

4

I

18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 227 of 1991

Cuttack this the 4th day of May, 1995

B.K. Parida ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

04 MAY 95

12

II / 19

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 227 of 1991

Cuttack this the 4th day of May, 1995

C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

Bikram Kishore Parida, aged about 33 years  
S/o. Bira Kishore Parida,  
Manager, E.S.I.C. Canteen,  
Janpath, Bhubaneswar,  
District: Puri

Applicant

By the Advocate: M/s. P.V. Ramdas  
B.K. Panda  
D.N. Mohapatra

Versus

1. Union of India represented by the  
Director General, E.S.I. Corporation  
Ranchdeep Bhawan, Kotla Road  
New Delhi-110 002
2. Regional Director-cum-Chairman,  
E.S.I. Corporation, Unit-IX  
Janpath, Bhubaneswar-751007  
Dist: Puri
3. Secretary, E.S.I.C. Canteen Committee  
Regional Office of ESI Corporation,  
E.S.I.C. Bhawan, Unit - IX,  
Janpath, Bhubaneswar-751007  
Dist: Puri

Respondents

By the Advocate: M/s. Devanand Mishra  
Deepak Mishra,  
Anil Deo,  
R.N. Naik,  
B.S. Tripathy,  
P. Panda

O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): The applicant, Shri B.K.

Parida, was the Manager of the Departmental Canteen in  
the Office of the Employees State Insurance Corporation,

Orissa Region Bhubaneswar, since 1.1.1983. He

— 39 —

13

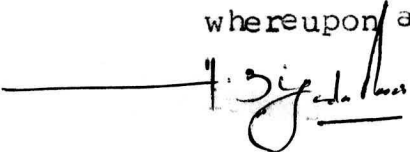
20

alleges in this application that he was not allowed to perform his duties from 30.11.1990, that the pay-scale fixed originally in his case (Rs.240-418) was incorrect since it should have been in the scale of Rs.260-418, which was revised to Rs.950-1500 with effect from 1.1.1986 in accordance with the recommendations of the Fourth Pay Commission. It is his contention that since he was drawing Rs.252/- in the old scale, he should have been accommodated in the new scale at the stage of Rs.1110/-, in accordance with the Pay Commission's recommendations accepted by the Government.

1.1. On 21.4.1993, in disposing of the Misc.application 259 of 1993 filed in this case, the learned Single Judge directed that the petitioner should be allowed to perform the duties from 3.5.1993, and that the emoluments to which he was entitled as per rules, should be paid to him regularly.

1.2. The applicant prays for <sup>the</sup> arrears of salary, with due increments, from 30.11.1990 to the date of his resuming duties in pursuance to the above orders, and <sup>to</sup> a direction be issued to fix his salary correctly in accordance with the revised scales with effect from 1.1.1986.

2. The respondents in their counter-affidavit submit that the applicant had grossly misbehaved with some employees of the Corporation on 28.11.1990, whereupon an enquiry was ordered on 29.11.1990, and



it was decided to dispense with the applicant's services from the next day, viz. 30.11.1990, pending enquiry and report. However, they also insist at the same time that the applicant was actually placed under suspension pending enquiry.

2.1. No enquiry, as contemplated, was conducted upto 30.10.1994, on which date the counter-affidavit was filed. The respondents also assert that the applicant had, as a matter of fact, failed to report to his duty on his own, <sup>and</sup> contend further that this Tribunal has no jurisdiction to entertain the application.

2.2. In a rejoinder to the counter, the petitioner argues that as per the notification dated 23.12.1980 issued by the Department of Personnel, Ministry of Home Affairs, all posts in departmental canteens were declared to be civil posts, that this Tribunal had thereby acquired jurisdiction over them. He maintains that it was not really a case where he failed to attend the duty but he was actually the victim of a situation created around him where he was not allowed to enter the office premises, not to speak of performing any duty. He says that he was never in fact placed under suspension at any time, and also that no enquiry report was ever shown to him although the enquiry had been conducted long ago.

