

Union of India and Another

Vs

Shyama Pada Sidhanta and Others

Special Leave Petition (C) No. 8451 of 1989

(K. Jagannatha Shetty, S. C. Agrawal JJ)

21.01.1991

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. The respondents are Inspectors of Central Excise at Calcutta. They were in the pay scale of Rs. 425-800. It was revised to Rs. 500-900 with effect from January 1, 1980. Consequently, their pay was fixed in the revised scale of Rs. 500 being the minimum in the revised scale. It was, however, ordered that they would be entitled to next increment not on their normal date of increment in the lower scale but after completion of twelve months of service in the revised scale, that is, with effect from January 1, 1981. This direction was issued perhaps following the officer memorandum dated January 9, 1984. The material portion of the office memorandum reads :

"Date of next increment in case of fixation at the minimum :

#1. \* \* \*##

2. In cases where the minimum pay of the revised scale is higher than the pay drawn by the government servant in the old scale, his pay will be fixed at the minimum of the revised scale. A question has been raised as to when the government servant will be eligible to draw the next increment after such initial pay fixation at the minimum of the scale.

3. The matter has been carefully considered, It is hereby clarified that the next increment in the cases of the kind mentioned in the preceding paragraph should be allowed in the revised scale, only after completion of full incremental period of 12 months/24 months, as the case may be, at that stage, from the date of fixation of initial pay in the revised scale, subject to the provision of F.R. 26."

2. Challenging the validity of the office memorandum, the respondents moved the Central Administrative Tribunal for relief. They have succeeded before the Tribunal. The Union of India challenges the legality of the decision of the Tribunal.

3. Counsel for the State, inter alia, contended that when the pay is fixed at a stage higher than the pay drawn in the old scale, then the increment shall accrue only after completing the period of twelve months. The service rendered in the lower scale cannot be counted for earning increment in the higher scale.

4. The correctness of these submissions must be tested with reference to the statutory rules; not by the said office memorandum of the Central Government. There are three Fundamental Rules which are relevant in this context. F.R. 23 provides :

"23. The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay : provided that he may at his option retain his old pay until the date on which he was earned his next or any subsequent increment on the old scale, ..."

F.R. 22 Provides, so far as material, as follows :

"22. The initial substantive pay of a government servant who is appointed subsequently to a post on a time-scale of pay is regulated as follows :

#(a) \* \* \*##

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the timescale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;"

5. The next rule which is relevant in this context is F.R. 26. Omitting immaterial words, F.R. 26 is in these terms :

"26. The following provisions prescribe the conditions on which service counts for increments in a time-scale :

# \* \* \*##

(b)(i) Service in another post, other than a post carrying less pay referred to in clause (a) of Rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post on which the government servant holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended."

6. The respondents are not covered under Rule 15(a) which is a common case of parties. Their service therefore, shall count for increments in the time-scale applicable to the post on which they hold a lien. That means in the post carrying lower pay scale. The combined effect of F.Rr. 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 scale as on the due date in the old scale. The office memorandum dated January 9, 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.

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