

CENTRAL ADMINISTRATIVE TRIBUNAL, GUJAHATI BENCH

Date of Order : This the 14th Day of December, 1994.

Justice Shri M.G.Chaudhari, Vice-Chairman.

Shri G.L.Sanglyine, Member (Administrative)

O.A.No.90/94

Shri S.K.Ganguli . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents.

O.A.No.149/94

Shri S.N. Gupta . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents.

O.A.No.150/94

Shri Chidananda Bardhan . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents.

O.A.No.151/94

Shri D.K.Bhattacharjee . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents.

O.A.No.152/94

Shri Naresh Chandra Deb . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents.

O.A.No.153/94

Shri Sukhendu Bikash Sen . . . . . Applicant

- Vs -

Union of India & Ors. . . . . Respondents

For the Applicants : Shri S.Roy, Advocate in all the applications.

For the Respondents : Mr G.Sarma, Addl.C.G.S.C in all the applications.

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ORDER

CHAUDHARI J.(V.C)

All the above applications involve same questions and the facts are also similar, hence these are being disposed of by this common order.

2. All the six applicants are retired IAS officers. Their grievance is that they have been denied special pay from the date of their respective appointments to the cadre post in the senior time scale in the IAS till the date of their retirement and that that action of the respondents is illegal and has caused great hardship to them.

3. Applicant in O.A.90/94 Shri S.N.Ganguli claims special pay at the rate of Rs.400/- per month from 19.8.88 to 31.10.91 on which date he retired. The applicant in O.A.140/94 claims special pay at the rate of Rs.500/-per month for two periods namely, 16.5.87 to 19.8.88 and from 7.1.94 to 28.2.94 and at the rate of Rs.400/-per month for the period from 20.8.88 to 6.1.94 (The learned counsel for the applicant states that this is the correct claim and there is some error in that respect in prayer clause-b). The applicant retired on 28.2.94. The applicant in O.A. 150/94 Shri C.N.Bardhan claims special pay at the rate of Rs.500/- per month from 18.3.90 to 31.7.90 and 4.11.91 to 12.5.93 and at the rate of Rs.400/-per month from 1.8.92 to 3.11.91 and 13.5.93 to 5.8.93. He retired on 31.3.94. The applicant in O.A.151/94 Shri D.K.Bhattacharjee claims special pay at the rate of Rs.500/-per month from 13.5.88 to 1.1.89 and at the rate of Rs.400/-per month from 2.1.89 to

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31.12.92. He retired from service on 31.7.93. The applicant in O.A.152/94 Shri Naresh Chandra Deb claims special pay at the rate of Rs.400/-per month from 22.8.88 to 31.5.90 and at the rate of Rs.500/-per month from 1.6.90 to 29.2.92. He retired from service on 29.2.92. The applicant in O.A.153/94, Shri Sukhendu Bikash Sen claims special pay at the rate of Rs.500/-per month from 5.7.84 to 27.12.88 and from 18.4.90 to 31.3.92 and at the rate of Rs.400/-per month from 28.12.88 to 17.4.90. Shri S.N.Ganguli was appointed to the IAS cadre post on 19.8.88. Shri S.N.Gupta was appointed to the IAS cadre post on 15.5.87, Shri C.N.Bardhan on 18.3.90, Shri D.K. Bhattacharjee on 13.5.88, Shri N.C.Deb on 22.8.88 and Shri S.B.Sen was appointed to the IAS cadre post on 5.7.88. The applicants on appointment in the IAS cadre post were fixed in the senior time scale of Rs.3200-15th and 26th-100-3700-125-4700/- and this pay was fixed at the maximum of that scale namely Rs.4700/-.

