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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 237 of 1990

Date of Decision : January 17, 1992.

Kanduri Charan Moharana Applicant

Versus

Union of India & Others Respondents

For the applicant M/s. J.N. Jethi
P.K. Nayak
Advocates

For the respondents Mr. P.N. Mohapatra,
Addl. Standing Counsel
(Central Govt.)

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C O R A M

HON' BLE MR .K.P .ACHARYA, VICE-CHAIRMAN

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

MR .K.P .ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to direct the respondents to refix the pay of the petitioner as per the fresh option exercised vide annexure-5 covered under the provision contained in Rule-7 of the Central Civil Services (Revised Pay) Rules, 1973 with consequential benefits.

2. Shortly stated, the case of the petitioner is that at present he is working as Section Supervisor (Operative) Traffic Division, Bhubaneswar under the Ministry of Telecommunication. While the petitioner was working as T.S.Clerk in the year 1973, the Central Civil Services (Revised Pay) Rules, 1973 (hereinafter called 'Rules') came into force with effect from 1.1.1973 and accordingly the petitioner gave his option for revision of the Central pay and the petitioner's scale of pay was revised and was fixed under Rule-7 of the said Rules. According to the petitioner Rule-7 of the said rules is applicable to those employee who elects/opt's under sub-rule 3 of Rule-6 to be governed by the revised scale from 1.1.1973 and ^{the} ^{of} in/case/all government servants continue to draw pay in the existing scale (pre-revised scale) and is brought over to revised scale from a date later than 1st day of 1973, the pay of such Government servants from the later date in the revised scale shall be fixed under Rule-9.

In case those who desired to reopt or re-elect the revised

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scale of pay from any subsequent/^{date}later than 1.1.1973, if gave rise to some anomalies and therefore the matter was reconsidered by a Committee of the National Council and on the basis of the agreement reached therein, the President was pleased to decide that the pay of the Government servants who opt for the revised scales of pay from a date not later than 31.12.1974 would also be fixed under the provisions of Rule-7 of the said Rules, and it was further clarified by a letter dated 11th June, 1975 that the Government servants may be allowed to exercise option for the revised scales from the date of grant of higher start/advance increments or incentive increments for passing certain departmental examinations, and get their pay fixed in the revised pay scales, under Rule 7 of the said Rules, but this would not be applicable to any day later than 31.12.1974. Due to the aforesaid reason time was extended till 31st May, 1984. In course of time the petitioner held the post of an Accountant with effect from 27th May, 1975 with a higher start of Rs.45/- per month and therefore the petitioner made an application for re-fixation of his pay from 18.5.1979 in the post of Accountant. Since the authorities declined to accede to the above request of the petitioner, this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain

that once an option was exercised by the petitioner under Rule-7, such option is final and cancellation of such option and again re-fixation is not permissible as the rules do not provide any such option being exercised subsequently or re-fixation of pay. The extra amount of Rs.45/- which is being paid to the petitioner is neither an increment nor any incentive nor a higher start and it is only a special allowance granted for a fixed tenure for holding the post of D.T.O. Accountant. In such circumstances the case being devoid of merit is liable to be dismissed.

4. Before the provisions contained in the different rules mentioned in the petition and in the counter are taken into consideration, it may be stated that the admitted case of the parties is that the petitioner had given his option for re-fixation of his pay under Rule-7 on 4.1.1974 and his pay was accordingly revised and the petitioner was given the revised scale of pay which he is now drawing. Keeping in view the above admitted position, it is now appropriate to take notice of the provisions contained under Rule-7 which runs thus:

"(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 from the 1st day of January, 1973, 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

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pay in the officiating post held by hi, in the following manner, namely :

- (A) In the case of a Government servant drawing basic pay up to and including Rs.1,800 in the existing scale -
- (a) an amount representing give per cent of the basic pay, subject to a minimum of Rs.15 and a maximum of Rs.50, shall be added to the existing emoluments of the Government servant;

