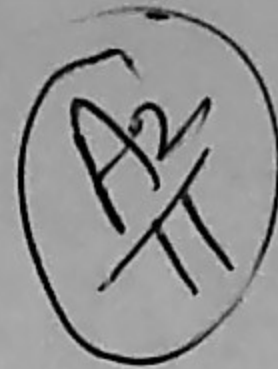


scale which in terms means the scale in which he was drawing his salary on 1-1-1973. In other words, it is not open to a Govt. servant to opt from a date for the purpose of revised pay scale after he ceases to draw salary in the existing scale. Explanation-1 to rule 5 puts a further fetter on the discretion available to a Govt. servant to postpone the date of drawing salary in the revised scale. However, it makes clear that the option to retain the existing scale under the proviso to the rules shall be admissible only in respect of one existing scale. It thus in terms rules out any discretion on the part of the Govt. servant to retain or to postpone the drawal of salary in revised pay scale beyond one scale, i.e. the scale existing on 1-1-1973 and not ^{the} pre-revised scale to which he may become entitled subsequent to 1-1-73 by promotion or otherwise. Hence the proviso to rule 5 expressly debars a Govt. servant from exercising option for drawal of salary in the revised pay scale subsequent to vacating his post or ceasing to draw pay in the existing scale. However, the petitioner in the instant case exercised option for drawing salary in the revised scale from a date after he had ceased to hold the post of Rate Fixer and had ceased to draw salary in the existing scale as on 1-1-73. There can be no two opinions that after his promotion to the post of Senior Rate Fixer with effect from 30th March, 1973, he became entitled to a higher scale of pay which was totally different from the one which he was drawing on the date the Revised Pay Rules came into force i.e. the existing scale. So he could not exercise ^{the} option in contravention of the express provisions of rule 5 especially the proviso to the said rule.



In this view of the matter, therefore, there can be no shadow doubt that his salary in the revised pay scale had been wrongly/erroneously fixed by the respondents vide Factory order dated 3rd Feb., 1978 and as such they were fully justified and entitled to set right the erroneous order so as to bring it in conformity with the provisions of rule 5. Needless to say that the contention of the petitioner that the respondents not only accepted the option as exercised by him but also acted upon it by fixing his pay vide order dated 3.2.78 and as such they were pre-cluded from reviewing the same has to be stated to be rejected. It is for the simple reason that there can be no estoppel against statute and the revised pay rules having been framed by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution, the said rules have statutory force. So the said rules bind not only the respondents but also the petitioner who can claim benefit of revised pay rules in accordance with the provisions thereof only and cannot seek shelter behind ^{the} facile plea that the respondents having fixed his salary in the revised pay scale at a higher amount once are incapacitated from rectifying the error. Under the circumstances, the conclusion is irresistible that the impugned Factory order dated 27th October, 1980 is perfectly correct and valid.

The next contention of the learned counsel for the petitioner is that the respondents passed the impugned order in violation of principles of natural justice in that he was not served with any show cause notice



nor was afforded any opportunity to explain his point of view before his salary was reduced by the impugned order. We find considerable merit in this submission in as much as a order reducing ^{the} salary and emoluments of a person certainly entails civil consequences and it was but meet that opportunity should have been afforded to the petitioner to put forth his point of view before the earlier Factory order dated 3rd of Feb., 1978 was sought to be revised to his detriment/prejudice. This proposition of law being well established, no authority is needed to support it. It rests on the principle of Audi alteram partem which is a basic concept of principles of natural justice. It simply means that no one should be condemned without hearing. Even administrative orders which involve civil consequences must be made consistently with the rules of natural justice and opportunity granted to the person who is going to be adversely affected by them (See State of Orissa Versus Dr. (Miss) Binapani Dei and others AIR 1967 SC 1269, and Chander Bhan Vs. Union of India (1987) 3 Administrative Tribunals Cases 432 which is a decision of Principal Bench of the Central Administrative Tribunal).

To sum up, therefore, we hold that on a correct and proper interpretation of rule 5 of the revised pay rules, the option exercised by the petitioner for drawal of pay in revised pay scale with effect from 1st of March 1974 was illegal and invalid, being contrary to the express provisions of rule 5. However, it was incumbent on the respondents to apprise the petitioner of this illegal position before treating it as illegal and invalid especially when the respondents had vide their previous Factory order dated 3rd February, 1978

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accepted the same and acted upon it, before they proceeded to revise the same. In that event the petitioner may have exercised a fresh option to be put in the revised pay scale from a date prior to his promotion as Senior Rate Fixer. The provision contained in sub-rule (4) of rule 6 that option once exercised shall be final obviously implies that such option must be valid and legal. In the instant case the option was exercised by the petitioner well in time, and it being nobody's case that it was beyond the stipulated time. So the respondents ought to have informed the petitioner that the option exercised by him was contrary to the provisions of rule 5 and he may have elected to be governed by the revised scales of pay with effect from a different date. Under the circumstances, we quash the impugned Factory order dated 27th October, 1980 subject to the condition that the respondents shall re-fix the pay of the petitioner in the revised scale of pay from a date which the petitioner may elect in this behalf, but the said date must be anterior to the date of his promotion as Senior Rate Fixer. The petitioner shall exercise fresh option within two months from today failing which the impugned Factory order shall stand as it is and shall be deemed to have become final. In view of all the circumstances of the case, we leave the parties to bear their own costs.

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(Birbal Nath)
AM.

J.D. Jain
(J.D. Jain) VC.
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