

Chander Bhan Gill vs Union Of India on 14 July, 1994

Equivalent citations: 1994 SCC (5) 328, JT 1994 (5) 432

Author: Kuldeep Singh

Bench: Kuldeep Singh, Jagdish Saran Verma, R.M. Sahai

PETITIONER:
CHANDER BHAN GILL

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT 14/07/1994

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
VERMA, JAGDISH SARAN (J)
SAHAI, R.M. (J)

CITATION:
1994 SCC (5) 328 JT 1994 (5) 432
1994 SCALE (3) 285

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- Chander Bhan Gill (Gill) joined Central Government service on 25-1-1985. The Central Civil Services (Revised Pay) Rules, 1986 (the Rules) came into force on 1-1-1986. 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 dated 13-4- 1992 dismissed the application. This appeal by Gill is against the judgment of the Tribunal.

2. We may notice the necessary facts. Gill was selected for appointment as Assistant (Legal) in the Department of Legal Affairs, Ministry of Law and Justice, Government of India. He joined the Ministry as such on 25-1-1985 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 4-3- 1985 in the same pay scale.

3. 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 1-1-1986. Gill completed one year's service on 26-1-1986 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).

4. The Government of India Instructions contained in the office memorandum dated 7-1-1971 are as under:

"The undersigned is directed to invite a reference on the recommendation of the Third Pay Commission contained in para 29 of Chapter 8 in Volume I of their Report to the effect that in future, an increment should be granted from the 1st 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 1 St of the month in which it would fall due under the operation of the general rules and orders regulating increments.

2. These orders shall take effect from 11 1- 1973 and shall cover only Central Government employees in Classes 11, III and IV."

5. The Government of India issued office memorandum dated 4- 5-1987 i wherein various clarifications in respect of the Rules were given. The clarification at Serial No. 1 of the memorandum, which is relevant, is as under:

"SI. No.	Points raised	Clarifications
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(1) (2) (3)

1. In case of a government Increment in the Pre-

servant whose increment revised scale is to be accrued in the pre-revised allowed first on 1-1- scale on 1-1-1986, whether 1986 and pay fixed in the increment in the pre- in the revised scale revised scale is to be allo- therefore.

wed first and pay fixed in the revised scale under CCS (RP) Rules 1986 latter or pay fixed in the revised scale first and increment allowed latter in the revised scale."

6. The appellant completed one year's service on 26-1-1986 and as such an increment accrued to him on the said date but keeping in view the Government instructions dated 7-1-1971 he was to be given the increment from 1-1- 1986. Relying upon the clarification dated 4-5-1987 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 1-1-1986 was fixed as Rs 1640.

7. It is not necessary for us to go into the question as to whether the clarification dated 4-5-1987 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 1-1-1986. All those who earned the increment any time between 1-2-1986 to 31-12-1986 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 4-3-1985 and was given his annual increment with effect from 1-3-1986 in the revised scale. The Government action based on the clarification dated 4-5-1987 has obviously worked to the detriment of the appellant.

8. We may examine the appellant's claim under the Rules. Rules 5, 6(3), 7 and 8 of the Rules, to the extent relevant, are reproduced hereunder:

"5. Drawal of pay in the revised scales.- 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:

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 in that scale

6. Exercise of option.-

(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 pay in the revised scale.- (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 employees,-

(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;

(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:

9. 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(1)(A)(i)(ii) he became entitled under Rule 7(1)(A)(a) to be fixed at the minimum of the revised scale. It is clear from the combined reading of Rules 6 and 7 of the Rules that the appellant was entitled to be fixed at Rs 1640 as his basic pay with effect from 1-1-1986 in the revised scale. The pre-revised scale ceased to operate on 31-12-1985. 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 Rule 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 1-1-1986, 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 1-1-1986 and his basic pay in the revised scale should have been fixed at Rs 1700 from 11- 1986.

10. 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 from 11

- 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.