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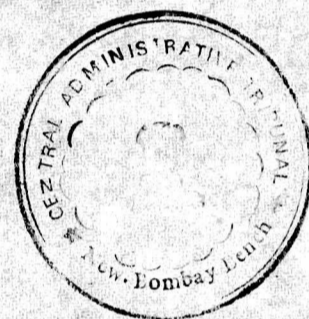
(80)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

- 1) GUNVANTRAI UMEDRAI BHAT,  
II floor,  
1/18, Mahavir Nagar,  
Dahanukarwadi, Kandivli (West),  
Bombay-67.
- 2) SHASHIKANT JETHALAL VAKIL,  
I floor, 1/18 Mahavir Nagar,  
Dahanukarwadi, Kandivli (West),  
Bombay-67.
- 3) PUNARUR VYASA ACHAR,  
8, Shiv Kunj,  
Majas Road,  
Jogeshwari (East),  
Bombay-60.
- 4) JAGANNATH GOPINATH SAPRE,  
21/660, Shastri Nagar,  
Goregaon (West),  
Bombay.

.. Applicants .. Tr.422/86  
(Original Petitioners)

- 1) Mrs.Thottada Ammukutty,  
Flat No.3, Vijayshree  
Durga Co-operative Housing  
Society (Air India) 6th  
Road, Santacruz (East),  
Bombay - 400 055.
- 2) Mr.Phatu Kishanchand Bhatia,  
5-B, Dhavalganga,  
1, Carter Road (South End),  
Near Otters Club,  
Bandra - Bombay 400 050.



.. Applicants .. Tr.28/87  
(Original Petitioners)

V/s

- 1) Union of India.
- 2) Employees' State Insurance Corporation,  
through the Chairman, Employees'  
State Insurance Corporation,  
Sharma Shakti Bhawan, New Delhi-11
- 3) The Director General,  
Employees' State Insurance Corporation,  
ESIS Building, Kotla Road,  
New Delhi 110 002.
- 4) The Regional Director,  
Employees' State Insurance Corporation,  
ESIC Bhavan, 108 N.M.Joshi Marg,  
Lower Parel, Bombay-400 012

Respondents .. Tr.422/86 &  
Tr.28/87.

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil.

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ORAL JUDGEMENT

Dated: 16.7.1987

(Per Hon'ble Vice-Chairman Shri B.C.Gadgil)

1) These two matters can be conveniently decided by a common judgement.

2) Tr.Application No.422/86 was originally Writ Petition No.2019/82 on the file of the High Court of Judicature at Bombay and it has been transferred to this Tribunal for a decision. Tr.Appln.No.28/87 was also originally Writ Petition No.2034/83 on the file of the Judicature of the High Court of Bombay and it has been transferred to this Tribunal for a decision.

3) Though a number of contentions have been raised on behalf of both the sides in these two matters, it is not necessary to mention them in detail. I propose to state the facts and various contentions that have been urged before me. Four applicants (Original Writ Petitioners in Tr.Appln.No.422/86) are the employees of the Employees' State Insurance Corporation. It is not necessary to give the details of their service history. Suffice it to say that in December, 1982 they were working in the grade of Rs.250-445. This grade was available to various posts namely Insurance Inspectors, Deputy Managers and Managers Gr.II. The posts are interchangeable meaning thereby the officials working as Insurance Inspectors can be asked to work as Deputy Managers or Managers Gr.II and also vice versa. The post of Deputy Manager and Manager Grade II carries a special pay of Rs.50/- per month. Thus, the officers working on these two posts were getting Rs.50/- per month more though they were appointed as Insurance Inspectors. The pay scale of various employees of the State Insurance Corporation were revised on the basis of the revision of pay scales of government employees in terms of the III Pay Commission. Of course, there was no automatic revision as the State Insurance Corporation was an

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independant statutory body and consequently the question of revision of pay scales of these employees has to be considered by the Corporation and its Standing Committee. One more important factor is that the sanction of the Central Government is necessary for such revision. It is not in dispute that the pay scales of these posts have been revised from 1.1.73 by raising it from Rs.250-445 to Rs.550-900. Such revision was similar to the one made with respect to government servants.

