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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.146 of 1991.

Date of decision : December 1, 1992.

S.Sundararajan ...

Applicant.

Versus

Union of India and another ...

Respondents.

For the applicant ...

M/s.J.Das,
B.S.Tripathy,
K.P.Misra, B.K.Sahoo,
S.Mallik, Advocates.

For the respondent No.1..

Mr.Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

For the respondent No.2.

Mr.K.C.Mohanty,
Government Advocate (State)

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C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *yes.*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a declaration that the impugned order of rejection of the prayer of the applicant for antedating his due date of increment contained in Annexure-3 is bad, illegal, improper and unjust and also for a declaration that the due date of increment of the applicant should be antedated to 1.1.1987 ~~instead of 1.1.1987~~ and consequential relief regarding suitably stepping up of the pay of the applicant ^{be granted} which should not be less than the pay of his juniors namely Mr. J.K. Bhattacharya and Mr. R.N. Das.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Administrative Service, and he was allotted Orissa cadre belonging to the batch of 1958, being a direct recruit. At the time of filing of the application the applicant was functioning as Additional Development Commissioner and Secretary to Government of Orissa, Planning and Coordination Department. During the period from 5.7.1982 to 16.12.1986 the services of the applicant were placed at the disposal of the Central Government by way of deputation and the applicant functioned as Joint Secretary to the Government of India in the Planning Commission. Prior to 1.1.1986 the applicant was drawing the pay of Rs. 2,750/- per month which was the pre-revised supertime scale. Pursuant to the revision of pay scale of the members of the Indian Administrative Service, the pay of the applicant

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was fixed at Rs.6,500/- per month with effect from 1.1.1986. On 16.12.1986 the applicant was sent back to Orissa Government and the applicant was posted as Commissioner, Agriculture and Rural Development Department entitling him the revised pay scale of Rs.7,300-100-7,600/- with effect from 26.12.1986 and his pay was fixed at Rs.7,300/- per month with effect from 26.12.1986, fixing the next increment due on 1.12.1987(incidentally it may be mentioned that there is a typographical mistake in the petition, itself stating that the next increment was due on 1.2.1987.). The main grievance of the applicant is that during the period when the applicant was on deputation under the Central Government, two Officers of the Orissa cadre namely M/s.J.K.Bhattacharya and R.N.Das (who are also direct recruits to the cadre of Indian Administrative Service and junior to the applicant) were appointed against ex-cadre posts under the Government of Orissa with effect from 13.7.1984 and 28.5.1985 respectively in the pre-revised pay of Rs.3,000/- per month corresponding to revised scale of pay of Rs.7,300/- per month with effect from 1.1.1986 conferring ^{the benefit of} next increment being due on 1.1.1987. Due to this anomalous position, the applicant sent a note to the Chief Secretary to the Government of Orissa, to redress his grievance by ante-dating his due increment to 1.1.1987 ^{fixing it to} instead of 1.12.1987. The request of the applicant was turned down. Subsequently, the State of

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Orissa(Respondent No.2) referred the matter to Respondent No.1 i.e. Secretary to the Government of India, Department of Personnel, for reconsideration of the case of the applicant as a special case, and allow the applicant to draw his increment with effect from 1.1.1987 under Rule 3 of All India Services(Conditions of Service and Residuary matters)Rules,1960. On 7.3.1990 the applicant received a communication from the Joint Secretary to the Government of Orissa in the General Administration Department stating that the Government of India had rejected the representation of the applicant. A detailed representation was submitted by the applicant addressed to the Respondent No.1 for reconsideration of the case afresh. Since there was no response from the Respondent No.1 this application has been filed with the aforesaid prayer.

3. Counter has been filed on behalf of both the respondents separately.

In the counter submitted on behalf of the Respondent No.1 it is stated that since M/s. J.K.Bhattacharya and R.N.Das were holding ex-cadre posts at the relevant time the grievance of the applicant for removing the anomalous position cannot be redressed in view of the provisions contained under Rule 5A of the I.A.S.(Pay)Rules, 1954, and it is further maintained that taking recourse to Rule 3 of the A.I.S.(Conditions of Service and Residuary matters)Rules,1960, ~~the~~ would be unjust and improper, and would open ^a floodgate for many other Officers to derive this benefit who have been denied in the past and who are going to

be denied in future. Hence, it is maintained that the case being devoid of merit is liable to be dismissed.

