CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN.NO. 128 OF 1995
TRANSFER APPLN.NO. OF 1995
CONTEMPT APPLN.NO. OF 1995 (IN OA NO.)
REVIEW APPLN. NO. OF 1995 (IN OA NO.)
MISC. PETN. NO. OF 1995 (IN OA NO.)

C. Bordhan ..... APPLICANT(S)

-VS-

Union of India Ors. ..... RESPONDENT(S)

FOR THE APPLICANT(S) ...MR. S. Roy,
MR.
MR.
MR.

FOR THE RESPONDENTS ...MR. A.K. Choudhury
Addl. CGSC

OFFICE NOTE	DATE	ORDER
This application is in form and within time C. F. of Rs. 50/- deposited vide IPO/BD No. 316782 Dated 6.7.95 Dy. Registrar	10-7-95	Mr.S.Roy for the applicant. Issue notice before admission to the respondents to show cause as to why the application be not admitted. Returnable on 4-9-95. In the meantime the respondents are expected to comply with the original order where under ~~there we have~~ they were directed to ~~disposed~~ of the application for payment of the amount of arrears of special pay within a period of three months from the date of receipt of the order. Mr.A.K.Choudhury, Addl.C.G.S.C. seeks to appear for respondent No.1(a). However, notices be directly issued to the said respondents. Vice-Chairman Member

lm

Requisites in order
are filed & issued
vide 3034-36 dt. 18-7-95

12/7

Notice issued
on R. No. 1 & 2
7/8/95

O.A. 128/95

4.9.95 Mr S.Roy for the applicant.

Mr A.K.Choudhury,Addl.C.G.S.C for the respondents.

The respondents have not so far decided the application of the applicant filed in February,1995 pursuant to order dated 14.12.94 in the O.A. Mr Roy therefore is right in submitting that a final operative order may be passed in terms of paragraph 10 of the order in the O.A. and the respondents may be directed to implement the same. We however, think that some more time may be allowed to the respondents to decide the application before such order is passed. We therefore direct the respondents to dispose of the application of the applicant within a period of six weeks from the date of receipt of the copy of this order. It is made clear that if no decision is taken within that time then having regard to the provisions of the Act we may proceed to pass final orders as prayed without waiting for the disposal of the said application.

O.A. is adjourned for admission to 3.11.1995.

Member Vice-Chairman

pg

(3)

O.A. /28/95.

3.11.95 Mr S.Roy on leave.

Mr A.K.Choudhury,Addl.C.G.S.C for respondent No.1.

Mr R.Sarma for Mr B.P.Kataki standing counsel of the Govt. of Tripura.

Thex respondents request for 8 weeks adjournments. The application is accordingly adjourned to 15.12.95 for admission. The Govt. of Tripura is expected to pass the final order on the application of the applicant which they were directed to pass on 4.9.95 before the aforesaid date.

Member Vice-Chairman

pg

15.12.95 Mr S. Roy, Advocate for the applicant, from Agartala is not present.

Mr A.K. Choudhury, learned Addl. C.G.S.C., and Mr R. Sarma for Mr B.P. Kataki, Standing Counsel for the Government of Tripura, are present for the respondents.

The learned counsel for the respondents produced a copy of the order passed by the Government of Tripura (Appointment and Services Department), No.F.23(118)-GA/93 dated 1.12.1995 and submit that as the relief prayed in the O.A. has already been granted to the applicant the O.A. may be disposed of. The order shows that the Governor has been pleased to sanction the payment of the speacial pay in accordance with the order passed by this Tribunal in the O.A. However, we find from the order that the sanction is provisional and it is purported to be made subject to the decision of the Supreme Court when it is given in the SLP against the decision of the C.A.T., Chandigarh Bench in Pritam Singh -vs- Union of India and others. By insisting upon such undertaking the

15.12.95

respondents are trying to subject our order in the O.A. to the decision in appeal which is not filed against our order but in some other case by different Bench and in respect of different parties. We are not able to dispose of the application as the applicant will have to be heard on the point of this undertaking.