4. Clause 2 under the heading "B - Posts carrying pay in the senior time scale of the Indian Administrative Service under the State Governments including posts carrying special pay in addition to pay in the time scale" in Schedule III of the Indian Administrative Service(Pay) Rules 1954, provides :

"(2) The State Government concerned shall be competent to grant a special pay for any of the posts specified in this part of the Schedule either individually or with reference to a group of class of such posts :

(3) The amount of any special pay which may be sanctioned by the State Governments under a clause (2) shall be Rs.200, Rs.300, Rs.400, Rs.450 or Rs.500 as may, from time to time, be determined by the State Government concerned : shall

Provided that pay plus special pay/ not exceed the maximum of the pay scale to which special pay is attached :

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Provided further that the pay in Selection Grade together with special pay shall not exceed Rs.6150 per month."

We are concerned with the first proviso of the clause 3 which provides that the pay shall not exceed maximum of the pay together with the special pay. As stated earlier the pay is Rs.4700/- maximum and the applicants want the special pay as claimed by them to be added thereto within the limit of Rs.6150/- per month under the second proviso.

5. The filing of the application has presumably been occasioned by reason of the Indian Administrative Service(Pay) 5th Amendment Rules 1993 which came into force from 6.8.93 of the (Annexure 7A in O.A.90/94). Amendment Rules have been made by the Central Government after consultation with the State Governments concerned in exercise of the powers conferred by sub-section(1) of Section 3 of the All India Services Act 1951 (61 to 1951). These rules omit the first proviso to clause 3 under the heading B-Fuses carrying pay in one session time etc. in Schedule III of the Indian Administrative Service (Pay) Rules, 1954. The word 'further' is omitted from the second proviso. Prior thereto the position was that by virtue of the first proviso of clause 3 special pay was not paid. The respondent No.1 have produced a circular issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) bearing No.11030/75/87-AIS(II) dated 21.1.88 (Annexure R-1 in O.A. 90/94). However, we find that to be not relevant for the question on hand as it relates to personal pay and not to special pay. In the respective written statements filed by Union of India, it is contended that the applicants (in respective cases) were not eligible to draw any special pay

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in view of the limitation placed by first proviso to clause 3 mentioned above. It is also contended by respondent No.1 that the rationale behind that restriction effective from 1.1.86 subsequent to the recommendations of Fourth Central Pay Commission was to ensure that officers in these grades (i.e. senior time scale and JAG of the IAS) who were drawing special pay did not draw more pay than the officers who were in the respective higher grades but were not in receipt of any special pay. The dispensation in the Selection Grade of the IAS to allow pay and special pay upto Rs.6150/- in the revised pay scales as per the second proviso to clause 3 has been in existence so as to maintain an inter service parity with the post of DIG in IPS which is a super time scale of this service whose pay scale is Rs.5100-6150/-. This however does not help much in proceeding with the question under consideration. Since until the Fifth amendment of the Rules aforesaid the provision was to limit the pay to the maximum of the scale and special pay was not to be paid the applicants had no occasion to demand the same. The fifth amendment Rules came into force after applicants except two applicants in O.A.149/94 (S.N.Cupta) and in O.A.150/94 (C.N. Bardhan) had retired. The applicants contend that the benefit of the fifth amendment Rules 1993 should also be extended to them and they should be paid the arrears for the periods for which they have claimed the special pay in the respective applications by applying those rules. It is contended by Mr Roy that although the rules have not been made expressly applicable retrospectively the benefit thereof cannot be denied to those IAS officers who had

✓ retired prior to the date of the amendment i.e. 6.8.93 which may be described as cut off date. It is submitted that there is no rationality for differentiating between the officers who retired prior to the cut off date and those who retired thereafter, that the officers who retired earlier and the officers who are in service after the cut off date form a homogeneous group holding the same post and cannot be divided into <sup>two</sup> classes artificially, <sup>and</sup> that making the amended rules prospective in operation has resulted in discrimination being caused to those officers who have retired prior to the cut off date like the applicants except two. In this connection reliance is placed on a decision of the Central Administrative Tribunal, Chandigarh Bench in the case of Pritam Singh -vs- Union of India & Ors. (and a companion matter) reported in AISLJ 1990(2) (CAT) 58. In that case constitutional vires of the provision relating to ceiling on the drawal of special pay in the case of IAS officers in the Time Scale of Junior Administrative Grade as contained in Rule 9 clause 3 of the amended Pay Rules was challenged. It was held that apparently there is no rational basis for differentiating between officers who are in the senior time scale/junior administrative grade and officers who are in the selection grade of IAS in the matter of special pay and thus the provision (Rule 9 clause 3) violates doctrine of equality enshrined in Articles 14 and 16 of the Constitution. It was observed thus:-