4). I have already observed that some of the employees in the common pay scale of Rs.250-445 were working as Dy.Managers/Managers with Rs.50/- as special pay whenever their pay was revised under the revised pay scale. This special pay of Rs.50/- was included in the existing emoluments, thereafter they were fixed at appropriate stage. Unfortunately, the applicants were not Dy.Managers or Managers Grade II in December, 1972. They were Insurance Inspectors. Consequently, they were not getting special pay of Rs.50/- They were fixed in the revised scale at lower stage as the special pay could not be added. The grievance of the applicants is that the appointment of Dy.Managers/Managers II were not being made on the basis of seniority. They were made after taking into account the administrative exigencies. Of course, normal seniority at a particular station was being taken into account; but there are few instances where even that was not done. It is material to note that the Corporation is maintaining a common All India Seniority of officers in this grade.

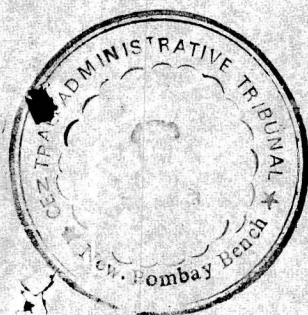
The applicants contend that there were number of officers junior to them but were working as Dy.Managers/Managers Grade II in Dec, 72 and consequently they were fixed at a higher stage in the revised pay scale. It was submitted that the applicants, though senior, have been fixed at a lower stage

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and that this is discriminatory and arbitrary. The applicants therefore, contend that their pay should be stepped up so as to bring it on par with those of juniors to the applicants and who are getting more pay.

6) The case of Applicant No.1 in Tr.Application No. 422/86 is that on 31.12.1972 he was promoted to the higher post viz. a post equivalent to Manager Grade.I, but there are some juniors of his who have been promoted to Manager Grade.I after 1.1.1973. The pay of these juniors in the revised scale of Rs.550-900 was fixed at higher stage because they were getting special pay of Rs.50 and consequently when they were promoted to the higher post equivalent to Manager Grade, they got their pay fixed at a rate higher than that of applicant No.1. Applicant No.1 contends that this is un-just and that therefore, stepping up of his pay should be done. Applicants Nos2,3 and 4 continued to be in the revised pay scale of Rs.550-900 till the time this Writ Petition was filed. Thus they were not getting special pay as they were working as Insurance Inspectors. However, certain juniors who were working as Deputy Managers or Manager Grade II were getting Rs.50 per month as special pay and hence in the revised scale, the pay of these juniors have been fixed at a stage higher than that of the applicant. Thus applicants Nos. 2, 3 and 4 pray that their pay should accordingly be stepped up so as to bring it on par with that of those juniors who have been getting more pay.



7) The Respondents have filed their reply. In substance they did not challenge the anomalous position that is mentioned in the above paragraphs. However, the contention of the Respondents is that there was an error in taking special pay as a part of the existing emoluments and that it is this

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error that has created anomaly. Thus the Respondents contend that inclusion of special pay while fixing the pay in the revised scale was an erroneous inclusion and that this error or mistake is required to be corrected. On the basis of the advice of the Government necessary orders in that respect have been issued. Exhibit.I attached to the Respondents reply gives an indication of those orders. That communication is dated 20th of July, 1983. It states that the Government has intimated that the special pay of Rs.50/- drawn by Manager Gr.II and Deputy Managers does not form part of the emoluments and that consequently the pay of these officers was fixed in an incorrect manner and is required to be refixed after excluding the special pay which these officers were getting before 1.1.1973. The communication further states that it has decided that the above mentioned special pay of Rs.50 would be protected and that it would be absorbed in future increase of pay after 1.1.1973. It was contended by the Respondents that this proposed action is in consonance with the principles which are required to be followed in fixing pay in the revised pay scales and that therefore if this is done there would exist no anomaly as contended by the applicants. It is principally on this ground that the application has been resisted.



I have already stated that by a communication dated 20th of July, 1983 the department proposed to refix the pay of those Managers Gr.II and Deputy Manager who were getting special pay of Rs.50. This refixing is to be done by excluding the special pay. The obvious result of this proposed action was that some of the officers (in whose case special pay has been included as emoluments while fixing their pay under the revised pay scales) were likely to be prejudicially affected. The

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reason is that their pay on 1.1.1973 would stand reduced and that this reduction will continue even for the years that are to follow. Those officers therefore filed Writ Petition No.2034 of 1983 challenging the contemplated action on the part of the Department to refix the pay after excluding the special pay from the emoluments. The contention in the petition is that this is not permissible as under the rules special pay has to be included in calculating the existing emoluments and thereafter the pay in the revised pay scales has been properly fixed. The applicants have sought permission of the High Court to file this Writ Petition in a representative capacity. The High Court has granted permission and necessary public notices has been issued. As stated earlier this Writ Petition is now Transferred Application No.28/87.

