

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 327 of 1989.

Date of decision: March 8, 1991.

Giridhari Dash ... Applicant.

versus

Union of India and another... Respondents.

For the applicant ... M/s.C.V.Murty,
C.M.K.Murty,
S.K.Rath, Advocates.

For the respondent No.1.. Mr. Aswini Kumar Mohanty,
Sr. Standing Counsel (CAT)

For the respondent No.2 **Mr.K.C.Mohanty,**
Government Advocate (State)

C O R A M:

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

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 ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, Briefly mentioned, the facts of the case are that the applicant was appointed to the Indian Administrative Service with effect from 22.5.1986 on promotion. The Indian Administrative Service (Pay) Rules, 1954 were revised under the Indian Administrative Service (Pay) (Second Amendment) Rules, 1987 under Government of India notification No. 11030 dated 13.3.1987 and the amendment was given retrospective effect from 1.1.1986. The pay of the applicant in Indian

Administrative Service was fixed according to this amendment though he had been promoted earlier. He was allowed to draw Rs.3693.40 inclusive of D.A., A.D.A., Adhoc D.A., interim relief with effect from 22.5.1986. He has approached the Tribunal with a prayer for directions to be issued to the State Government to revise the applicant's pay taking into consideration the principles laid down in Clause (1) & (2) of Rule 3(3) of the Indian Administrative Service (Pay) (Second Amendment) Rules, 1987 by adding the amount representing 20 per cent of the prrevised basic pay in the revised scales. In other words, he has asked for direction to fix his pay at Rs.4075/- per month with effect from 22.5.1986.

2. The respondents in their counter affidavit have maintained that whatever loss in the matter of pay the applicant has suffered on account of the amendment has been made good by allowing him reduceable personal pay and as such no prejudice has been caused to him and there is absolutely no ground for entertaining the application.

3. We have heard Mr C.V.Murty, learned counsel for the applicant, Mr.K.C. Mohanty, learned Government Advocate (State) for Respondent No.2 and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondent No.1 and perused the relevant papers. Mr. Murty has averred that once some emoluments were given to an I.A.S. Officer it cannot be ~~modified~~ to his disadvantage. He has in this connection drawn our attention to the provision of Section 3(1-A) of the All India Services Act, 1951 which reads as follows:

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" The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. "

and has asserted that the Act will prevail over the Rules. Mr. Mohanty has drawn our attention to paragraph 5 of the letter of the State Government bearing No. 5701 dated 23.7.1987 addressed to the Deputy Secretary to Government of India, Department of Personnel and Training, New Delhi. The State Government have requested in this letter to consider as to how best the pay of the Officers promoted to the Indian Administrative Service between 1.1.1986 and 13.3.1987 can be fixed in a just and equitable manner without adversely affecting them by notification of the I.A.S. (Pay) Second Amendment Rules, 1987 for giving retrospective effect. To make matters clear we would like to quote paragraph 4 of this letter which reads as follows:

" 4. In the Notification amending pay rules with effect from 1.1.86 it has been certified that no member of the IAS is likely to be adversely affected by this Notification being given retrospective effect. In the circumstances, it is observed that ~~xx~~ some of the State Civil Service Officers who have been appointed to IAS by promotion after 1.1.86 and before 13.3.87 are adversely affected by this Notification of IAS (Pay) Second Amendment Rules, 1987 being given retrospective effect. The number of such State Civil Service Officers adversely affected is very limited being six(6) only."

Mr. Murty submits that one of the persons affected like the ones mentioned in this paragraph is the applicant. Mr. Mohanty has also placed before us the reply of the Government of India to this letter of the State Government dated 6.12.1987 which is at Annexure-R/5, which was received by

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the State Government on 16.12.1987. This letter has advised the State Government to fix the pay of all the State Civil Services Officers appointed to the Indian Administrative Service by promotion on or after 1.1.1986 and before 13.3.1987 in accordance with the provisions contained in Schedule 2 to the I.A.S. (Pay) Rules, 1954 as amended vide notification of the Department of Personnel and Training dated 13.3.1987. It further says;

" The emoluments (viz. pay+D.A.+ADA+IR) drawn by the SCS Officers promoted to the IAS during the period from 1.1.1986 to 12th March, 1987, in the pre-revised senior scale of the IAS may be protected by allowing the difference between the emoluments drawn by them in the pre-revised Senior Scale of the IAS and the emoluments viz., pay + DA admissible to them in the revised senior scale of the IAS as personal pay to be absorbed in future increase of pay."

Mr. Mohanty also referred to Annexure-R/6 which explains further the 'personal pay' to be given to such officers. In view of the action taken by the Central Government, according to Mr. Mohanty, the applicant should not feel aggrieved. Mr. Murty on the other hand has contended that the letters of Government of India at Annexures-R/5 & R/6 go to support his plea that the interests of the applicant and officers similarly circumstanced like him have ⁱⁿ ~~not~~ fact, been prejudicially affected. Had it not been so, according to Mr. Murty, Government of India would not have issued these two letters. Mr. Aswini Kumar Misra has placed before us paragraph 5(i) & (ii) of the reply filed on behalf of the Union of India. We have carefully gone through these two paragraphs. Paragraph 5(i) refers to the personal pay that has been allowed to the Officers affected by the second amendment to the Pay Rules in order to mitigate the temporary financial hardship. The other paragraph refers to the Explanation 2 of sub-rule(1) of Rule 3 of the IAS (Pay) Second Amendment Rules,

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1987 which lays down ;

" The aforesaid option shall not be admissible to any person appointed to the service on or after the 1st day of January, 1986 and he shall be allowed pay only in the revised scale".

Mr. Misra contents that as this is uniformly applicable to all the State Civil Service Officers appointed to the IAS by promotion on or after 1.1.1986 there is no violation of any constitutional provision as it leads to distinction or discrimination between the same class. Countering the argument of Mr. A. K. Misra, Mr. C. V. Murty has stated that all I.A.S. Officers belong to same class. The applicant was a member of the IAS long before the second amendment was effected to the Pay Rules and if any treatment is meted out to him which is different from the treatment given to other members of the I.A.S. which is definitely a case of discrimination. He has further stated that others who were promoted after 13.3.1987 have been given the option x.

There is absolutely no ground not to give option to the applicant who was promoted earlier. Relying on the provision of Section 3(1A) of the All India Services Act, 1951 we have come to the conclusion that by giving retrospective effect to the amendment the applicant has been prejudicially affected. So, we direct that his pay should be fixed according to the Pay Rules which was prevalent when he was appointed to the IAS on promotion i.e. on 22.5.1986 and he should be given whatever benefit admissible under the IAS (Pay) Second Amendment Rules, 1987 with effect from 13.3.1987.

Mea Sept 8.3.91.
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Member (Judicial)

Central Admn. Tribunal
Cuttack Bench, Cuttack.
March 8, 1991/Sarangi.



Bhushan 8.3.91.
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Vice-Chairman