

Supreme Court of India

Employees' State Insurance ... vs Gunvantri Umedrai Bhat And Ors. on 9 December, 1993

Equivalent citations: (1996) ILLJ 484 SC

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Bench: A Ahmadi, K Ramaswamy, A . S.C.

ORDER A.M. Ahmadi, J.

1. These appeals are directed against the order of the Central Administrative Tribunal, New Bombay Bench, dated July 16, 1987. Since we are not inclined to interfere with the Tribunal's order impugned in these appeals we need not state the facts and the question urged in detail. It would suffice to say that in the establishment of the Employees' State Insurance Corporation there comprises a cadre of Insurance Inspectors, Deputy Managers and Managers Grade II, the employees occupying these posts being interchangeable. All of them were in the pay scale of Rs. 250-445 upto December 31, 1972. However; those who were designated as Deputy Managers or Managers, Grade II were allowed Rs 50 extra, which was termed as Special Pay. Pursuant to the recommendations made by the 3rd Central Pay Commission their salary came to be revised with effect from January 1, 1973. They were put in the revised pay scale of Rs 550-900. While applying the fitment formula, the Special Pay admissible to Deputy Manager and Manager, Grade II was merged into the basic pay for the purpose of placing them in the revised pay scale. As a result of this, Insurance Inspectors who were not entitled to Special Pay did not get this benefit and, therefore, their basic pay lagged behind those of Deputy Manager and Manager, Grade II, their inter se seniority notwithstanding. The effect of this was that, if on account of fortuitous circumstances the Insurance Inspector was placed as Deputy Manager prior to January 1, 1973, he got the benefit of the inclusion of the Special Pay in his basic salary for purpose of fitment in the revised pay, whereas his senior who continued to work as Insurance Inspector did not get this benefit and hence his revised basic pay fell short of that of his junior. This led to heart burning. The Corporation, therefore, issued a memorandum dated April 23, 1975 clarifying that the Special Pay of Rs 50 attached to the post of Deputy Manager/Manager, Grade II will not be admissible to the revised pay scale. In other words it was clarified that the pay to be fixed in the revised scale will be without treating Special Pay as forming part of existing emoluments', an expression having a special meaning under Rule 3(2) of the Central Civil Service (Revised Pay) Rules, 1973 hereinafter called the Rules. But before the ink on this memorandum had dried another memorandum dated May 28, 1975 was issued clarifying that "insofar as the post of Deputy Manager/Manager, Grade II is concerned the revised scale of Rs 550-25-750-EB-3-900 is in replacement of both the pre-revised scale of pay of Rs 250-15-455 as well the Special Pay of Rs 50 p.m. ". It was further stated that in view of this the special Pay will be treated as part of existing emoluments in terms of Rule 3(2)(b)(i) of the Rules. The above clarification, therefore, meant that Special Pay was to be treated as forming part of existing emoluments within the meaning of the said expression in Rule 3(2) of the Rules. It is clear from the above memorandum that insofar as the post of Deputy Manager/Manager, Grade II was concerned the revised scale of pay of Rs 550-900 was in replacement of both (i) the pre- revised scale of Rs 250-445 and (ii) the Special Pay of Rs 50 p.m. That being so, the tribunal came to the conclusion that for the purpose of fixation of the revised pay scale, the Special Pay admissible to Deputy Managers/Managers, Grade II was includable in the basic wage for upward revision. Subsequently, by another memorandum dated July 20, 1983 it was stated that Special Pay of Rs 50 drawn by Deputy Manager/Manager, Grade II will not form part of

the emoluments and that the said amount will be excluded while refixing the salary with effect from January 1, 1973. On account of this order dated July 20, 1983 the Deputy Managers/Managers, Grade II who had already been refixed in the revised scale after including Rs 50 per month in the pre-revised scale to the basic salary apprehended that they would be required to refund the extra payment allegedly made to them. The other employees who were at the material time working as Insurance Inspectors carried a grievance that even though some of them were seniors to the Deputy Managers/Managers, Grade II they were denied the benefit of inclusion of Rs 50 in their basic wage which had given rise to an anomaly. The Deputy Managers/Managers, Grade II who apprehended deduction in their salary filed a writ petition in the High Court of Bombay challenging the memorandum dated July 20, 1983 and the Corporation's apprehended action pursuant thereto. The Insurance Inspectors who bore a grievance because they did not get the benefit as Special Pay was not admissible to them, filed a separate writ petition in the High Court of Bombay for stepping up their salary to be brought at par with those Deputy Managers/Managers, Grade II who had reaped the benefit on account of inclusion of Rs 50 in their salary. In both the writ petitions notices under Order I Rule 8 of the CPC were issued. Therefore, they were representative in character. When the Central Administrative Tribunal came to be set up, these petitions were transferred to that Tribunal in view of Section 29 of the Administrative Tribunals, Act, 1985. Both the petitions were heard together and disposed of by a common judgment.

