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CHANDER BHAN GILL

v.

UNION OF INDIA

JULY 14, 1994

B

[KULDIP SINGH, J.S. VERMA AND R.M. SAHAI, JJ.]

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Service Law : Central Civil Services (Revised Pay) Rules, 1986—Rules 5, 6(3), 7 & 8 and Office Memorandum dated 4.5.1987—Fixation of pay in the revised scale of pay and annual increment falling on the same day—Held entitled to increment in the revised scale of pay.

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The appellant and one 'D' were selected and appointed as Assistants (Legal) in the Department of Legal Affairs, Ministry of Law & Justice under the Respondent-Union Government on 25.1.1985 and 4.3.1985 respectively. The pay scale for the post was 425-800 and it was revised to 1640-2900 with effect from 1.1.1986. Based on the recommendation of the Third Pay Commission, the Respondent decided to grant the annual increments from the first of the month in which the increment falls due. According to the Office Memorandum dated 4.5.1987 issued by the Respondent, it was clarified that the increment in the pre-revised scale was to be allowed first on 1.1.1986 and thereafter to fix the pay in the revised scale. Accordingly the appellant's increments which fell due on 26.1.1986 was advanced to 1.1.86 and his revised pay was fixed of Rs. 1640 after grant of increment in the pre-revised scale. In so far as 'D' was concerned his pay was fixed at Rs. 1640 as on 1.1.1986 and he was granted annual increment on 1.3.1986 raising his pay to Rs. 1700.

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Appellant claimed that his annual increment in the revised pay scale and the respondent rejected the same. Appellant filed an application before the Central Administrative Tribunal. The Tribunal having dismissed the application the appellant preferred the present appeal.

Allowing the appeal, this Court

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HELD : 1. The appellant was entitled to the grant of Rs. 60 as increment with effect from January 1, 1986 and his basic pay in the revised scale should have been fixed at Rs. 1700 from January 1, 1986. [595-H]

2.1. The appellant did not give any option under rule 5 of the Central Civil Services (Revised Pay) Rules, 1986 and as such under 6(3) he became entitled to the revised scale of pay "with effect on and from the 1st day of January, 1986". Since the minimum of the revised scale of the appellant was more than the amount worked out Rule 7(A)(i)(ii) he became entitled under rule 7(A)(a) to be fixed at the minimum of the revised scale. It is clear from the combined reading of rules 6 & 7 of the rules that the appellant was entitled to be fixed at Rs. 1640 as his basic pay with effect from January 1, 1986 in the revised scale. The pre-revised scale ceased to operate on December 31, 1985. [593-D-E]

2.2. The language of rule 8 makes it clear that the appellant, whose annual increment became due on January 1, 1986, was entitled to the grant of the said increment in the revised pay scale. [595-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3958 of 1992.

From the Judgment and Order dated 13.4.1992 of the Central Administrative Tribunal Principal Bench, New Delhi in O.A. No. 2254 of 1991.

S.M. Hooda and Bhal Singh Malik for the Appellant.

K.Lahiri, Ms. Niranjana Singh and Ms. Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Chander Bhan Gill (Gill) joined Central Government Service on January 25, 1985. The Central Civil Services (revised pay) Rules, 1986 (the rules) came into force on January 1, 1986. On completion of one year's service Gill was granted annual increment in the existing scale (unrevised) His claim for grant of annual increment in the revised pay scale was rejected by the Government. Gill challenged the action of the Government by way of an application before the Central Administrative Tribunal, Principal Bench, New Delhi (the tribunal). The tribunal by its judgment date April 13, 1992 dismissed the application. This appeal by Gill is against the judgment of the tribunal.

We may notice the necessary facts. Gill was selected for appointment

- A as. Assistant (Legal) in the Department of Legal Affairs, Ministry of Law and Justice, Government of India. He joined the Ministry as such on January 25, 1985 in the pay scale of 425-15-500-EB-15-560-20-700-EB-25-800. One S.S. Dhaiya was also selected and appointed as Assistant (Legal) along with the appellant. He Joined service on March 4, 1985 in the same pay scale.
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- The existing pay scale for the post of Assistant (Legal) [425- 800] was revised to 1640-60-2600-EB-75-2900 under the rules with effect from January 1, 1986. Gill completed one year's of service on January 26, 1986 and became entitled to the grant of an annual increment. The short question for consideration is whether he was entitled to the increment in the revised scale of pay (Rs. 60) or in the unrevised scale (Rs. 15).
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The Government of India Instructions contained in the office memorandum dated January 7, 1971 are as under :—

