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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 35/89

~~XXXXXXXXXXXXXXXXXXXX.~~

Date of decision 22.6.93

Dr. (Mrs.) Aruna Madan. Petitioner

Shri G.S. Walia Advocate for the Petitioner

Versus

Union of India and others Respondent

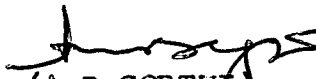
Shri N.K. Srinivasan Advocate for the Respondent(s)

Coram :

The Hon'ble Shri A.B.GORTHI, Member (A)

The Hon'ble Shri V.D.DESHMUKH, Member (J)

1. ~~Whether the Reporters of local papers may be allowed to see the Judgement ?~~
1. To be referred to the Reporter or not ? ✓
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


(A.B.GORTHI)
MEMBER (A)

6

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 35/89

Dr. (Mrs.) Aruna Madan.

... Applicant.

V/s.

Union of India through

General Manager,
Western Railway
Churchgate,
Bombay.

Railway Board, Min. of
Railways, through
Secretary, Railway Board,
Government of India,
New Delhi.

General Manager,
Western Railway
Churchgate,
Bombay.

... Respondents.

CORAM: Hon'ble Shri A.B.Gorthi, Member(A)

Hon'ble Shri V D.Deshmukh, Member (J)

Appearance:

Shri G.S.Walia, counsel
for the applicant.

Shri N.K. Srinivasan, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 22.6.93

¶ Per Shri A.B.Gorthi, Member (A) ¶

Heard Shri G.S.Walia for the applicant and
Shri N.K. Srinivasan for the respondents.

2. The applicant who is in service in the Western Railway was allowed to proceed on study leave from 1.11.1985 to 31.10.1987. When she was holding the post of Assistant Divisional Medical Officer(Pathology) at Ajmer, she was deputed to pursue higher study leading to post-graduation in M.D. course (Pathology) vide Railway Board's letter No. E(o)/85-IE-67-68 dt. 9.1.1986. When the applicant was on study leave, the recommendation of the IVth Pay Commission became effective with effect from 1.1.1986. Her prayer in this application is that she should be allowed the benefit of higher pay as per the recommendation of the IVth Pay Commission with effect from 1.1.1986.

8

3. As may be seen vide FA & CAO letter dated 30.11.87 the revised pay scale came into effect from 1.1.1986 and consequently the arrears would be admissible to the applicant despite the fact that she was on study leave at the relevant period. Thereafter the respondents have decided that the applicant would not be entitled to the benefit of the higher pay with effect from 1.1.86 because on that day she was on study leave. The question of proper fixation of pay of the applicant remained under consideration for some time and finally vide the Railway Board's letter dated 8.1.1990 it was decided that pay of the applicant could be increased notionally with effect from 1.1.86 or from the date of the subsequent increment, as the case may be, according to her option. According to the respondents, actual benefit of such revised pay will accrue from the date of her joining duty after expiry of the study leave.

4. We have heard the learned counsel for the parties at length. Shri N.K. Srinivasan, learned counsel for the respondents has taken an objection to the maintainability of the application on the ground that it is barred by limitation. According to him, claim of the applicant is for higher pay with effect from 1.1.1986 but the application has only been filed in 1989. We are not convinced with the merit in this objection, because as already stated the respondents themselves decided the position with regard to the fixation of the pay of the applicant as late as on 1.1.1990 to the effect that she should be entitled to notional fixation of pay with effect from 1.1.1986. In view of this, the application cannot be said to be not maintainable on account of limitation.

5. As regards the merits of the case, Shri Walia learned counsel for the applicant has contended that an employee who is on study leave is deemed to be

on duty for all purposes and that the respondents are not justified in denying the applicant the benefit of the IVth Pay Commission recommendation merely on the ground that the applicant at the relevant time was on study leave and was not actually performing any duty as such. The Railways, in accordance with rule 556 of the Indian Railway Establishment Code Vol. I, prescribed " Study Leave Rules." Rule 7 thereof is extracted below:

" ... Rule 7, Leave Salary during study leave -
(2)(a) - During study leave availed in India, a Railway servant shall draw leave salary equal to the pay (without allowance other than dearness allowances) that the Railway servant drew while on duty immediately before proceeding on such leave.."