2. Fundamental Rule 9(25) defines a Special Pay to mean an addition, of the nature of pay, to the emoluments of a post or of a government servant, granted in consideration of (a) the specially arduous nature of the duties; (b) a specific addition to the work of responsibility. What was being granted to the Deputy Managers/Managers, Grade II was termed as Special Pay. Even in the memorandums of April 23, 1975 and May 28, 1975 the same expression is used for the payment of an extra amount of Rs 50 to officers working as Deputy Managers/Managers, Grade II. We tried to ascertain from counsel the rationale for grant of this extra amount of Rs 50 per month to officers holding the aforesaid two posts but he was unable to enlighten us in that behalf. His difficulty was that there was no material on record from which the rationale could be discerned. Be that as it may, the fact remains that the extra amount was throughout treated as Special Pay by the Corporation. Rule 3(2)(b)(i) which has been referred to in the memorandum of May 28, 1975 reads as under:

In these rules, unless the context otherwise requires -

(2) that existing emoluments includes -

(b) special pay (other than non-practising allowance), if any, drawn in addition to pay in existing scale;

(i) in a case where a revised scale merging the special pay has been provided for in substitution of both the present scale and the special pay.

3. Therefore, the expression existing emoluments includes Special Pay if the same is merged in the revised pay. By the memorandum of May 25, 1975 it was in terms stated that insofar as the post of Deputy Manager/Manager, Grade II is concerned the revised scale of Rs 550-900 shall be in

replacement of both the pre- revised scale of Rs 250-445 as well as the Special Pay of Rs 50. To leave nothing to doubt it was further stated that the Special Pay will be treated as part of existing emoluments in terms of Rule 3(2)(b) (i) of the Rules. If that be so, the Tribunal cannot be faulted for having taken the view that the Special Pay was includable in the pre-revised basic wage for the purpose of fixation of the revised wage. That was clearly discernible from the memorandum dated May 28, 1975. It was on the strength of this memorandum that the pay scale of Deputy Managers/Managers, Grade II were revised by including the Special Pay in the pre-revised basic salary. We, therefore, do not, see any infirmity in the line of reasoning adopted by the Tribunal. But then by the subsequent memorandum dated July 20, 1983, the position was sought to be disturbed. It was on this account that the Deputy Managers/Managers, Grade II approached the Court. This was proposed to be done without giving hearing to them even though it was likely to have an adverse effect so far as their salary and other benefits were concerned. The Tribunal, therefore, was not in any manner wrong in the view it took. The tribunal also came to the conclusion that in the absence of any rationale, Insurance Inspectors senior to the Deputy Managers/Managers, Grade II could not be placed at a disadvantage and, therefore, their salaries had to be stepped up. We are, therefore, of the opinion that the view taken up by the tribunal is a plausible view and does not require interference in exercise of our extraordinary jurisdiction under Article 136 of the Constitution. Both the appeals must, therefore, fail.

4. Mr. Verma, the learned Counsel for the Corporation, however, submitted that on account of the decision of the tribunal affirmed by us a heavy financial burden will fall on the Corporation. While we may not agree that the burden is heavy, having regard to the budget of the Corporation we do agree that lump sum payment, if has to be made, that may cause some budgetary disturbance. In order to soften the blow, we direct that the additional amount the Corporation will have to pay to the employees by reason of the tribunal's order affirmed by us, the amount payable to the existing employees in service may be deposited in their provident fund account, whereas those who have retired may be paid their dues within a period of six months from today. The Corporation will immediately undertake the task of calculating the dues of the employees payable under these orders so that the employees are not required to knock at the doors of the Court once again. The pension payable to retired employees will also be recalculated, if it had originally been calculated without including the benefit of Rs 50 while fixing their salary in the revised scale. This may also be done within even time. With this modification in the order of the tribunal, we dismiss these appeals with no order as to costs.