The Government counsel for the State of Tripura shall take necessary instructions from the Government in the light of above observations.

O.A. adjourned for admission/orders to 29.1.1996.

A copy of this order be sent to the applicant for information and informing him further that he may remain present either in person or through Advocate on that date failing which the O.A. may be disposed of in his absence. Copy of the order may also be furnished to Mr A.K. Choudhury and Mr R. Sarma.

15.12.95
Vice-Chairman

Member

Order dt 15-12-95 issued to all concerned vide no. 5424-31 dt. 21-12-95

8.1.96

Mr. S. Roy, Adv. from Agartala nkm by his application dt.8.1.96 (flag'A') prays that the OA Nos.128-132 & 159/95 which are fixed on 29.1.96 may be adjourned to 12.2.96 for hearing.

Laid for favour of kind perusal and necessary orders.

8/1/96
S.O.(J)

29.1.96
F/A ~ 13.2.96

By order
Bch

O.A.128/95

13-2-96 Mr.S.Roy for the applicant.
Mr.A.K.Choudhury, Addl.C.G.S.C. (in O.A. 128/95 to 132/95 and Mr.G.Sharma Addl. C.G.S.C. in O.A. 159/95) for respondents.
Mr.M.R.Pathak for Mr.B.P.Kataki for Respondent No.2 (in all matters.)

In view of our observation in para 10 of the order dated 14-12-94 in the O.A. the undertaking directed to be given and the provisional sanction appear to be in order. Both counsels inform that the applicant has already given undertaking and the payment has also been made. Hence nothing survives in the O.A. for decision. O.A. is accordingly disposed of. This order is without prejudice to future proceedings in the light of Supreme Court decision if arise.

Member Vice-Chairman

lm

2/5/96
copy of order dtd. 13.2-96 issued to the counsel for the parties vide D/No. Dtd.

128/95

Chidananda Bardhan

APPENDIX - A.

FORMS

FORM-1

(See Rule 1.)

O. A. No. 128../1995

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985.

Title of the Case : Shri Chidananda Bardhan .... Applicant

-V E R S U S-

Union of India & 2 others ..... Respondents.

I N D E X

Sl.No.	Description of documents relied upon :	Page Nos.
1.	Application	1 - 9
2.	ANNEXURE - 1 Judgment and Order passed by the Hon'ble Tribunal on 14.12.1994	10 - 25
3.	ANNEXURE - 2 Representation of the Applicant dated 18.2.95 to the Respdt No.2 ...	26

10/7/95

Signature of the Applicant.

For use in Tribunal's Office

Date of Filing :
OR
Date of receipt by
Postal Registration :

Signature
for REGISTRAR

Chidananda Bardhan

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O. A. No...../1995.

B E T W E E N

Shri ..Chidananda Bardhan..... APPLICANT

A N D

1. Union of India, - represented by the -
Secretary, Ministry of Personnel,
Public Grievances and Pension,
(Department of Personnel and Training)
Government of India : New Delhi;

2. The State of Tripura, - represented by the -
Chief Secretary to the Government of Tripura,
Agartala;

3. The Accountant General,
Tripura : Agartala;

..... RESPONDENTS.

1. Particulars of the Applicant :

I. Name of the Applicant :- Shri Chidananda Bardhan
II. Name of Father :- Late Sachchidananda Bardhan
III. Age of the Applicant :- About 59 years.
IV. Designation and particulars of Office(Name and station) in which employed or was last employed before ceasing to be in service :- Director : Food & Civil Supplies : Government of Tripura : Agartala.

cont.....p/2

Chidananda Randhawa

V. Office address :- Does not arise since retired on 31.3.1994

VI. Address for serving Notices : Old Kalibari Lane : Krishnanagar, P.O. Agartala : PIN - 799 001 : P.S. West Agartala : Dist - West Tripura.

