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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.245 of 1991.

Date of decision : January 19, 1993.

Padmanav Das Applicant.

Versus

Union of India and others Respondents.

For the applicant ...

M/s. Devanand Misra,
Deepak Misra,
R.N. Naik, A. Deo,
B.S. Tripathy, P. Panda,
Advocates.

For the respondents ...

Mr. Aswini Kumar Misra,
Senior Standing Counsel
(Central)

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C O R A M:

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

A N D

THE HONOURABLE MR. S. R. ADIGE, MEMBER (ADMN.)

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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 ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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J U D G M E N T

S.R. ADIGE, MEMBER (ADMN.) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to issue appropriate directions to the respondents to step up the pay of the applicant with effect from the date on which Shri P.C. Barik was given officiating promotion to the cadre of Upper Division Clerk.

2. Shortly stated, the case of the applicant is that he was appointed as an L.D.C. in the Postal Department with effect from 21.10.1974. Shri P.C. Barik was also appointed as an L.D.C. in the Postal Department with effect from the same date. The applicant was posted at Chatrapur while Shri P.C. Barik was posted at Rourkela. On 1.7.1976 a gradation list was published. The applicant has been marked senior to Shri P.C. Barik. On 4.3.1978 the applicant was allowed to officiate in the cadre of U.D.C. and Shri P.C. Barik was allowed to officiate in the same cadre with effect from 2.3.1978. The applicant was regularised in the cadre of U.D.C. with effect from 20.2.1982 whereas Shri P.C. Barik was regularised with effect from 26.10.1983. The scale of pay prescribed for the U.D.C. is Rs.260-400/-. The grievance of the applicant is regarding the difference in the pay and emoluments drawn by him vis-a-vis Shri P.C. Barik. According to the applicant Shri P.C. Barik has got two increments whereas no such benefit has been conferred on the applicant and thereby the applicant is getting lesser pay than Shri Barik and therefore, the applicant prays for a direction to the extent of stepping up of his pay to remain ⁱⁿ par with Shri Barik.

3. In their counter, the respondents maintained that as per provisions contained in F.R.22-C and keeping in view the directives contained in Annexure-R-3, the applicant is not entitled to the relief claimed and hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.R.N.Naik, learned counsel for the applicant and Mr.Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents. Mr.A.K.Misra strenuously urged before us that F.R.22-C stands as a clear bar for allowing the prayer of the applicant. Mr.Misra invited our attention to Annexure-R-3 wherein it is stated,

" The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

Accordingly, Mr.Misra submitted that the applicant was not allowed continuous officiation whereas Shri P.C.Barik was allowed continuous officiation in the cadre of U.D.C. and therefore, Shri Barik was rightly given two advance increments. We are unable to agree with Mr.A.K.Misra because admittedly the applicant is senior to Shri P.C.Barik. For no fault of the applicant he has been deprived of continuous officiation whereas his junior Shri Barik was allowed continuous officiation. This aspect should have been seriously borne in mind by the competent authority before passing any such orders. Mr.Misra ~~though~~^{even} contended that there was no vacancy at Rourkela and therefore Shri Barik was allowed to officiate at Rourkela. Admittedly, the applicant being senior to Shri Barik, option should have been called for from the applicant as to whether he was

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willing to go and fill up the vacancy at Rourkela. In case the applicant would have expressed his unwillingness to go to Rourkela then only the provisions contained in F.R.22-C might or could have been invoked. But depriving the applicant of his service benefits without any fault on his part, would be against all canons of justice, equity and fair play. From the point of view of compliance of principles of natural justice, a junior cannot be allowed to draw more pay than a senior officer for no fault on the part of the senior officer. Therefore, we find no merit in the aforesaid contention of Mr. A.K. Misra. Keeping in view the peculiar facts and circumstances of the case, we are of opinion that the pay of the applicant should be made in par with the pay of Shri Barik and therefore, we would direct that the entire matter be reconsidered and the applicant be given the same pay as that of Shri P.C. Barik with effect from the date on which higher pay was given to Shri Barik and arrears be calculated and paid to the applicant within 90 (ninety) days from the date of receipt of a copy of this judgment.

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

[Signature]

 MEMBER (ADMINISTRATIVE)

[Signature]
 19.1.93

 VICE-CHAIRMAN

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 January 19, 1993/Sarang