4. On behalf of the Respondent No.2, it is maintained that the case is not only barred by limitation but the junior Officers namely Mr.J.K.Bhattacharya and Mr.R.N.Das having held ex-cadre posts at the relevant time, the applicant is not entitled to the benefit sought for by him especially when his case does not come within the purview of Rule 5 of the A.I.S.(Pay)Rules. Hence, it is maintained by the Respondent No.2 that the case being devoid of merit is liable to be dismissed.

5. I have heard Mr.J.Das, learned counsel for the applicant, Mr.Aswini Kumar Misra, learned counsel for the respondent No.1 and Mr.K.C.Mohanty, learned Government Advocate (State) for the State of Orissa.

6. The following facts are admitted;

- i) The applicant is senior to M/s.J.K.Bhattacharya and R.N.Das.
- ii) The applicant while on deputation to the Central Government, M/s.J.K.Bhattacharya and R.N.Das were holding ex-cadre posts and during this period the pay of the applicant was fixed at the stage of Rs.6500/- per month with effect from 1.1.1986 and on return from the Central Government, the pay of the applicant was fixed at Rs.7,300/- per month with effect from 26.12.1986.
- iii) While M/s.J.K.Bhattacharya and R.N.Das were on deputation their pay was fixed at Rs.7,300/- per month in the revised scale of pay with effect from 1.1.1986 with the next increment being due on 1.1.1987.

7. In view of the above mentioned admitted case of the parties, the only disputed question which remains to be determined is as to whether the pay of a senior Officer should be kept in par with the Officers junior to him otherwise the principle of stepping up of the pay becomes nugatory/ and/or redundant. Rule 5(a) of the I.A.S. (Pay) Rules, 1954 runs thus :

" (5) (a) The increments admissible to a member of the service in the scale of pay other than the time-scale of pay specified in rule 3 shall be regulated with reference to the length of his service in that scale of pay, previous service, if any shall count for increment, if it is :-

- (i) Service in a cadre post; or
- (ii) Service in a permanent or temporary post (including a post in a body incorporated or not, which is wholly or substantially owned or controlled by the Government) in the said scale or higher scale of pay :-

Provided that Service in a post outside the cadre including service in a post under the Central Government, shall count for increment on reversion to the cadre, subject to the following conditions, namely:-

- (a) The member of the Service should have been approved by the Government of the State on the cadre of which he is borne, for appointment to posts in the said scale;
- (b) all his seniors in the cadre, except those regarded as unfit for such appointment, were serving in posts carrying pay in the said scale in which benefit is to be allowed or in higher posts, and at least one junior was holding a cadre post under the Government of the State on the cadre of which he is borne, carrying pay in the said scale;-
- (c) the service shall count from the date on which his junior is promoted and the benefit shall be limited to the period during which he would have held a post under the Government of the State on the Cadre of which he is borne, had he not been appointed to a post outside the cadre. "

8. Conceding for the sake of argument that the contention advanced by learned counsel for the Central Government and the State Government that the above quoted provision contained in Rule 5(5) creates a bar for giving necessary benefit to the applicant as prayed for by him, yet the provisions contained in Rule 3 of the A.I.S. (Conditions of service-Residuary matters) Rules, 1960 should have been invoked and at one point of time that is in the letter addressed to the Department of Personnel and Training on behalf of the Government of Orissa, vide Annexure-2 it was stated as follows:

" In order to mitigate the hardship caused to the senior officer, it is requested that the case of Sri Sundararajan may please be reconsidered as a special case and he may be allowed to draw his increment with effect from 1.1.87 instead of 1.12.87 under rule 3 of IAS (Condition of service-residuary matters) Rules, 1960.. "

From the above quoted matters it is clear that the State Government was of the view that hardship is being caused to the applicant. In my opinion, rightly this view was taken by the State Government because it is against all canons of justice, equity and fair play to find that a Senior Officer would be drawing lesser emoluments or lesser financial benefit than the junior Officer. In this connection, it should also be noted that the applicant was never responsible for his deputation or posting under the Central Government while his juniors were serving under the State Government in ex-cadre posts. The applicant equally had no control over the posting of his junior Officers in the ex-cadre posts. Had the applicant chosen out of his

