

O.A.No.435 of 1988.

Narasingh Charan Misra Applicant

Union of India and others Respondents

For Respondent No.3 M/s. C.V.Murty, C.M.K.Murty
and S.K.Ratha, Advocates

The Honourable Mr. N.Sengupta, Member(Judicial)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

J U D G M E N T.

N. Sengupta, Member (J). The facts of this case lie in a short compass.

Admittedly, the applicant was working as a Stockman-cum-Compounder under I.C.A.R. which is a part of C.R.R.I. It is also not disputed that to the applicant the Technical Service Rules apply. The applicant's case is that he was given three

advance increments in accordance with the instructions of the I.C.A.R. letter No.7(18)83-per III dated 16.7.84. The respondents do not dispute the issue of these instructions. The applicant's grievance is that he at the time of coming into force of the Revised pay scale Rules 1986 was drawing the basic salary of Rs.640/- with other allowances, such as D.A., A.D.A. etc. The respondents fixed his pay on ^{the} assumption that he was given a basic salary of Rs.580/-. The applicant's case is that the taking of Rs.580/- as his basic salary by the respondents is against the rules and by such mistake, he has been made to lose substantial amounts in salary.

2. Mr G.C.Mohapatra, learned counsel for the applicant has reiterated the contentions made in the application. Mr C.V.Murty for the respondents has contended that the three advance increments granted to the applicant under those instructions were in the nature of 'personal pay' and therefore it would not come within the meaning of 'pay' as defined in Rule 21-(a) of the Fundamental Rules which apply to such government servants as the applicant is. Mr Murty's contention is that on reading Annexure-A/1 it would be apparent that the advance increments are granted to such of the persons who have rendered ^{five years} such service in the grade and on assessment of their merit they could have been promoted but could not be for want of posts. Therefore, it was in the nature of personal pay and only personal to the incumbent having these qualifications and such advance increments were to be excluded while fixing the pay in the revised scales of pay of 1986. There can be

Mr. Murty
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no doubt about the ingenuity of Mr Murty and that is his real trait and forte. I am unable to subscribe to the view that Mr. Murty propounds. 'Personal pay' cannot be in the nature of advance increments. It is not inconceivable nor is it uncommon where a person is granted advance increments for his qualifications whether at the initial stage of appointment or acquisition during the tenure of service and these increments do not come within the meaning of 'personal pay'. A 'personal pay' may be granted in special circumstances, such as, where a person on his promotion may get a lesser pay under the rules in which eventuality the difference is to be allowed to the person as 'personal pay' and there may also be cases where a particular person in a particular situation may be allowed temporarily a pay which would be termed as personal pay. Mr Murty has contended that because the applicant could not be promoted that is why he was granted three increments and after the coming into force of the Revised Pay Scale Rules, 1986 the applicant had in fact been granted three advance increments after fixation of his pay taking Rs.580/- as the basic pay in the existing scale. It is stated by Mr Murty that the increments were of ad hoc nature. I am unable to countenance such a view. The expression 'ad hoc' has entirely a different connotation. It is something which is in the nature of stop-gap or purely temporary nature. On reading of Annexure-A/1 it can never be conceived that at any time the applicant would have lost three increments. Therefore, the fixation of his pay taking Rs.580/- as basic

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pay ignoring three advance increments which ~~he~~ had been allowed in the existing scale prior to 1986 Pay Rules is not justified.

3. Mr Mohapatra has sought reliance on a decision of the Ernakulam Bench of this Tribunal in the case of Central Institute of Fisheries and Technology v. Director General of I.C.A.R., but the question that was for consideration before that Bench was some-what different. So the observations made therein may not in terms apply to the facts of the present case.

4. In the result, the application is allowed and the fixation of pay of the applicant in the revised scales of pay is to be made not ignoring the three advance increments that were allowed to him in the existing scale of pay prior to 1986 but taking those increments into account. There shall be no order as to costs.



Manoj Kumar
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Member (Judicial)