

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Registration No. Q.A.-112 of 1996

Date of Order : 9th Oct., 1996

S. Razi Ahmad & Ors. Applicant

vs.

Union of India & Ors. Respondents

Counsel for the applicant Mr. G. Trivedi

Counsel for the respondents Mr. Lalit Kishore

C O R A M

Hon'ble Mr. K.D. Saha, Member (Administrative)

J U D G M E N T

Hon'ble Mr. K. D. Saha, Member (Administrative) :-

Two applicants have jointly filed this application. Applicant No. 1 (S. Razi Ahmad) is posted as Cane Worker and applicant No. 2 (Abdul Halim Khan) stands posted as Painter in the Central Institute of Psychiatry, Kanke, Ranchi. After appointment to their respective posts their pay scale was revised in the year 1966 when they were given the pay scale of Rs. 110-131/- but there was no change in the date of increment which was 1st July. Similarly, pursuant to the recommendations of the 3rd Pay Commission, their pay scale was further

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revised to Rs.260-350/- with effect from 1.1.1973, but there was no change in their date of increment. The recommendations of the 4th Pay Commission were made applicable with effect from 1.1.1986 and the applicants were placed in the pay scale of Rs.950-1500/-. The grievance of the applicants is that, this time their date of increment has been shifted from 1.7.1986 to 1.1.1987 as a result of which the applicants are put to substantial financial loss every year to the extent of six increments alongwith allowances thereon. They submitted representations to the Respondent No.3 vide Annexures-3 and 3/1, both dated 25.7.1995, requesting to re-fix their pay retaining their original date of increment of 1st July. Their representations were rejected by Annexures-5 and 5/1 respectively both dated 21.11.1995. By this application, the applicants pray for quashing the order of Respondent No.3 as contained in Annexures-5 and 5/1, and for issue of direction to the respondents to change their date of annual increment from 1.1.1987 to 1.7.1986 and to allow all consequential benefits.

The applicants submit that pursuant to the revision of the pay scale from 425-800/- to Rs.500-900/-, the date of increment was changed in the case of Inspectors

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of Central Excise and Customs, who being aggrieved by the change in the dates of their increment after revision of their pay scale, moved the Calcutta Bench of this Tribunal in O.A.-677/1988. The O.A. was allowed by the Tribunal by its order dated 2.3.1989 holding that the date of increment in old scale should not be changed. Union of India filed an SLP No. 8451/1989 before the Hon'ble Supreme Court against the above order of the Tribunal and the Apex Court by its order dated 21.1.1991 upheld the decision of the Tribunal. Accordingly, Govt. implemented the order by Annexure-6 dated 16.11.1993.

Their further assertion is that on revision of the pay scale as per the recommendations of the 4th Pay Commission, several other employees in the Central Institute of Psychiatry, Kanke were allowed to retain their respective dates of increment in their pre-revised scale, but in the case of the applicants the date of increment in the pre-revised pay scale has been changed to their disadvantage and thus the applicants have been discriminated vis-a-vis other employees of the Institute.

2. In their reply, respondents submit that there was no change in the date of annual increment of the applicants on revision of their pay scales in the year, 1966, and in 1973, but since the applicants had already



reached the maximum in the old scale of pay and were given one stagnation increment @ Rs. 8/- prior to 1.1.1986, pursuant to the recommendations of the 4th Pay Commission, their pay was fixed on Rs. 1275/- after giving two increments @ 25/- w.e.f. 1.1.1986 in the revised scale as per 4th proviso to Rule 8 of the CCS(Revised Pay) Rules, 1986 and against this background the date of next increment in the revised pay scale has been fixed 1.1.1987, i.e. after completion of 12 months.

With regard to the cases of Shri K.L. Mazumdar, Shri Indrajit Lal etc. referred to by the applicants in para 4.13 of the O.A., the respondents submit that in all these cases, the employees were not allowed any additional increment in the revised pay scale w.e.f. 1.1.1986 as per Rule 8 of the CCS(Revised Pay) Rules, 1986 and as such there is no change in their date of annual increment on re-fixation of pay on the revised scale.

As regards the order of the Collector of Central Excise dated 16.11.1993 (Annexure-6) regarding fixation of pay of the Inspectors, Central Excise and Customs on revision of their pay scale from Rs. 425-800/- to Rs. 500/- with effect from 1.1.1980, the respondents assert that this relates to 1980 and it has nothing to

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do with the Revised Pay Rules, which came into force w.e.f. 1.1.1986 pursuant to the recommendations of the 4th Pay Commission.