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own volition to go to the Central Government on deputation, the matter could have taken a different turn. But as Government servants, the applicant and his juniors, M/s. J.K. Bhattacharya and ~~XXXX~~ R. N. Das were bound to carry out the orders of the Government, either Central or State in regard to their transfer and posting. But that does not necessarily mean one senior officer would suffer from a hardship on account of his deputation over which he had no control. Rightly, the rule making authority had conceived of a situation of this nature and therefore, Rule 3 of A.I.S. (Conditions of service - Residuary matters) Rules, 1960 was framed with the sole intention that there may be cases who may be hardhit by the provisions contained in I.A.S. (Pay) Rules and therefore, residuary rule was enforced to give necessary redress to an Officer whose claim would be just and equitable and suffering from undue hardship. This particular rule of 1960 has been framed with the same intention or with the same view as that of Section 151 of the Code of Civil Procedure. Inherent powers have been vested with the Civil Courts to redress the grievance of a particular party when there is no specific provision made in the Civil Procedure Code for giving relief to the party. In such circumstances, the Civil Court could exercise its powers under section 151 of the Code of Civil Procedure to give necessary relief. With a similar intention this rule of 1960 has been framed expecting that all types of cases which may arise in future causing undue hardship to the officer envisaged may not have been contemplated or / and necessary provision to redress the grievance of the officer may not have been

provided in the Pay Rules. At the cost of repetition, it may be stated that the State Government rightly came to the conclusion that undue hardship is being caused to the present applicant and since his case does not come within the provisions contained in the I.A.S. (Pay) Rules, 1954, hence, provisions contained in I.A.S. (Conditions of service- Residuary matters) Rules, 1960 should be adhered to. The Central Government does not say anywhere in the counter that the case of the applicant is not ^{a bit} one to be considered for relaxation under the Rules stated above. The only averment finding place in the counter of the Central Government in this regard runs thus :

" It would kindly be noted that if this is done, it will amount to making mockery of the rules and allowing unintended benefits to many more officers who are not entitled to get those benefit under the rules."

9. It is far beyond my comprehension as to what the Respondent No.1 meant that adhering to the provisions contained in A.I.S. (Conditions of service-Residuary matters) Rules, 1960 would amount to a mockery. At the cost of repetition, it may be stated that the rule making authority framed a set of Rules with the sole intention of redressing the grievances of the Government Officers facing such hardship and the provisions contained in the said Rules could be adhered to only when there is no specific provisions elsewhere to redress the grievance of the concerned officer. Accepting the case of the Central Government and holding the particular provision(stated above) in the A.I.S. (Conditions of Service-Residuary matters) Rules, 1960 would be mockery, then one would

flagrantly violate the intention of the rule making authority which is not permitted under the law. Therefore, I find no merit in the contention of Mr. Aswini Kumar Misra, advanced on behalf of the Central Government relying on the abovequoted averment finding place in the counter. Hence, it stands rejected.

10. Last but not the least, I would unhesitatingly state that it is not ^{the} concerned of any particular officer or of a Court/Tribunal, if a floodgate is opened to several officers to receive a benefit conferred under a particular rule, ~~formed~~. Every officer is entitled to protection of law if he is entitled to such protection under the law. If law allows, the Court must award irrespective of any other consideration.

11. In view of the aforesaid discussions I would hold that the applicant is entitled to derive the benefit of having his increment with effect from 1.1.1987 and therefore, I would direct Respondent No.1 to grant relaxation adhering to the provisions contained under Rule 3 of the All India Services (Conditions of service-Residuary matters) Rules, 1960 and pass necessary orders that the deemed date of increment of the applicant, Shri S. Sundararajan should be made effective from 1.1.1987 and accordingly arrear financial benefits to which the applicant is entitled should be paid to the applicant within 60 (sixty) days from the date of receipt of a copy of this judgment. Necessary orders, as

directed above, should be passed by the Respondent No.1 within 30(Thirty) days from the date of receipt of a copy of this judgment.

12. Thus, this application stands allowed leaving the parties to bear their own costs.

[Signature]
1.12.92
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack
December 1, 1992, Sarangi.