"Hence in order to ensure equality of treatment between two sets of officers, the first proviso to clause (3) of Schedule-III of Pay Rules under the heading "B-Posts carrying <sup>pay in the senior</sup> pay in the senior time scale of IAS under the senior time scale of IAS under the State Governments etc. including posts carrying special pay in addition to pay in the time scale as amended by Rule 9 of the Pay (amended)"

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Rule 9 of the Pay (amended) Rules, cannot be sustained and is liable to be quashed being violative of Article 14 and 16 of the Constitution." (para 24)

Consistently with these findings following order was passed referring to the Pay Rules as existed prior to the Fifth Amendment introduced on 6.8.93;

"The amendment to Schedule-III to Pay Rules under the heading "B-Posts carrying pay in the senior time scale of the IAS under the State Governments including posts carrying special pay in addition to pay the time scale as per rule 9 of the amended Pay Rules" is quashed to the extent provisional) that it lays down that the pay plus special pay shall not exceed the maximum of the pay scale to which the special pay is attached, as being discriminatory and ultra vires of Articles 14 and 16 of the Constitution. In other words the special pay attached to a post shall be paid to the IAS officer in addition to the pay in the senior time scale/junior administrative grade. However, the second proviso to the amended clause (3) shall remain unaffected." (para 29)

6. This decision was rendered on 20.3.89. Apparently amendment was introduced thereafter by the Fifth Amendment Rules 1993 from 6.8.93. The amendments are in tune with this decision. As regards this decision the respondent No.1 submit in their written statement that the respondents have filed an SLP against the judgment in the Supreme Court which has been admitted in September 1989. However no stay of the implementation of the Tribunal's judgment was granted. With the result the ceiling was not applied in the case of the applicants (in that case) and their pay and special pay together was allowed to exceed the maximum of the respective pay scales in which they were placed on provisional basis, subject to the

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final outcome of the SLP. The respondents have further stated that in a related reference made to the Union Ministry of Law, that Ministry opined that the CAT's judgment may be implemented in respect of the applicants only and if considered necessary, it may be extended to all by taking administrative decision in this behalf. The language of the paragraph is not clear. In the context the reference appears to be made to the applicants in the two cases before the Chandigarh Bench decided on 20.3.89 (Pritam Singh's case) (supra). Even though according to the written statement the Ministry of Law had opined that if considered necessary the benefit of the said judgment may be extended to all by taking administrative decision in that behalf, yet no such decision has been taken by the Government so as to extend the same benefit to the present applicants. It is also pertinent to note that in para 1 of the written statement the respondent No.1 have stated as follows :

"In the meanwhile, Government of India suo motu initiated action to consider changes in the Pay Rules so as to mitigate the genuine grievances of the promoted officers to the maximum extent possible. As a result, it was decided that since the said ceiling had been working mainly against the interests of the promoted officers, this ceiling need not be continued in the Pay Rules. Accordingly, notifications were issued on 6.8.93 to do away with the said ceiling from the pay Rules for the three All India Services. As per the general principles of financial propriety, however, these amendments were made prospective in nature - making them effective from the date of their publication in the Official Gazette viz. 6.8.93."

However except the contention as regards prospective operation of the Fifth Amendment Rules as made above the other

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contentions raised by the respondent No.1 which we have set out above do not necessarily run counter to the contentions of the applicants. We fully agree with the view taken by the Chandigarh Bench in Pritam Singh's case and the reasons adopted in support thereof. It is therefore not necessary to enter into any fresh discussion of all those points which were considered in that judgment. With respect, therefore we follow the said judgment and in our opinion it equally applies to the present applicants.