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- "The undersigned is directed to invite a reference on the recommendation of the Third Pay Commission contained in Para 29 of the Chapter 8 in Volume I of their Report to the effect that in future, an increment should be granted from the Ist of the month in which it falls due instead of from the actual date on which it accrues, and to say that Government have accepted the aforesaid recommendation of the Commission vide item No. 5 in the annexure appended to the Resolution No. 70(34)-Imp. Cell dated 1.11.1973. The sanction of the President is accordingly conveyed hereby to the increment of employees being admitted from the Ist of the month in which it would fall due under the operation of the General rules and orders regulating increments.
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2. These orders shall take effect from Ist November, 1973 and shall cover only Central Government employees in Classes II, III and IV."
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- The Government of India issued office memorandum dated May 4, 1987 wherein various clarifications in respect of the rules were given. The clarification at serial number 1 of the memorandum, which is relevant, is as under:—
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"Sl. No.	Points raised	Clarifications
1	2	3
1.	In case of a Government servant whose increment accrued in the pre-revised scale on 1.1.1986, whether the increment in the pre-revised scale is to be allowed first and pay fixed in the revised scale under CCS/(RP) Rules, 1986 later or pay fixed in the revised scale first and increment allowed later in the revised scale.	Increment in the pre-revised scale is to be allowed first on 1.1.86 and pay fixed in the revised scale there after.

The appellant completed one year's service on January 26, 1986 and as such an increment accrued to him on the said date but keeping in view the Government instructions dated January 7, 1971 he was to be given the increment from January 1, 1986. Relying upon the clarification dated May 4, 1987 the Government of India granted the increment to the appellant in the pre-revised scale. Rs. 15 were added to his basic pre-revised pay of Rs. 425 thereby making a total of Rs. 440. After doing the exercise of granting him increment in the pre-revised scale he was given the revised pay scale and his basic pay on January 1, 1986 was fixed as Rs. 1640.

It is not necessary for us to go into the question as to whether the clarification dated May 4, 1987 is contrary to the rules. The clarifications are, ordinarily, issued with a view to remove the anomalies in the working of the rules. In the facts of this case, however, the clarification has - rather - created an anomaly. We see no logic in the clarification. It is applicable only to the Government servants whose increment accrued on January 1, 1986. All those who earned the increment any time between February 1, 1986 to December 31, 1986 were given the increment in the revised scale. Had the appellant joined in the month of February 1985 or thereafter he would have got the increment in the revised scale. As mentioned above S.S. Dhaiya was selected and appointed along with the appellant. He joined on March 4, 1985 and was given his annual increment with effect from March 1, 1986 in the revised scale. The Government action based on the clarification dated May 4, 1987 has obviously worked to the detriment of the appellant.

We may examine the appellant's claim under the rules. Rules 5, 6(3),

A 7 & 8 of the rules, to the extent relevant, are reproduced hereunder :

5. Drawal of pay in the revised scales.

B Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed :

C Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay that scale.....

6. Exercise of option

D 6(3). If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1986.

7. Fixation of initial place in the revised scale

E (1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised scale on and from the 1st day of January, 1986 shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely :—

(A) in the case of all employee,-

G (i) an amount representing 20 per cent of the basic pay in the existing scale, subject to a minimum of Rs. 75 shall be added to the "existing emoluments" of the employee;

H (ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed :

Provided that -

(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

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 :

It is not disputed that the appellant did not give any option under rule 5 of the rules and as such under rule 6(3) he became entitled to the revised scale of pay "with effect on and from the 1st day of January, 1986". Since the minimum of the revised scale of the appellant was more than the amount worked out under Rule 7(A) (i)(ii) he became entitled under rule 7 (A)(a) to be fixed at the minimum of the revised scale. It is clear from the combined reading of rules 6 & 7 of the rules that the appellant was entitled to be fixed at Rs. 1640 as his basic pay with effect from January 1, 1986 in the revised scale. The pre-revised scale ceased to operate on December 31, 1985. Rule 8 of the rules clearly lays down that "the next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of shall 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale". The language of the rule makes it clear that the appellant, whose annual increment became due on January 1, 1986, was entitled to the grant of the said increment in the revised pay scale. We are, therefore, of the view that the appellant-Gill was entitled to the grant of Rs. 60 as increment with effect from January 1, 1986 and his basic pay in the revised scale should have been fixed at Rs. 1700 from January 1, 1986.

- A We allow the appeal and set aside the judgment of the tribunal. We allow the application filed by Gill before the tribunal in the above terms. We direct the respondents to fix the pay of the appellant as Rs. 1700 with effect January 1, 1986 and give him all the consequential benefits. This should be done within three months from the date of the receipt of this judgment. The appellant shall be entitled to his costs which we quantify as Rs. 10,000.
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G.N.

Appeal allowed.