2. Particulars of the Respondents :

I. Name of the Respondents : (a) Union of India
(b) State of Tripura
(c) The Accountant General, Tripura.

II. Name of Father : Does not arise.

III. Age of Respondent : Does not arise.

IV. Designation & Particulars of Office (Name & Station) in which employed : Does not arise.

V. Office Address : (a) Union of India-represented by the-Secretary, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) Government of India, New Delhi.

(b) The State of Tripura - -represented by the- Chief Secretary, Government of Tripura Agartala.

(c) The Accountant General, Tripura : Agartala.

VI. Address for service of Notice : As above.

cont.....p/3

Chidananda Bandhopadhyay 10

3. Particulars of the order against which the application is made : Pursuant to the Judgment and Order passed by the Hon'ble Tribunal on 14.12.1994 in O.A.No.150../1994, the Petitioner submitted an application to the Respondent No.2 on 17.2.1995 for payment of Special Pay due tothe Petitioner for the period he held "B-Posts" in Schedule-III of the Indian Administrative (Pay) Rules, 1954, but the Respondent No.2 having declined to respond such representation and thereby refusing to pay the Special Pay as demanded, the Petitioner files the present application for appropriate direction upon the Respondents.

4. Subject in brief : (I). That, the applicant while holding the post in Tripura Civil Service Grade-I was appointed to the I.A.S. Cadre Post on .18/3/90..... in the Senior Time Scale of Pay. The Government of Tripura granted Special Pay @ Rs.200/- per month for the post held by the applicant but the applicant could not get such Special Pay as the applicant's basic pay was fixed at the maximum of the Senior Time Scale i.e. Rs.4,700/-. The Respondent No.2, in the mean time, on 6.4.1987 doubled the existing rate

cont....p/4

Chidananda Bandhopadhyay Advocate

of Special Pay subject to a maximum of Rs.500/- per month with effect from 1.1.1986.

(II). That, the Respondent No.1 by Notification dated 6.8.1993 in G.S.R.No.535(E) made Indian Administrative Service (Pay) Fifth Amendment Rules, 1993 for the purpose of amending the Indian Administrative Service (Pay) Rules, 1954 in the following manner:

" In the Indian Administrative Service (Pay) Rules, 1954, in Schedule-III under 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 paragraph (3) :-

(a). the first proviso shall be omitted;

(b). in the second proviso the word - 'further' shall be omitted;

And the said Fifth Amendment Rules was given effect to with effect from 6.8.1993 most arbitrarily and capriciously by the Respondent No.1 and by giving effect to such amended Rules with effect from 6.8.1993 instead of 1.1.1986 - the date when the Revision of Pay Scales of the Central Government employees

cont....p/5

Chidananda Bandhoy

was given effect to, it has caused discriminatory treatment to the I.A.S.Officers including the Petitioner who held such "B-Posts" in Senior Time Scale.

(III). That, the Petitioner filed O.A.No.150../94 before the Hon'ble Tribunal for quashing and/or modifying/amending the provisions of the Indian Administrative Services (Pay) Fifth Amendment Rules, 1993 for the purpose of giving effect of the amendment with effect from 1.1.1986 - the date when the revision of Pay-scales were given effect to and also for an order directing the Respondents to pay Special Pay @ Rs. 500/-..... per month from 18/3/90 to 31/7/90 & 4/11/91 to 12/5/93 & @ Rs.400/- 1/8/92..... to .3/11/91..... to the applicant which he is entitled to by virtue from 13/5/93 to 5/8/93 of holding the post in A.I.S.Cadre in the Senior Time Scale and the Hon'ble Tribunal disposed of the said O.A. .150..../1994 on 14.12.1994 with the following direction :

" 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."

A copy of the Judgment and Order passed by the Hon'ble Tribunal on 14.12.1994 is annexed and marked ANNEXURE - 1.

ANNEX - I.

(IV). That, in accordance with the Order passed by the Hon'ble Tribunal (Annexure - 1) the applicant submitted an application to the Respondent No.2 on 17.2.1995 for payment of the Special Pay, but such representation has not been responded and thereby the Respondent No.2 has refused to pay the Special Pay as claimed by the Applicant.

