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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

HYDERABAD BENCH : AT HYDERABAD

O.A.No.75/93.

Dt. of Order: 3-9-93.

B.S.Rahi

Vs.

....Applicant

1. Director General,
Employee's State Insurance Corporation,
Kotla Road, New Delhi-110002.
2. Dy.Chief Accounts Officer,
Employee's State Insurance Corporation,
ESIC Bhavan, Lower Bombay-400 013.

....Respondents

Counsel for the Applicant : Shri B.S.Rahi
(party-in-person)

Counsel for the Respondents : Shri N.R.Devraj, Sr.CGSC

CORAM:

THE HON'BLE SHRI A.B.GORTHI : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

(Order of the Divn. Bench passed by
Hon'ble Shri A.B.Gorthi, Member (A)).

The applicant joined the Employees State
Insurance Corporation (ESIC for short) as Insurance
Inspector on 8-4-59. On 31-12-1985 he was holding

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the appointment of Dy. Regional Director in the scale of pay of Rs.700-1300, but drawing total emoluments of Rs.3,275/- pm. With the introduction of revised pay scales ~~on~~ the basis of recommendations of IV Pay Commission the pay of the applicant was fixed at Rs.3,300/- in the scale of Rs.2200-400 with effect from 1-1-86. He was given the next increment of Rs.100/- on 1-3-86 which was the normal date of increment in his case. Thereafter he was given yet another increment of Rs.100/- on 1-3-87. Thereafter the Respondents unilaterally revised the pay of the applicant by declaring that he was entitled to the increment only from 1-1-87. Consequently a sum of Rs.1,624/- was deducted from the applicant's G.P.F. account. Aggrieved by the same he has filed this application praying for a direction to the Respondents to re-fix his pay at Rs.3500/- with effect from 1-3-86 as was originally done and to re-fix his subsequent pay and pension as he was retired from service on 31-1-89.

2. The Respondents in their counter affidavit have clarified that as the applicant was drawing total emoluments of Rs.3275/- prior to 1-1-86, His pay in the revised pay scale was fixed at Rs.3,300/- following

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"next above" rule. In addition to fixing the applicant's pay thus in the revised pay scale, the Respondents allowed an increment of Rs.100/- interms of 3rd proviso to Rule 8 of CCS (revised pay) Rules 1986, because the applicant at the relevant time was stagnating at the maximum of the old pay scale. The Respondents contend that the applicant was erroneously given the next increment of Rs.100/- with effect from 1-3-86 whereas he should have been given the said increment only with effect from 1-1-87. The Respondents thus justified the deduction of the excess amount paid to the applicant.

B. The applicant appeared before us in person, argued his case and in support of his arguments he ~~relied on~~ ^{the} judgment of the Hon'ble Supreme Court in the case of Union of India and another Vs. Shyampada Sidihamthi & others (1991(16)ATC 942), ^{the relevant portion of} which is reproduced below :-

The respondents are not covered under Rule 15(a) which is a common case of payees. Their service therefore, shall count for increments in the time-scale applicable to the post on which they hold lien. That means in the post carrying lower pay scale. The combined effect of the F.R.23, 22(a)(ii) and 26(b)(i) seems to be that the respondents need not wait for twelve months from the date of fixation of their pay in the new scale

for earning increment in the revised scale. They are entitled to get the first increment in the new scales on the due date in the old scale. The office memorandum dt.9-1-1984, appears to be contrary to the statutory rules and therefore, cannot be given effect to. The view taken by the Tribunal is justified and we see no merit in this petition. It is accordingly rejected, with no order as to costs."

In the above case the Respondents were Inspectors of Central Excise in the pay scale of Rs.425-900 which was revised to Rs.500-900 with effect from 1-1-80. Consequently their pay was fixed in the revised scale of Rs.500/- being the minimum in the revised scale. The next increment was allowed only with effect from 1-1-81 on the basis of Government of India memo dt.9-1-84. The Supreme Court found ~~xxxxxxxxxxxxxx~~ that the said Office Memo was not in consonance with the combined effect of Fundamental Rules 23, 22(a)(ii) and 26(b)(i) and that directed/the said O.M. was not to be given effect to.