7. However, the question as to whether benefit can be given retrospectively prior to 5.8.93 needs to be dealt with. In our view the position of the officers as was prior to 5.8.93 and of those who continue to hold the IAS posts after that date would not be different. The Fifth Amendment Rules are in the nature of liberalising the existing rules which placed restraint on eligibility for special pay. In this connection a reference to the decision of the Supreme Court in the case of All India Reserve Bank Retired Officers Association -vs- Union of India, AIR 1992 S.C. 767 would be apt to be made. In that decision the decision of the Supreme Court in D.S.Nakara and Ors. -vs- Union of India, AIR 1983 S.C 130 has been noticed to and it is observed (in para 10) as follows :

"Nakara's judgment (AIR 1983 SC 130) has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision of liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not

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entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing on artificial cut off line which cannot be justified on rational ground and is wholly unconnected with the object intended to be achieved."

As seen earlier the Fifth Amendment Rules are in the nature of revising and liberalising the old provision which placed a restriction on the maximum of pay plus special pay. The written statement of respondent No.1 does not set out any rational basis for conferring the benefit of relaxation (subject to 2nd proviso to clause 2 in IIIrd Schedule of Pay Rules, quoted above) prospectively from 6.8.93. Indeed the respondents in their written statement stated that the rules have been liberalised in order to mitigate the genuine grievances of the promoted officers to the maximum extent possible and that event the Ministry of Law had opined that the benefit may be extended to all by taking administrative decision in that behalf although no opinion seems to have been expressed that it may be done so retrospectively. However the use of expression "all" is capable of taking in its sweep even those officers who have retired prior to 6.8.93. The normal rule that a fiscal legislation would ordinarily operate prospectively unless specifically made applicable retrospectively would not be applicable in respect of the rules in question which are more in the nature of a policy decision in the light of a decision of the Tribunal. Thus there appears no reason to take a

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different view than taken by the Chandigarh Bench and on parity of reasoning the ratio can be applied to officers who retired prior to 6.8.93 as they can be described as similarly situated persons. However the observations of the Supreme Court in Reserve Bank Retired Officers Association's case (supra) in para 10 once again have to be noticed where it is said thus :

"But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability to the scheme. That is why in Nakara's case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc."

8. On the touchstone of these guidelines in our opinion the Fifth Amendment Rules have to be extended to pre 6.8.93 retirees as these are in the nature of continuance of the

existing rules under which special pay was payable in a liberalised form and it is not as if for the first time special pay has been introduced by the Amendment rules. In that view of the matter the retired IAS officers have to be treated to have a right to receive the special pay within the limit set in second proviso. Any classification of the officers into two groups by reference to the date of publication of Amendment Rules 1993 particularly as the object to be achieved by the amendment is to mitigate the genuine grievances of promoted officers would be discriminatory. The grievance can not be only of officers who happen to be in service on 6.8.93 or thereafter. There is no discernible rationale in purporting to do so.

9. In the written statement the respondent No.1 have stated that as per the general principles of financial propriety, amendments were made prospective in nature making them effective from the date of their publication in the official Gazettees viz. 6.8.93. The respondents also seek to justify the prospective operation of the rules by contending that the rationale behind the restriction was to ensure that officers in these grades who are drawing special pay do not draw more pay than the officers who are in the respective higher grades but are not in receipt of special pay. This according to respondent No.1 is aimed at maintaining parity with the post of DIG in the IPS which is a super time scale of this service and whose pay is Rs.5100-6150/- . Although the said respondents concede that the applicants continued to hold <sup>senior</sup> super time scale which carried the special pay but contend that they were not entitled to draw the special pay in view of the fact