3. I heard the learned counsel for the rival parties and carefully went through the documents on record. The question is whether the change of the date of increment from 1.7.1986 to 1.1.1987 is sustainable under the rules.

4. The recommendations of the 4th Pay Commission were implemented by means of the Central Civil Services (Revised Pay) Rules, 1986 (hereinafter referred to as, Revised Pay, Rules), which were made by the President in exercise of the powers conferred by proviso to Article 309 and Clause (5) of Article 148 of the Constitution. These Rules came into force with effect from 1st January, 1986. Under the proviso to Rule 5, a Govt. servant is given an option 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. Rule 6 stipulates the manner and the period for exercising such option under different circumstances. The option under these rules, once exercised is treated as final. Rule 7 deals

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with "Fixation of initial pay in the revised scale". In brief, under Rule 7, the initial pay of a Govt. servant, who elects or is deemed to have elected to be governed by the revised pay scale on and from 1st January, 1986, shall be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien and in respect of his pay in the officiating post held by him, by adding to the "existing emoluments" of the employee, an amount representing 20% of the basic pay in the pre-revised scale subject to a minimum of Rs.75/-, and after the existing emoluments have been so increased, the pay shall be fixed in the revised scale at the stage next above the amount thus computed. If the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale and if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the minimum of that scale. Rule 8, which deals with the "Date of next increment in the revised scale", is relevant for the present case. It reads as under :-

"8. Date of next increment in the revised scale
The next increment of a Government 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 :

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Provided that in cases where the pay of a Government servant is stepped up in terms of Note 3 or Note 4 of Note 7 to sub-rule (1) of Rule 7, the next increment shall be granted on the completion of qualifying service of twelve months from the date of the stepping up of the pay in the revised scale :

Provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1986, at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier :

Provided also that in the case of persons who had been drawing maximum of the existing scale for a year or more as on the 1st day of January, 1986, next increment in the revised scale shall be allowed on the 1st day of January, 1986;

Provided also that in the case of Government servants who were in receipt of an ad hoc increment on their stagnating for two years or more at the maximum of the existing scale of pay as on the 1st day of January, 1986, one more increment in the revised scale shall be allowed to them on the 1st day of January, 1986, in addition to the increment already allowed under preceding proviso."

(Notes 1, 2, 3 and 4 appearing below Rule 8 are not relevant for the present case.)

Pursuant to the framing of the Revised Pay Rules, clarifications were issued by the Govt. from time to time with regard to various provisions. For the case on hand,

the instructions issued under G.I., M.F., O.M. No. 7 (21)-E III/87 dated 4.5.1987 appearing as Govt. of India's decision No. (7) below rule 8 of the Revised Pay Rules, (Swamy's Compilation of Central Civil Services, Revised Pay Rules, published by Muthuswamy and Brinda, corrected upto 1.2.1992, pages 71-72) are relevant. The point raised at Sl.No.2 and the clarification given there against in the above said circular dated 4.5.1987, which is relevant for this case, reads as under :-

"(7) Clarifications regarding grant of next increment.- References are being received from Ministries/Departments seeking clarifications regarding application of certain provisions of CCS(RP) Rules, 1986. Based on the issues raised, following clarifications are issued for the guidance of all concerned :-

Sl. No. (1)	Point raised (2)	Clarification (3)
1.	xx xx	xx xx
2.	Where increment(s) has/have been allowed under provisions 3 and 4 to Rule 8 of CCS(RP) Rules, 1986, whether the next increment would be allowed	The next increment in revised scale to Govt. servant to whom the benefit of increment(s) under provisions 3 and 4 to Rule 8 of CCS(RP).

Sl.No. (1)	Point raised (2)	Clarification (3)
	after the qualifying period of 12 months reckoned from the date of last increment in the pre-revised scale or after completion of qualifying period of 12 months from 1.1.1986.	Rules, 1986, has been given would be admissible after qualifying period of 12 months from 1.1.1986 under F.R. 26. In other words, the next increment, in such cases would be accrue on 1.1.1987, subject to the maximum of the revised scale not being exceeded.
3.	xx	xx
4.	xx	xx
5.	Admittedly, the pay scale applicable to the applicant was revised from Rs. 260-350 to Rs. 950-1500/- pursuant to the recommendations of the 4th Pay Commission. On 1.1.1986, the pay of the applicant was Rs. 350/- (maximum of the pre-revised scale) + Rs. 8/- (one stagnation increment). The pay of the applicant was fixed at Rs. 1225/- with effect from 1.1.1986 as per Rule 7 of the Revised Pay Rules and then he was granted two additional increments of Rs. 25/- each w.e.f. 1.1.1986 raising his pay to Rs. 1275/- in the revised pay scale of Rs. 950-1500/- as per 4th proviso to Article 8, and his date of next increment was fixed on	

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1.1.1987, in terms of Govt. of India's decision, referred to above. As per provisions of Rule 8, had the applicant not got stagnation increment w.e.f. 1.1.1986, he would not have been allowed any additional increment w.e.f. 1.1.1986, and his date of increment in the pre-revised scale would not have been changed on the revision of his pay scale.

