

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 749/90
TR.A.NO. _____

199 _____

DATE OF DECISION 23.7.1993

Dr.D.Sikdar

Applicant(s)

Versus

Union of India & Ans.

Respondent(s)

1. Whether it be referred to the Reporter or not ? No
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ? No


(M.Y.PRIOLKAR)
MEMBER (A).

-
VICE CHAIRMAN

mbm:

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

Original Application No. 749/90

Dr.D.Sikdar

.. Applicant

-versus-

Union of India & another

.. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Shri S.H.Iyer
Advocate for the
Applicant.
2. Mrs.Thompson
Advocate for the
Respondents.

ORAL JUDGMENT:

Date: 23-7-1993

(Per M.Y .Priolkar, Member(A))

Heard Shri S.H.Iyer for the applicant
and Mrs.Thompson for the respondents.

2. The applicant who is a Senior Medical Officer working in the Ordnance Factory Organisation has the grievance that his option to come over from 1-3-1986 to the revised pay scales recommended by the IVth Pay Commission and implemented by Government w.e.f. 1-1-1986 is not being accepted by the Respondents. The IVth Pay Commission recommendations were implemented w.e.f. 1-1-1986 instead of from 1-4-1986 as recommended by the Commission. Under Rule 5 of the C.C.S (Revised Pay) Rules, 1986 however, an option was given to government employees to continue to draw their pay in the existing pre-revised scales and to come over to the new pay scales only from the date of the next or any subsequent increment. Explanation 2 of this Rule, however, states that the aforesaid option shall not be admissible to

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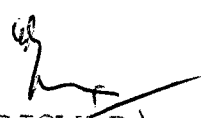
a person, inter-alia, if he is promoted on or after 1-1-1986. According to the Respondents, the applicant's case is governed by this explanation 2 of Rule 5 since he was promoted to the post of Senior Medical Officer on 20-2-1986 and therefore, the benefit of the option is not admissible to the applicant.

3. The learned counsel for the applicant argued that the applicant is being adversely affected by the Government's decision to implement the pay commission's recommendation w.e.f. 1-1-86 instead of what the Pay Commission had recommended viz. 1-4-1986 and therefore, he is entitled to be permitted the option which he had asked for. Nowhere, however, the applicant has given details of how he has been adversely affected by retrospective effect given to the C.C.S.(Revised Pay) Rules, 1986 w.e.f. 1-1-1986. The learned counsel relied on a decision of the Cuttack Bench of this Tribunal in the case of Girdharidash vs. Union of India and Another (1992(2)ATC 356) in which it has been held that when Rules are made with retrospective effect there should be protection of interests of persons to whom retrospective application of rules affects adversely. This decision was, however, in respect of Indian Administrative Service (Pay) Rules, 1954. Besides, it is clear from para 3 of that judgment that the total emoluments of the aggrieved employees there in the pre-revised scale as on 1-1-1986 were actually reduced by bringing them over to the revised pay scales from that date. It is **not** however the case of the present applicant that his actual total emoluments got reduced as on 1-1-1986. His only grievance is that if the

recommendations had been accepted w.e.f. 1-4-1986 instead of 1-1-986, he would have been in receipt of considerable additional emoluments. There is no material before me to suggest that the date viz. 1-1-1986 fixed by the Government for implementation of Pay Commission recommendation was purely arbitrary or without any rational basis. Evidently, any date which is taken as a cut off date for the purpose of implementation of new Pay scales, is likely to benefit some employees more than the others, and this by itself can be no ground to demand that the interests of all such employees should be protected by giving them the benefit beyond what has been allowed under the relevant rules viz. beyond the option to draw the pay in the revised scale w.e.f. the date of increment as given in Rule 5 however, subject to the explanation 2 whereby such option is not available if a person gets promoted after 1-1-1986.

4. The learned counsel for the applicant also argued that this ~~xx~~ Rule 5 is inequitable, discriminatory and is also contrary to the basic Fundamental Rules governing the promotions. There is, however, no such challenge in the original application to the legality or constitutionality of this Rule. I do not, therefore, find any merit in the application. It is dismissed with no order as to costs.

B.


(M.Y. PRIOLKAR)
Member(A)