3. A number of inconsistencies are noticed



in the arguments advanced by the respondents. Chief among them are : (1) the respondents claim that the applicant was placed under suspension, a statement against which another statement is made by them that his services were dispensed with. (2) They maintain that the revised pay-scale has been made applicable with effect from 1.10.1991 and there is no question, therefore, of granting revised pay-scale with effect from 1986. This is evidently an incorrect stand as item 6 of Annexure-2 to the application clearly shows that the Manager-cum-Salesman of a D Type Canteen is eligible for the revised scale with effect, at least, from 24.11.1986, i.e., the date of issue of O.M. No.3/2/10/86-<sup>of the same</sup> PER (C) date, although probably the date of effect is 1.11.1986 in keeping with the revision granted to employees in all other departments of the Government. (3) The respondents also say that the Tribunal has no jurisdiction to adjudicate the matter inasmuch as the applicant is not an employee of E.S.I.C., ignoring the notification issued by the Government in the matter which vested the jurisdiction of Central Administrative Tribunal over the staff of E.S.I.C. with effect from 12.5.1986.

Without going into needless issues or questions, it would be enough to say that the employees of all departmental canteens are duly covered by the Administrative Tribunals Act, and E.S.I.C. is included in them as notified by the concerned

— 13 July 1986 —

department under Section 14 of the Act. It is also a settled fact that the recommendations of the Fourth Pay Commission were implemented in respect of Central Government employees with effect from 1.1.1986. Canteen employees have been declared as holders of civil posts by the Hon'ble Supreme Court. Taking into consideration the combined effect of these orders and the notification, it is clear that the petitioner, Shri B.K.Parida, was fully entitled to the revised pay-scales recommended by the Pay Commission from the same date as was given to all others.

4. The petitioner was alleged to be involved in a certain incident on 28.11.1990. A summary enquiry seems to have been ordered on 29.11.1990, and the applicant was either placed under suspension, as claimed by the respondents, or more likely, his services were dispensed with on 30.11.1990. No document has been produced to substantiate these actions. In either case, the action is objectionable inasmuch as an enquiry of summary nature, without affording an opportunity to the applicant to defend himself from the charges, before dispensing with his services, cannot be regarded as equitable procedure. Alternatively, if he was merely placed under suspension pending enquiry, as claimed by the respondents, it is not known what was the outcome of such an enquiry, if one was held at all, and whether the applicant was made aware of the findings of the Enquiry

— 10/11/90

Officer. Nothing is clear from the record and the respondents have chosen to be totally silent on these aspects. What comes out of the inadequate responses of the respondents is that no accepted procedure seems to have been followed in this case, and that the applicant was evidently prevented from entering the office premises in an arbitrary manner, without any corresponding follow-up action, or holding <sup>of</sup> a proper enquiry.

Under the circumstances, it is to be held that the applicant, Shri B.K. Parida, was inexplicably denied an opportunity to perform <sup>his</sup> duties, or to defend himself, besides being unlawfully deprived of his pay and allowances during 27.11.1990 till the date of his resumption of duty.

4.1. It is, therefore, directed that immediate action be taken to (1) re-fix his salary to the extent necessary with effect from 1.1.1986, and (2) to determine and fix the date of his next increment in accordance with the relevant instructions from the Government; and after his pay is fixed in line with the

recommendations of the Fourth Pay Commission in respect of his post and accepted by the Government, to determine and fix the date of his next increment on the same basis, and (3) disburse the arrears of pay and increments accordingly. The payment

— 15 July —

18

VIII  
21

of arrears shall, however, be confined to a period beginning 18.7.1990 i.e., one year prior to the filing of this application. These reliefs shall be extended to him if he has resumed his post as directed by this Tribunal on 24.<sup>12</sup>21.1993 and has been performing his duties regularly thereafter.

Thus the application is disposed of.

No costs.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

B.K.Sahoo/

04 MAY 95