97. The Respondents resisted this application by filing their reply before this Tribunal. They admit that there was an anomaly in fixing the pay of seniors at a lower stage and some of the juniors who were getting special pay are fixed at a pay scale above that of the seniors. As stated earlier the contention of the Respondents is that inclusion of special pay while arriving at the emoluments was a mistake and that by communication dated 20th of July, 1983 the department contemplates the correction of that mistake by reviewing the fixation of pay of such officers. It was contended that it would not be correct to perpetuate the mistake and that the intended action is quite legal and proper.



10). These are the main and rival contentions of the parties. The learned advocates also made their submissions in support of these contentions. It is thus clear that the proposed review as per the communication dt.20.7.1983 would be legal and proper if the original fixation of pay after

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including special pay in emoluments was erroneous and incorrect. Secondly, if there is no such mistake as alleged by the Respondents it would be necessary to find out as to what would be the effect of discrimination in the fixation of pay scales as alleged by the applicants in Tr.Application No.422/86. Lastly, it would be necessary to find out a solution as to how that discrimination has to be done away with.

11) Mr.Sethna for the Respondents contended that special pay of Rs.50 ought not to have been included in the emoluments while determining the stage at which a particular officer is to be placed in the revised pay scales. As against this Mr. Damania for the applicants urged that there is no question of any such mistake and that what has been earlier done (by including the special pay) is in accordance with rules. He also contended that this theory of mistake or error has been falsely put up by the Respondents only to avoid the claim of the applicants in T.A.No.422/86. It is material to note that the Writ Petition No.2019 of 1982 (which is now numbered as T.A.422/86) was filed in 1982 and it is only during the pendency of that Writ Petition that the Respondents have thought of taking an action to review the pay scales on the basis of the alleged mistake or error. Mr.Damania submitted that prior to this communication dated 20.7.1983 the Respondents have not indicated anywhere that there existed a mistake as alleged by them now. The applicants in Tr.Application No.422/86 have been making representations to the Respondents alleging that injustice was caused to them due to higher fixation of pay for officers who were juniors to the applicants. The applicants in T.A.422/86 have filed rejoinder. Along with it they have produced a note prepared by the Director General of the Respondents about the anomalies arising from different fixation of pay of the officers belonging to the same cadre. That note shows that

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the postings as Managers Gr.II and Deputy Managers was not always made strictly in accordance with seniority and that a number of senior persons were not worked as Manager Gr.II or Deputy Manager on 1.1.1973. The note further states that this is done mainly due to administrative convenience on regional basis, though the seniority of the cadre is in all India Seniority. The note then states that an anomaly has arisen as some of the junior officers working as Manager Gr.II or Deputy Manager on 1.1.1973 were getting the special pay of Rs.50 and necessarily their pay in the revised pay scales have been fixed at a stage higher than that of their seniors. Paragraph 13 of the note has suggested the solution as to how this anomaly can be removed. In substance the solution is that the pay of Senior Officers should be stepped up so as to bring it on par with those junior officers who were getting more pay. It is not necessary to mention certain other details from that note.

12) It appears that the question of removing this anomaly and certain other problems has been referred by the standing committee to a sub-committee of 5 persons. The Director General was the Chairman of the said committee. Exhibit 'C' to the main Writ Petition No.2019 of 1982 (Tr.A.422/86) shows the constitution of the said committee. It appears that the committee did not express any opinion about the anomaly in question, as the matter was being separately considered. This can be seen from Ex.'E' to the application. It was rightly urged by Mr.Damania that till the time the impugned communication dt. 20.7.1983 was issued the department as well as the Government were trying to have a solution for the purpose of removing the anomaly. Till that time there was no communication to suggest that the anomaly has arisen on account of any mistake

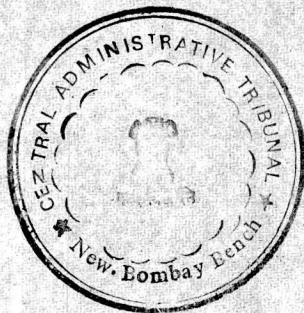
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as pleaded in these proceedings. Mr.Damenia submitted that this plea is an afterthought and is taken to resist claim in Tr.Application No.422/86. This aspect though relevant would not be decisive. I would therefore, prefer to consider the merits of the plea of alleged mistake in the background of the relevant rules about the fixation of pay in the revised pay scales. I have already observed that the Corporation revised the pay scales of its officers as the pay scales of the Central Government Servants were revised. That revision was made on recommendation of the IIIrd Pay Commission. The Government has formulated certain rules known as the Central Civil Services (Revised Pay) Rules, 1973. These rules are made applicable mutatis mutandis to the revision of the pay scales of the employees of the Corporations. Ex.'A' to the T.A.No.28/87 is a memorandum dt.23.4.1975. The relevant part of that memorandum reads as follows:

