

that the special pay post of Upper Division Clerks should be filled up on the principle of seniority cum fitness and the Upper Division Clerks with three years service in the grade will be eligible for the said special pay. It was further mentioned that the special pay will be protected by the grant of personal pay under fundamental rule 9 (23)(b) by the Head of the Department.

3. In order to ^{meet} defeat the claim of the applicant the respondents have stated that the personal pay one can get only on promotion. This they have said despite the clear definition of personal pay given in the fundamental rule (23). The fundamental rule 9(23) reads as under:-

"Personal pay means additional pay granted to a Government servant-

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay other-wise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal consideration

4. The applicant no.1 ~~was~~ started getting the special pay from the year 1979, the year they joined the Revenue Branch, though on different dates. While the applicant no.2 was granted the special pay on 7th March, 1980 and applicant no.3 was granted on 2nd May, 1980 while applicant no.4 was granted on 22nd May, 1980, ^{and he too received the same} till this order in question was passed. The applicants have challenged the same on variety of grounds including that no opportunity whatsoever ^{was} ~~has been~~ given to them before depriving them of this benefit which they were entitled to get under the decision of Govt. of India, and if there was any revision of the decision, the applicant were entitled to opportunity of hearing atleast pointing out that the revision which is made subsequently it cannot be given retrospective effect and at the most it can have ^{prospective} ~~retro-spective~~ effect. Further there were occasions of subjecting the applicant's matter before the Screening Committee as by virtue of the work and in view of the clear decision of the Government of India they were granted special pay.

6. The respondents have stated that further clarification was received by the Ministry on 20th June, 1981 and letter received under Ministry's letter dated 7.2.83 which mentioned.

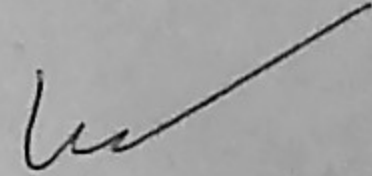
"The selection is to be made by the controlling authority on the suitability of particular officer to handle the work in a post identified as carrying discernible duties responsibilities of complex nature. Seniority-cum-fitness would not be the criterion for filling up such posts."

It was contended that from the said letter it was contended that it makes clear that the U.D.C.'s for 10% special pay are to be selected on the basis of their suitability to deal with complex nature of work, and the question of protection of personal pay arises only on promotion. As the applicants were not promoted to next higher grade, the question of protecting their special pay does not arise.

6. There is some fallacy in the plea taken by the respondents regarding personal pay. The question as to whether the applicants are to be screened or to be deprived of the special pay which was granted to them under a particular decision of the Govt. of India, in view of the subsequent clarifications issued in the year 1983 should not have been decided against the applicants without hearing to them, and they have enjoyed it and certain interests were created in their favour and there was no fault on their part. As their contention cannot be outright rejected, the question whether retrospective effect could be given to the same was also a matter which requires consideration. The deprivation for special pay which they enjoyed by them is yet another consideration. Without going into the merits we are of the view that the order dated 23rd April, 1983 affecting the interest which have some semblance of right was passed against the applicant, without

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giving them any hearing, deserves to be quashed. The respondents are directed to decide this question again in accordance with law after giving them a hearing. Let a decision in this behalf be given within a period of 3 months from the date of the communication of this order. No order as to costs.



Vice-Chairman.

16th Dec., 1991, Alld.

(sph)