A copy of the said representation submitted by the applicant on 17.2.1995 is annexed and marked ANNEXURE - 2.

ANNEX - 2.

cont....p/7

Chidambaram Bandhan 14 N.D.Patil

5. Jurisdiction of the Tribunal : The applicant declares that the subject matter of the petition and provisions of Rules against which he wants redressal is within the jurisdiction of the Tribunal.

6. Limitation : The applicant further declares that the application is within the limitation prescribed in Sec.21 of the Administrative Tribunal Act, 1985.

7. Facts of the Case : As stated in paragraph 4 and Sub-paras (I) to (IV) thereto.

8. Details of remedies exhausted : In accordance with the Judgment and Order passed by this Hon'ble Tribunal on 14.12.1994 in O.A.No.150.../1994, the Applicant submitted an application on 18.2.1995 vide Annexure - 2 to the Respdt No.2, but without any response.

9. Matters not previously filed or pending before any other Court : That, the Petitioner filed O.A.150..... of 1994 for grant of Special Pay and such case has been disposed of by the Hon'ble Tribunal on 14.12.94 (Annexure - 1) and accordingly having not received any reply to his representation dated 17.2.95 (Annexure - 2) the Petitioner files the present petition.

cont....p/8

10. Reliefs sought : In view of the facts mentioned in the foregoing paragraphs, the Petitioner prays for the following reliefs :

(a). for an order directing the Respondents to implement the Judgment and Order of the Hon'ble Tribunal Dated 14.12.1994 in O.A.No.150/94 and to pay Special Pay :

(1) @ Rs.500/- from 18.3.90 to 31.7.90 and from 4.11.91 to 12.5.93 AND

(2) @ Rs.400/- from 1.8.90 to 3.11.91 and from 13.5.93 to 5/8/93 to the Applicant which he is entitled to by virtue of his holding the post of I.A.S.Cadre post as given in the Senior Time Scale viz :

(i) Joint Secretary, L.S.G.Deptt. Govt.of Tripura

(ii) Registrar of Cooperative Societies, Govt of Tripura;

(iii) Secretary, Tripura Public Service Commission;

(iv) Director, Food & Civil Supplies, Government of Tripura.

(b). other reliefs which the Applicant is entitled to under the Law and the equity.

Interim Order, if any, prayed for : NIL.

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11. Particulars of Postal Order/Bank Draft in respect of the Application Fee :

I. Number of Indian Postal Order : 09 316787 of Rs.50/-

II. Name of the Issuing Post Office : Agartala

III. Date of issue of the Postal Order : 6.7.95

IV. Post Office at which payable : Guwahati.

12. List of Enclosures :

(1). Copy of the Judgment and Order passed by the Hon'ble Tribunal on 14.12.1994 in O.A. 150/1994.

(2). Copy of the representation submitted by the Applicant on 17.2.1995 .

(3). Vokalatnama.

(4). Postal order for Rs.50/- No. 09 316787

VERIFICATION

I, Shri C. Bardhan S/o. late S.Bardhan aged about 59 years, retired from Government service as a member of IAS, resident of - Old Kalibari Lane, Krishnanagar, Agartala, do hereby verify that the contents of paragraphs 4, 4(I), 4(II), 4(IV), 7, 8 and 9 are true to my personal knowledge and the rest of the foregoing application are my humble submission and prayer and that I have not suppressed any material fact.

Dated : 7th July, 1995.

Place : Agartala

Chidananda Bardhan

Signature of the Applicant.

ANNEXURE I
(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI 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.30/94

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.