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that their pay in the senior time scale was fixed at the maximum of the grade, viz. Rs. 4700/- . The said respondents also express the apprehension that if the amended rules are applied to the applicants then it would be open end and other promoted officers may also step in for grant of similar benefits on one pretext or the other. We find no force in any of these contentions. In advancing these contentions the respondents are trying to compare the position of applicants with officers in other services overlooking that in saying so they are admitting that as between the same set of officers, namely, IAS, they are forming two groups and are treating them unequally. Moreover if the relaxation was thought necessary to be made even after the revision of the pay scales as from 1.1.86 then there would be a stronger reason to do so in respect of those who retired prior to 6.8.93 whose pre revised pay scale was not comparable with the revised scale. The Rules do not contain any indication that these were intended to be made prospective in operation to avoid similar claim from officers who belong to other services. Under the circumstances no question of financial propriety can arise as contended by the respondents. How the grievance of the officers from the other services, if any, should be dealt with is a matter for the Central Government to tackle independently and that cannot justify giving discriminatory treatment to the same homogeneous class of officers by bringing about an artificial division between them resulting in violation of principle of equality.

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18 Hence we reject the above contentions.

10. We therefore hold that the ~~restriction~~ <sup>existing</sup> contained in the first proviso to clause 3 under the heading "B-Posts etc." in schedule III of the Indian Administrative Service (Pay Rules) 1954 was not applicable to the applicants and they are entitled to claim the special pay for the periods mentioned by them subject to the qualifications, firstly, that at the material time they should have been holding the post in the grade which attracted payment of special pay under the IAS(Pay) Rules, 1954 and, secondly, subject to the second proviso to clause 3 restricting the maximum of Rs. 6150/- per month. The consequential payment of arrears can be made provisionally subject to the result of the SLP pending in the Supreme Court against the decision of the Chandigarh Bench in Pratap Singh's case <sup>as far as</sup> in the case of applicants in the two cases before the Chandigarh Bench. Needless to say that the decision of the Supreme Court in that SLP should also govern the cases of the present applicants. However in the absence of any order of stay granted in that SLP we see no reason as to why the respondents should not consider the claim of the applicants and allow the same provisionally at this stage.

11. The difficulty that however arises in our way to grant relief in above terms <sup>is</sup> by reason of the fact that the applicants have approached this Tribunal without first approaching the respondents with their claim for payment of the special pay in view of the Fifth Amendment Rules. If even thereafter inspite of the decision of the Chandigarh

Bench and the opinion of the Law Ministry as indicated in the written statement the respondents were to refuse to grant them the payment then that would have afforded the applicants a cause of action to approach this Tribunal for suitable relief. On the present frame of the applications all that can be done is to declare what the position of law is relating to the claim of the applicants. The entire exercise of hearing thus turned to be more of academic nature which however became inevitable as respondent No.1 have asserted in the written statement that the Fifth Amendment Rules are prospective in nature effective from 6.8.93. Moreover in the absence of the legal position being clarified by us if the applicants were to apply to the authorities concerned that was most likely to be rejected in view of the stand taken by the respondent No.1 in the written statement. We therefore thought that in order to secure the ends of justice it was necessary for us to express our opinion on the correct position of the law rather than require the applicants first to apply to the respondents and thereafter again approach the Tribunal if their prayer was refused.

12. Mr Sarma, the learned Addl.C.G.S.C for the respondents submitted that the reliefs claimed are barred by limitation and on that ground the application should be rejected. Mr Roy on the other hand submitted that the applications have been filed in view of the amendment of the Rules made on 6.8.93 and therefore the bar of limitation does not arise. In the circumstances of the case we are not inclined to hold that the claim is barred by time and in any event we are inclined to condone the delay in the interest of justice.

13. In the light of the above discussion and with the position of law being discussed we direct the applicants to apply to the appropriate authority for payment of the amount of arrears of the special pay as claimed in the respective applications. The authorities concerned may take administrative decision and pass suitable orders on those applications subject to the second proviso to Rule 3 under the heading "B-Posts" in schedule III of the Indian Administrative (Pay) Rules 1954 and eligibility of each of the applicants with reference to the periods for which the payment is claimed. Such application to be filed within one month from the date of receipt of a copy of the order. The concerned authority shall dispose of the applications as far as practicable within 3 months from the date of receipt of the same from the respective applicants.

14. ✓ The application is partly allowed. No order as to costs. /

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)