6. After considering the submissions of the rival parties and going through the Revised Pay Rules, and giving anxious consideration, I have no hesitation to hold that the fixation of pay of the applicants has been done correctly and no injustice is involved in the change of date of next increment in their case. The applicants were given two additional increments of Rs. 25/- each w.e.f. 1.1.1986 in the revised pay scale of Rs. 950-1500/- in terms of proviso 3 and 4 to Rule 8 of the Revised pay Rules, and accordingly their next increment in the revised pay scale is due after 12 months from 1.1.1986 under F.R. 26. It is not the case where the pay of the applicants has been fixed only in terms of provisions of Rule 7(1) without grant of any additional increment in the revised pay scale.

The facts in the cases of the employees of the same Institute, referred to in para 413 of the O.A., are different from the facts in the case of these applicants.

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In their case no additional increment arising out of stagnation in the pre-revised scale was given and accordingly, those employees after revision of the pay scale on implementation of the Revised Pay Rules, have been allowed to retain the same date of next increment which they had in the pre-revised scale.

7. The learned counsel for the applicants draws my attention to the decision of the Supreme Court in Shyama Pada Sishanta & Ors. vs. Union of India & Ors., reported in 1991(1) U.J. (SC) 482, the facts of which are also given in the O.A. In that case, on revision of the pay scale of Inspectors of Central Excise and Customs from the pay scale of Rs. 425-800/- to Rs. 500-900/- w.e.f. 1.1.1980, their pay was fixed at Rs. 500/- the minimum in the revised scale. It was, however, ordered that they would be entitled to next increment, ^{on} ~~not~~ their own normal date of increment in the lower scale, but after completion of 12 months of service in the revised scale i.e. on 1.1.1981. This direction was issued in terms of an Office memorandum dated 9.1.1984 which provided that in cases where the minimum pay of the revised scale is higher than the pay drawn by ~~the Govt.~~ servant in the old scale, ~~his~~ pay will be fixed at the ² minimum of the revised scale and next increment in the

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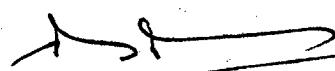
revised scale shall be allowed after completion of full incremental period of 12 months/24 months, as the case may be, from the date of fixation of initial pay in the revised scale subject to the provisions of FR-26. The decision to grant next increment after 12 months was assailed before the Central Administrative Tribunal which allowed the application. The Govt. of India challenged the legality of the decision of the Tribunal by SLP (c) No.- 8451/89. The Apex Court by its order dated 21.1.1991, upheld the decision of the Tribunal and held that the office memorandum dated 9.1.1984 is contrary to the statutory rules.

Having regard to the factual matrix of the instant case and the facts in Shyama Pada Sidhanta (supra), I am of the view that the decision in Shyama Pada Sidhanta & Ors. (supra) can be of no assistance to the applicants. The facts in the case on hand are entirely different. The applicants had reached the maximum of the pre-revised scale and got one stagnation increment and their pay has been fixed in the revised scale after grant of two increments w.e.f. 1.1.1986 @ Rs. 25/- in the revised scale. Accordingly, in terms of the provisions in FR-26, date of their next increment has been correctly fixed as 1.1.1987. In the case of the Inspectors of Central Excise and Customs,

sanction of any increment in the revised scale was not involved. Their pay was fixed at the minimum of the revised scale of Rs. 500-900/- w.e.f. 1.1.1980, and therefore, there was no justification for shifting their date of next increment to 1.1.1981 in the revised scale. This apart, the case of the Inspectors of Central Excise and Customs was one of revision of pay scale in the year 1980 and was based on an executive order contravening the provisions of FR-26. As against this, the fixation of the pay of the applicants has been done on implementation of the Revised Pay Rules, which are statutory rules framed pursuant to the recommendations of the 4th Pay Commission.

8. In the result, the application fails and is accordingly dismissed.

There ~~shall~~, however, be no order as to costs.


(K.D. Saha) 9.10.96

Member (Administrative)

MPS.