6. The rule position is thus clear, i.e. pay to which the Railway servant will be entitled during the period of study leave shall be equal to the pay of the Railway servant while on duty immediately before proceeding on such leave. In the instant case, the applicant's pay prior to proceeding on study leave was in accordance with the 3rd Pay Commission. It was only after the applicant proceeded on leave that the pay scale was refixed with effect from 1.1.1986. The respondent's case is that in view of Rule 7(2)(a) of the Study Leave Rules, the applicant cannot claim the benefit of the higher pay with effect from 1.1.1986. It is however, to be noted that after due consideration of merits of the case, the respondents themselves decided vide Railway Board's letter dated 8.1.1990 that the applicant's pay can be increased notionally with effect from 1.1.1986. In other words, the benefit of the pay commission recommendation was to be given to the

applicant with effect from 1.1.1986, only on notional basis. From the perusal of the reply of the respondents it is not clear as to what prompted the respondents to come to this decision. When the applicant became entitled to the higher pay in accordance with the IV th Pay Commission recommendation with effect from 1.1.86, it will be difficult to appreciate as to how the actual benefit of the same could be denied to the applicant merely on the ground that as on 1.1.1986 the applicant was on leave.

7. Rule 556 of the Indian Railway Establishment Code Vol.I is extracted below:

"... Study leave may be granted in accordance with the rules prescribed in Appendix V to Railway servants to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave is not debited against the leave account.

Counting of study leave for promotion, pension, seniority, leave and increments.

(1) Study leave shall count as service for promotion, pension and seniority. It shall also count as service for increments as provided in Rules... "

8. Learned counsel for the applicant has drawn our attention to a judgement of the Tribunal in the case of Rohitashwa Kumar V/s. State of Rajasthan (1989 10 ATC 808). That was the case where an employee was under suspension on the day prior to 1.1.1986 and continued to be on suspension even after that day. As regards subsistence allowance to be given to the employees under suspension, ~~that~~^{it} was to be calculated on the basis of the pay that was actually drawn by the employee prior to the date when he was suspended. A similar question as is now before us had come up for consideration before the Tribunal. The Tribunal came to the conclusion that 'pay' for the purposes of calculation of subsistence allowance should be treated as increased pay consequent to the implementation of the IV th Pay Commission

recommendation. Relevant portion of the Judgement may be extracted below:

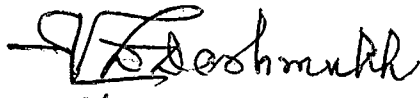
- "15(i) Since an order of suspension does not have the effect of snapping relationship subsisting between the employer and the employee and does not put an end to the employment, the applicant can be safely said to be a member of the Service during the period of suspension. By virtue of the aforesaid amendment to the Pay Rules, a member of the Service in the selection grade is entitled to pay in the scale of Rs. 4500 - 5700. The denial of the benefit of revised pay scale to the applicant would mean that the applicant is not being treated as a member of the Service in view of his suspension. This would not appear to be permissible under the Pay Rules.
- (ii) Disallowance of the benefit of revised pay for computing the subsistence allowance on the basis of a fortuitous circumstance of a member having been suspended prior to 1.1.1986 or even a date prior to the said date would appear to be a case of invidious and patent discrimination as compared to a case where a member of the Service is placed under suspension or is under deemed suspension on or subsequent to 1.1.1986. Suspended members of the Service are entitled to the same rights and privileges and are also subject to the same disabilities. Suspended members of the Service can thus be appropriately said to be similarly situated. Payment of differential subsistence allowance by splitting the aforesaid category of employees with reference to a particular date would not appear to be a case of reasonable classification. The basis for revising the pay by the Fourth Pay Commission is the rise in the cost of living and erosion in the purchasing power of the rupee- The higher cost of living equally affects adversely the member of the Service

Suspended prior to 1.1.1986 as their colleagues who may have been suspended on or after 1.1.1986. This would appear to be a case of treating equals as unequals and would thus seem to attract the frown of Articles 14 and 16 (1) of the constitution.... "

9. The aforesaid case pertains to an employee who was under suspension and not on study leave. From that point of view the case may be distinguished, but at the same time it is beyond one's comprehension as to how the benefit of higher pay under IVth Pay Commission's recommendation could be given to a Government employee under suspension and facing disciplinary case, but the same is denied to another government employee who is on study leave duly sanctioned by the competent authority. As already stated, the rule position indicates that study leave should be treated as duty for various purposes. The respondents seem to have accepted this position and accordingly had given the benefit of the higher pay to the applicant with effect from 1.1.1986 but on notional basis. There is nothing in the respondent's reply to explain the stand taken by them to the effect that such benefit should be given only on notional basis and not actually. With the implementation of the IVth Pay Commission recommendation, the existing pay scale would be substituted by the new pay scale. The pay scale applicable as on 1.1.1986 would be the new scale and not the old one.

10. In the result, we are of the view that the application deserves to be allowed. The respondents are directed to give benefit of the actual pay as per IVth Pay Commission's recommendation to the applicant with

effect from 1.1.1986 and to pay the arrears accruing on account of the same within a period of three months from the date of communication of the order. There shall be no order as to costs.


(V.D.DESHMUKH)
MEMBER (J)


(A.B.GORTHI)
MEMBER (A)

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