In the instant case however it is apparent from the Respondents' counter affidavit that the refixation of the pay of the applicant was done in accordance with Rule-7 of the CCS ~~xxxxxxxxxx as the new scale~~ (revised pay) Rules, 1986 (referred to as Rules hereafter) and the date of next increment in the revised scale was fixed

in accordance with rule-8 of the said Rules.

4. The main question for our consideration is whether the date of next increment in respect of the applicant was correctly fixed. The applicant contends that on a reading of Rules 7 and 8 of the Rules it would be seen that he would be entitled to the increments with effect from the normal date on which they became due i.e. on 1-3-86, 1-3-87 and so on. The Respondents disputes this contention. Relevant portions of Rule 8 are re-produced here 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;

8.(i)....

8.(ii)....

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

A very interesting argument has been raised by the applicant in support of his contentions. He states that

in accordance with the 3rd proviso he was correctly given the next increment of Rs.100/- with effect from 1-1-86 after his pay had been re-fixed in the revised scale of Rs.3300/-. Thus the Respondents correctly fixed his pay including the increment at Rs.3400/- with effect from 1-1-86. Now in view of rule 8 which is to the effect that the next increment of the Government servant shall be granted on the date he would have drawn his increment ~~as~~ had he continued in the existing scale, the claims that the next increment should have been given to him w.e.f. 1-3-86. This contention of the applicant ~~cannot~~ cannot be accepted. The main rule has to be read first subject to what is stated in the proviso. The rule is to the effect that the next increment would be granted on the same date on which it would have became due had government employee ~~was~~ continued in the existing scale. This rule is however subject to what is stated in the 3rd proviso which states that in case of persons drawing the maximum of the existing scale for ~~year~~ more than a year as on 1-1-86 the next increment in the revised scale shall be allowed from 1-1-86. In other words the normal rule ~~was~~ with regard to the fixed date of increment ~~was~~ gets pre-poned to 1-1-86 in respect of such of those employees who had been stagnating at the maximum

Copy to:-

1. Director General, Employees State Insurance Corporation, Kotta road, New Delhi-002.
2. Dy. Chief Accounts Officer, Employee's State Insurance Corporation, ESIC Bhavan, Lower Bombay-013.
3. One copy to Sri. B.S.Rahi, (Party-in-person), 33 Rock Roof-III, Road No.12, Banjara Hills, Hyderabad-034.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Deputy Registrar(Judl.), CAT, Hyd.
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of the old pay scale as on 1-1-86. It was on the strength of rule 8 read with 3rd proviso that the pay of the applicant was initially determined at Rs.3400/- which includes ~~the~~ the increment of Rs.100/- that became due on 1-1-86. In accordance with the ~~said proviso~~ ^{3rd} but for the proviso the applicant's actual pay should have been only Rs.3300/- and his next date of increment would have been 1-3-86.

5. The above aspect was clarified in O.M. dt.6-5-87 issued by the Govt. of India, Ministry of Finance. The applicant contends that the said clarification is somewhat on the same lines as the O.M. dt.9-1-84 which was struck down by the Supreme Court in Shyampada Sindhanchand's case (cited supra). Even if it ~~would~~ were so, it would not make any material difference to the merits of the case because as already stated, we find that the pay fixation as well as the fixation of the next date of increment in respect of the applicant were done by the Respondents in accordance with rules 7 and 8 of the Rules.

6. In view of what is aforesaid we are unable to accept the contention of the applicant. The application is therefore dismissed. There shall be no order as to costs.

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..... (T.C.HANORASEKHAR REDDY)
Member (E)

thus
(A. B. GORTATI)
Member (A)

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Dated: 3rd September, 1993.
Dictated in Open Court

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O.A. 75/93 Date
25/10/93

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APPROVED BY X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER (A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 3/9/1993

ORDER/JUDGMENT: *For Reply*

M.A/R.A/C.A.N.

O.A.No.

in
75/93

T.A.No. —————

(W.P. —————)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

pvm