" the undersigned is directed to say that the Central Government have accorded sanction to the revision of the scale of pay of the posts of Manager Gr.II/ Deputy Manager/Audit Inspector/Insurance Inspector in the ESI Corporation from Rs.250-15-445 (pre-revised) to Rs.550-25-750-EB-30-900 (revised) with effect from 1.1.1973 subject to the condition that the provisions of the Central Civil Services (Revised Pay) Rules, 1973 shall mutatis-mutandis be applicable to the employees of the Corporation who are brought on the revised scales of pay. The Special Pay of Rs.50/- now attached to the post of Manager Gr.II/Dy.Manager will not be admissible with the revised scale."

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" The question whether the Special Pay of Rs.50/- P.M. at present attached to the post of Manager Gr.II/Dy.Manager will be treated as part of existing emoluments for purpose of fixation of pay in the revised scale as per Rule 3 of the Central Civil Services (Revised Pay) Rules, 1973 is under consideration with the Central Government and further instructions in this regard will be issued shortly. Pending receipt of instructions in this behalf, the pay may be fixed in the revised scale without treating Special Pay as part of existing emoluments."

Thereafter, on 28th May, 1975 (Ex.'B' to T.A.28/87) the relevant portion of that memorandum reads as follows:-

" In continuation of this Office Memorandum of even Number dated 23rd April, 1975, it is clarified in consultation with the Central Government that so far as the post of Manager Grade-II/Deputy Manager is concerned the revised scale of Rs.550-25-750-EB-30-900 is in replacement of both the pre-revised scale of pay of Rs.250-15-455 as well as the Special Pay of Rs.50/- p.m. In view of this the Special pay will be treated as part of the existing emoluments in terms of Rule 3(2)(b)(i) of the Central Civil Services (Revised Pay) Rules."



Thus, the Corporation has in specific terms taken a decision that the special pay shall be treated as part of the existing emoluments while fixing the stage of pay in the revised pay scales. Another factor is that all this has been done in consultation with the Central Government. No circumstances are indicated in the reply that is filed on behalf of the

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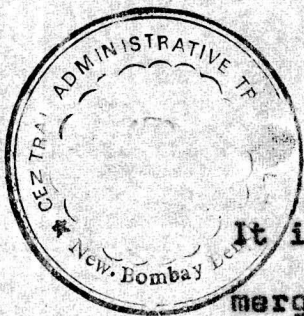
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Respondents as to how this decision in consultation of the Central Government was a mistaken or erroneous decision.

137. In fact, various provisions of the revised pay rules would show that a conscious and correct decision has been taken to include special pay while determining the existing emoluments as provided by those rules. The scheme of the rules is that initially the existing emoluments under the pre-revised pay scales are to be determined and thereafter those emoluments are to be increased in a particular fashion. The pay of an employee has to be fixed at a particular stage in the revised pay scales after taking into account such increased emoluments. All this can be seen if a reference is made to Rule 3(2) as also Rule.7 of the Revised Pay Rules. Rule.3(2) defines the term existing emoluments. It includes 4 items. However, I will reproduce only a few of them that are relevant for the purpose of deciding this application.

" Existing emoluments includes a) basic pay as on 1st January, 1973, b) special pay (other than non-practicing allowance) if any drawn in addition to pay in existence (c) in case where a revised scale has been provided for any ....."



It is thus clear that whenever a revised scale is fixed after merging the special pay the said special pay has to be added to the basic pay while determining existing emoluments. The importance of these existing emoluments can very well be seen by reference to Rule.7. It is not necessary to reproduce that rule in its entirety. Under that rule, the existing emoluments are increased by adding some percentage thereof. This increased pay shall be fixed in the revised scale at the stage equivalent to the amount so computed or that if there is no such stage, it should be fixed at the stage next above the amount so computed. A plain reading of these rules would therefore show

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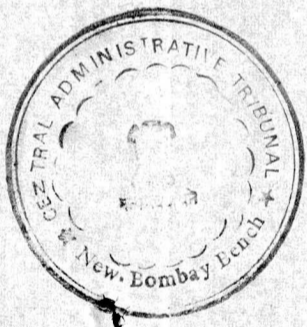
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that special pay has to be included while determining the existing emoluments. Such inclusion is necessary when the revised pay scale emerges the special pay under the revised pay scales. This is exactly what has been done while fixing the pay scales of those officers who were getting special pay on account of their posting as Deputy Manager or Manager Gr.II. In my opinion, the action that was taken by the Govt. and the department was in consonance with these rules. Thus the proposed action to refix the pay of such officers after excluding the special pay would be illegal. It would not be permissible under the rules that are required to be followed for fixation of pay.