Explanation- If the amount so computed includes a part of a rupee, then, if such part is fifty paise or more, it shall be increased to one complete rupee and if such part is less than fifty paise, it shall be ignored;

- (b) after the existing emoluments have been increased and computed as specified in clause(a), the pay shall be fixed in the revised scale at the stage equal to the amount so computed or, if there is no such stage in the revised scale, at the stage next above the amount so computed:

Provided that -

- (i) if the amount is computed under clause(a) is less than the minimum of the revised scale, the pay shall be fixed at the minimum of that scale;
- (ii) if the amount as computed under clause(a) is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale:

Provided further that in the case of a Government servant who is in receipt of a non-practicising allowance, the pay shall be fixed in the revised scale at the stage where the aggregate of the revised pay and the revised non-practicising allowance is equal to the amount computed under clause(a), or if there is no such stage in the revised scale at the lowest stage in the revised scale where the aggregate aforesaid exceeds the amount computed under clause(a):

Provided further tha, except in cases where the pay is fixed at the minimum of the revised scale, if the revised emoluments as determined under this sub-rule exceed the existing emoluments by more than Rs.100, the initial pay shall be fixed at the highest stage in the revised scale at

which the revised emoluments payable do not exceed the existing emoluments by Rs.100 and the difference, if any, between the existing emoluments plus Rs.100 and the revised emoluments so payable shall be allowed as personal pay to be absorbed in future in pay.

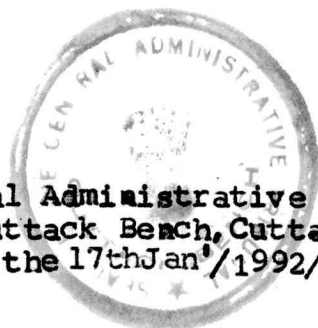
(B) In the case of a Government servant drawing basic pay exceeding Rs.1,800 in the existing scale, the initial pay in the revised scale shall be fixed under the provisions of Fundamental Rules 22, 23 and 31 and for this purpose his pay in the existing scale shall be deemed to include the dearness allowance, if any, drawn by him".

5. In view of the above quoted provisions of Rule-7 the petitioner had admittedly opted for revision of his pay scale which was accepted and accordingly it was revised. Rule-6(4) envisages that the option once exercised shall be final. This was also not disputed before me. The only question on which argument was advanced by the learned counsel for the petitioner Mr. J. N. Jethi that by virtue of payment of Rs.45/- to the petitioner as higher start, the petitioner is entitled to give a fresh option during the extended time granted by the President and therefore the said sum of Rs.45/- plus the pay already drawn by him (the petitioner) should be calculated and revised and the petitioner should be paid the revised pay scale on the basis of such emoluments.

6. This argument was stiffly opposed by Mr. P. N. Mohapatra, learned Standing Counsel. The argument advanced by Mr. Jethi is devoid of merit and not sustainable because, Rule-7 postulates fixation of pay on the basis of the substantive pay of the Government servant in the permanent

post, and secondly the option having been once exercised it automatically becomes final in view of the provisions contained in Rule-6(4) of the said rules, and thirdly the sum of Rs.45/- given to the petitioner cannot be categorised as a higher start pay as described by the petitioner in paragraph-4(g). It is only a special allowance granted in favour of the incumbent who holds a tenure post like that of an Accountant and now held by the petitioner. It was admitted before me that the post of an Accountant is a tenure post. In such circumstances any amount given for discharge of duties in respect of a tenure post could be nothing but a special allowance which cannot be added to the substantive pay and therefore in such circumstances I find that there is substantial force in the contention of Mr. D.N. Mohapatra, learned Standing Counsel that there is no question of revising the pay scale of the petitioner which has become final after his option had been exercised and that to he had drawn arrears of pay on the basis of the option accepted for revision of the pay scale.

6. Therefore I find no merit in this case which stands dismissed leaving the parties to bear their own costs.



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17.1.92
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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 17th Jan^y/1992/BK Sahoo