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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
CIRCUIT BENCH ; LUCKNOW

Registration O.A.No.257 of 1990(L)

R.S.Srivastava

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Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.A.B.Gorthi, Member(A)

(By Hon.Mr.Justice U.C.Srivastava,V.C.)

The applicant held the post of Audit Officer in the Office of the Accountant General(Audit) -I, U.P., Allahabad, and he retired from the said post on 31.10.1986. Earlier the applicant remained on foreign service in U.P. Housing and Development Board, Lucknow from 7.8.1982 to 31.10.1986, where he was drawing deputation allowance @ Rs.100/ per month from 7.9.82 to 31.12.85 and from 1.1.86 to 6.9.86 @ 5% of the basic pay i.e. Rs. 3125/-. The applicant has filed an application before this Tribunal claiming 20% of the basic pay as deputation allowance from 7.9.82 to 31.12.85 and 10% of basic pay as deputation allowance from 1.1.86 to 6.9.86, and the matter is still pending.

2. The present grievance of the applicant is that prior to 1.1.86 the deputation allowance was added ^{to the} ~~in the~~ emoluments for calculating the pension. But from 1.1.86 the Government changed its policy and notifications were issued by which this benefit has been ~~snatched~~ ^{to be added to} away, though the benefit which has been given to the Doctors prior to 1.1.1986 i.e. non practising allowance ^{to be added to} ~~is~~ still continues with basic pay for calculating the pensionary benefits. This declaration has been made by the O.M.No. 2/1/87-PIC II, dated 14.4.1987. Note 7 of the said O.M. which ^{subject matter} ~~is~~ challenged

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this application reads here as under:-

" The pay drawn by a Government servant while in foreign service will not count for retiral benefits but the pay which he would have been drawn in his parent department would count for purpose of computing emoluments."

The applicant contends that this ^{is} ~~can be~~ arbitrary and violative to the Article 14 of the Constitution of India and there is no rationale behind this cut off ^{date} ~~of date~~ and this cut off ~~date~~ which has only created two classes without giving any reason, resulting in benefit to one class and denial of benefits to another.

3. The respondents have apposed this application and pleaded that the non-practicing allowance with deputation is granted to Doctors for aggrieved ^L ~~not to~~ indulge ⁱⁿ in private practice and the non-practising allowance is included in the basic pay. Regarding the policy it has stated and contended that earlier this policy itself ^{was} ~~was~~ creating two classes, one who get on certain deputation and the others who could not get any deputation post. With the result even in the same cadre and same service one gets higher pension but the others ^{have} ~~have~~ to get lower pension, even though at the time of retirement they were in the same pay scale or holding the same post in the parent department.

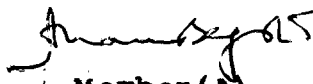
4. The contention which has been raised on behalf of the Central Government cannot be rejected. Obviously it is true that the government itself allowed this practice but later on ^{when} ~~it~~ was found ~~not~~ equitable, a decision was taken to reverse the earlier policy.

5. The earlier policy created two classes one of the favour ^{ed} ~~ed~~ and the other of non favoured class, ~~favoured~~ ^{by} those who succeeded in getting deputation posts. However,

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the others who should not get any deputation posts during their service period ^{was} normally unfavoured ^{by} this. It appears as the cut off ^{is} date which has been put ^{on} some date or the other was to be put, and it was decided that with effect from a particular date a person should not get benefit. No one can claim a deputation post by right. It is the choice of the employer to give deputation post or not to give deputation post, and as such it cannot be said that any discrimination has been done, and the policy decision is arbitrary or it will result in inequity or creation of two classes which was earlier unknown. Since long the government has adopted its policy and has been given this benefit to many others, and those who were in service from 1.1.1986 could get various deputation or were holding deputation posts, they will get benefit of deputation ~~in~~ their pension also were all of sudden deprived of the same.

6. Accordingly we are dismissing this application, but with a recommendation that the Government should re-consider its decision regarding those who were in service from 1.1.1986 ^{who} ~~and have~~ already held the deputation post at that time and there was no doubt in their mind that the benefit of ~~the~~ same would also not be given to them.


Member (A)


Vice-Chairman.

8th November, 1991, Lucknow.

(sph)