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E. GOPALAKRISHAN AND ORS.

v.

UNION OF INDIA

OCTOBER 31, 1995

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[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

*Service Law :*

*Pension—Computation of—Special pay—Inclusion of—Held, Appellants having retired prior to the date on which notional pay was given effect to, scale of pay including special pay cannot be stepped up for computing pension.*

C The appellants, while working as Upper Division Clerks, were drawing special pay of Rs. 35 per month. The Department issued instructions by memo dated 11.7.1979 specifying that the special pay would not be paid to the promoted Head Clerks or Chief Clerks. Accordingly, when the appellants were promoted as Head Clerks or Chief Clerks they did not carry with them the special pay of Rs. 35. Later, in order to avoid anomaly in the pay structure, the Board of Arbitration decided that special pay of

D Rs. 35 would also be paid to the promoted Head Clerks Chief Clerks with effect from 1.9.1985 but without arrears. The Central Administrative Tribunal also held that the persons who had not been paid the special pay from 11.7.1979 till 31.8.1985 would also be entitled to the said special pay, but they were not entitled to the arrears. The appellants who retired prior to 1.9.1985, claimed that they were entitled to step up their pay by including Rs. 35 per month for purpose of calculating the pension. Their claim was rejected by the Department as also by the Central Administrative Tribunal. Aggrieved, they filed the appeal by special leave.

Dismissing the appeal, this Court

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HELD : 1.1. Pension is required to be computed on calculation of average of 10 months' pay actually drawn by the employee. The appellants have retired prior to September 1,1985. Since they were not in service as on September 1, 1985, the date on which the notional pay was given effect to, they had not actually drawn the pay including Rs. 35 per month.

H Accordingly, the scale of pay including Rs. 35 per month cannot be

stepped up for computing the pension. [610-H, 611-A]

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1.2. The benefit that was given by the Board as well as the order of the Tribunal and the respondents was to remove the anomaly in the pay structure and bring uniformity applying notional scale of pay of those promoted as head clerks/chief clerks between July 11, 1979 to August 31, 1985 but denied payment of arrears. Thus, no salary with Rs. 35 as special pay was made to any one. That benefit was given only to those who continued in service after September 1, 1985. The notional pay is considered in that perspective only for the purpose of removing the anomaly. [610-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1423 of 1995.

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From the Judgment and Order dated 26.4.93 of the Central Administrative Tribunal, Madras Bench in O.A. No. 1165 of 1991.

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S. Sundarvaradan and K. Swami for the Appellants.

A. Jayaram, Additional Solicitor General, A.D.N. Rao, Arivind Kr. Sharma and C.V.S. Rao for the Respondent.

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The following Order of the Court was delivered :

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The appellants, nine in number, admittedly had retired prior to September 1, 1985 as either head clerks or chief clerks, the last being June 30, 1985. It appears that a practice was in vogue at one point of time that for the discharge of special duties, a sum of Rs. 35 p.m. as special pay was granted to the upper division clerks working in certain special posts. Decision was taken that on promotion as head clerk or special clerk, they would not be entitled to carry with them the special pay of Rs. 35 per month. Admittedly, the appellants had been promoted, as stated earlier, as head clerks or chief clerks and they were not given the special pay of Rs. 35 per month from the date of their promotion till the date of their retirement prior to September 1, 1985. It is also clear that in the memo dated July 11, 1979, it was expressly stated that the special pay would not be paid to the promoted head clerks or chief clerks. Subsequently, it appears that there was an agitation and a reference to the Board of Arbitration was made which had decided that with a view to remove the

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- A anomaly in the pay structure, the special pay of Rs. 35 per month shall be paid to the promoted head clerks/chief clerks w.e.f. September 1, 1985 but without paying arrears. Challenging the non-availment thereof, some of the employees had approached the CAT at Delhi which appears to have held that the persons who had not been paid from July 11, 1979 till August 31, 1985 would also be entitled to the special pay at Rs. 35 per month but they were not entitled to the arrears of the salary. In other words, the result of the decision of the Board of Arbitration and the CAT is that the persons, who continued in service between July 11, 1979 and August 31, 1985 and thereafter, would be entitled to the special pay of Rs. 35 per month though promoted as head clerks/chief clerks but without arrears of salary. This was also the decision taken by the respondents.

The question that emerges is whether the head clerks/chief clerks who retired prior to September 1, 1985 are also entitled to step up their pay by including Rs. 35 per month for the purpose of calculating the pension. The Tribunal in this case held that they are not entitled.

- Shri Sundarvardan, the learned senior counsel appearing for the appellants, contended that since the appellants had actually worked as head clerks/chief clerks on par with other persons to whom the benefit of the pay of Rs. 35 per month had been granted by the Board of Arbitration and also the CAT, they have been unjustly discriminated violating Article 14 of the Constitution and that, therefore, the Tribunal was not right in denying the benefit of stepping up of the scale of pay for computation of pension. Having considered the argument, we find that there is not justification in the stand taken by the appellants. Admittedly, they have retired prior to September 1, 1985. The benefit that was given by the Board as well as the order of the Tribunal and the respondents was to remove the anomaly in the pay structure and bring uniformity applying notional scale of pay of those promoted as head clerk/chief clerks between July 11, 1979 to August 31, 1985 but denied payment of arrears. In other words, no salary with Rs. 35 as special pay was made to any one. That benefit was given only to those who continued in service after September 1, 1985. The notional pay is considered in that perspective only for the purpose of removing the anomaly. The pension is required to be computed on calculation of average of 10 months pay actually drawn by the employee. Since the appellants admittedly were not in service as on September 1, 1985, the

date on which the notional pay was given effect to, they had not actually drawn the pay including Rs. 35 per month. Accordingly, the scale of pay including Rs. 35 per month cannot be stepped up for computing the pension. The appeal is accordingly dismissed but, in the circumstances, without costs. A

R.P.

Appeal dismissed.