Advocate 7.7.97

O R D E R

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.149/94 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

contd... 3/-

(12)

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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 [illegible] 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 x 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 :
>
> Provided that pay plus special pay shall not exceed the maximum of the pay scale to which special pay is attached :

contd... 4/-

(13)

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 (Annexure 7A in O.A.90/94). Amendment of the 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-Posts carrying pay in the scale of time etc. in Schedule III of the Indian Administrative Service (Pay) Rules, 1954. The word 'further' is omitted from the second proviso. Pripr 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.11030/73/87-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

contd... 5/-

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 existance 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 [illegible] 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.Gupta) 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

contd... 6/-

(15)

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 two classes artificially, and 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

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 ~~pay in the senior time scale of IAS under the senior time scale of IAS~~ pay in 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)~~

(16)

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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 26)

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 (Sic) thereto 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, [illegible] (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

contd.....8/-

(17)

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 6.8.93 needs to be dealt with. In our view the position of the officers as was prior to 6.8.93 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/libera-lisation 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 an 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 [illegible] 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 finalcial 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 employeer 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

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(21)

existing rule 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 discriminating. 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 [illegible] propriety, amendments were made prospective in nature making them effective from the date of their publication in the official Gazettee 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 ~~super~~ senior 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 [illegible] from 1.1.86 [illegible] effect the revision of [illegible] 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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Hence we reject the above contentions.

10. We therefore hold that the ~~restriction~~ wording 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~~ to 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 Pritam Singh's case as has been done 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 is 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

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13

Bench and the opinion of the Law Ministry as indicated in the written statement the respondents were to refuse to grant them the peyment 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.

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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 applications are partly allowed. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

TRUE COPY

प्रतिलिपि

Section Officer (J)

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी न्यायपीठ, गुवाहाटी

ANNEXURE 2 133

(26)

To
The Chief Secretary,
Government of Tripura,
AGARTALA

Subject:-Grant of Special Pay to IAS Officers regardless of restriction on pay plus Special Pay not exceeding the maximum of the scale.

...

Sir,

I had made an application to the Secretary, Appointment and Services Department on 31.7.92 praying for grant of Special Pay to me for holding the following posts for the duration against each in view of the decision of C.A.T. (Chandigarh Bench decision in OA No.369 CH of 1987, Pritam Singh Vs. Union of India).

A copy of the said application is enclosed for ready reference.

Name of posts	Duration of holding the posts
1.Joint Secretary, L.S.E.Deptt.	From 18.3.90 to 31.7.90.
2.Registrar, Cooperative Societies.	From 1.8.90 to 3.11.91.
3.Secretary, T.P.S.C.	From 4.11.91 to 12.5.93.
4.Director, Food & Civil Supplies.	From 13.5.93 to 31.3.96.

The posts under Sl.1 & 3 carried a Special Pay of Rs.500/-p.m. and the post under Sls.2 & 4 carried a Special Pay of Rs.400/-per month. But unfortunately, the same was not sanctioned to me.

Finding no other alternative, I made an application to the Central Administrative Tribunal, Guwahati, being case No.OA.150/94 for a decision regarding payment of arrears of Special Pay aforesaid. The Central Administrative Tribunal, Guwahati, has upheld my claim and directed me to apply to you for payment of the amount of arrears of the Special Pay as claimed by me. An extract from the decision of the

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Attested
7.7.97

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Central Administrative Tribunal is enclosed herewith for ready reference.

I shall be extremely grateful if arrangements are made to pay the arrears of Speciao Pay to me within the period of 3(three) months as stipulated by the Tribunal.

Yours faithfully,

17/2

(C.Bardhan)
IAS(Retd).,
Old Kalibari Lane,
Krishnanagar,Agartala

Enclo:-As stated

Dated,Agartala,
The 17th February, 1995.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI - 5

O.A. /95

... APPLICANT

-VS-

Union of India & Ors. ... RESPONDENTS

PRESENT

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN).

For the Applicant ... Mr. S. Roy.

For the Respondents ... Mr. A.K.Choudhury, Addl.C.G.S.C.
Mr. B.P.Kataki,G.A.Tripura.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMN)

MEMO NO. : DATE :

Copy for information & necessary action to :

1. Mr. Sukdeb Roy, Advocate, High Court Bar Association, Agartala.
2. Mr. A.K.Choudhury,Addl.CGSC, C.A.T., Guwahati Bench, Guwahati.
3. Mr. B.P. Kataki, G.A.Tripura, Gauhati High Court, Guwahati.

SECTION OFFICER(J)