14) It is true that Mr. Sethna contended that special pay was allowed to certain officers not necessarily on the basis of seniority. He further contended that some of the officers were getting special pay on account of a fortuitous circumstances as there were at the relevant time posted as Deputy Manager or Manager Gr.II. He, therefore, urged that no advantage can be taken of such fortuitous circumstance and that the special pay has to be omitted while computing or determining the pay under the revised pay rules. In my opinion, this would not be a correct position. The rules prescribe that special pay has to be included in the existing emoluments if the revised pay scales covers merger of the old scale as also the special pay. It is common ground that the revised pay scales of Rs.550-900 has merged the special pay after 1.1.1973. No one including Deputy Manager or Manager Gr.II is entitled to get special pay. It is thus clear that the contention of the Respondents is erroneous when they allege that special pay is not to be calculated while determining the stage at which the pay of a particular employee has to be fixed under the revised

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pay scales. The necessary result of this discussion is that the proposed action in terms of the communication dt.20th of July, 1983 (vide Ex.'D' to the Tr.Application No.28/87) is liable to be struck down and the Respondents are to be prevented from proceeding further on the basis of that communication.

15) Thus the net analysis is that special pay has been rightly included while fixing the stage of the Deputy Managers and Manager Gr.II in the revised pay scales. However, by doing so an anomaly as mentioned in the earlier part of this judgment has arisen. To repeat the same, it may be stated that a senior officer who was not Deputy Manager or Manager Gr.II on 1.1.1973 is fixed at a lower stage in the revised pay scales while some of his juniors (who were working as Deputy Manager or Manager Gr.II) were fixed at a higher stage in the revised pay scales. This would be discriminatory as all these officers belong to one and the same cadre and the post are inter changeable. This discrimination cannot be allowed to stand and it is for this purpose that the principle of stepping up has to be invoked. I propose to pass an appropriate order of stepping up the pay of the concerned officers as detailed in the following order.

(i) Transfer Application No.422/86 as also Transfer Application No.28/87 are partly allowed. The Respondents are restrained from taking action in accordance with the communication dt.20th July, 1983 (Ex.'D' to the Transfer Application No.28/87). To be more specific, I direct that the Respondents are not permitted to omit the special pay of Rs.50/- while fixing the pay of the officers at a particular stage in the revised pay scales.

17) (ii) The Respondents are directed to step up w.e.f. 1.1.1973 the special pay of the applicant No.1 in Transfer

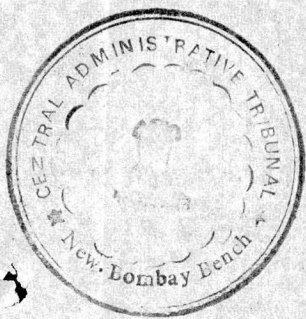
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Application No.422/86 and other similarly placed like him to the same stage in the scale of the higher post as fixed for their juniors who were promoted to the higher post after 1st January, 1973 and when they had the advantage of special pay in their fixation of pay in the lower post of Manager Gr.II. The Respondents are further directed to step up u.e.f. 1.1.1973 the pay of Applicants Nos 2,3 and 4 (in T.A.No.422/86) and other similarly placed like them at the same stage as fixed for their juniors who in the pre-existing scale of Rs.250-445 were drawing equal pay or less pay than the applicants (and other similarly placed like them) and who had the advantage of special pay in their fixation of pay in the revised scales of Rs.550-25-750-EB-30-900. The Respondents are further directed to pay all arrears to the applicants in Transfer Application No.422/86 and to all other concerned employees who are similarly placed like these applicants, after stepping up the pay in terms of this order. If somebody has opted the Revised Scales from a date subsequent to 1.1.73 and the anomaly, as discussed in the judgment arise on that basis that anomaly should also be removed by following this direction from the relevant date. All these directions are to be complied expeditiously, say within a period of 4 months from to day. Parties to bear their own costs of both the applications.



sd/-  
(B.C.GADGIL)  
VICE-CHAIRMAN

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SECTION OFFICER  
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