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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.400 of 1991

Date of Decision: 12.4.1993

Pyari Mohan Mohapatra

Applicant

Versus

Union of India & Others

Respondents

For the applicant:

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

For the respondent No.2

Mr.K.C.Mohanty,
Govt.Advocate (Orissa)

For the respondent Nos.1 & 3

Mr.U.B.Mohapatra,
Addl.Standing Counsel
(Central Government)

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C O R A M:

THE HONOURABLE 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, The applicant, Shri Pyari Mohan Mohapatra is a member of the Indian Administrative Service having been allotted to Orissa cadre belonging to 1963 batch. He has served the State Government of Orissa in different capacities and so also his services were placed at the disposal of the Central Government. He had also served the Central Government in different capacities. During his incumbency as Deputy Chief Administrator of the Dandakaranya Project, the applicant was appointed as the Chief Administrator, Dandakaranya Project with effect from 28.5.1980 vide Annexure-1 dated 4/7th June, 1980 and he continued as such for a good bit of time. Before the applicant joined the post of Chief Administrator, the post in question was equivalent to the post of an Additional Secretary to Government of India carrying a pay scale of Rs.3000/-. Later, the post of Chief Administrator was down graded and was declared as equivalent to the post of Joint Secretary to the Government of India in the pay scale of Rs.2500-125/2-2750/-. The applicant completed his two years service as Chief Administrator with effect from 28.5.1982. According to the applicant, he is entitled to increment in the supertime scale of I.A.S. with effect from 28.5.1982. But vide notification bearing No.7(39)/80.Admn.II dated 7.7.1980, though the post of Chief Administrator was down graded having been equated with the post of a Joint Secretary in the Government of India, carrying pay scale mentioned above, it was stated in the notification endorsed

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to the F.A. & C.A.O. that the pay of the applicant would be restricted to Rs.2500/- per month. Later vide Annexure - 5 dated 15.6.1982, the F.A. & C.A.O., Dandakaranya Project was informed by the Deputy Secretary to the Government of India in the Ministry of Supply and Rehabilitation that the restriction of the pay of the applicant as Chief Administrator Dandakaranya Project at Rs.2500/- per month in the scale of pay of Rs.2500-125/2-2750/- may be treated as having been withdrawn with effect from 3.3.1982 and the applicant (Shri Mohapatra) will be eligible to get the increment in the supertime scale only after completion of the required service from 3.3.1982. On receipt of this communication the applicant made representations to the Ministry and then filed a memorial ^{before} ~~to~~ the President which did not yield any fruitful result and such representation and memorial having been turned down the applicant has filed this original application with a prayer to quash Annexures-5 and 10 and to give a declaration that the applicant is entitled to the increment with effect from 28.5.1992.

2. The Ministry of Supply and Rehabilitation, Cabinet Secretariat not having been made a party in this application, the applicant moved this Bench for amendment to the original application to the extent of adding the Secretary to the Government of India, Department of Supply and Rehabilitation Ministry of Supply and Rehabilitation, Cabinet Secretariat, New Delhi as one of the opposite parties. This amendment was allowed vide order dated 23.9.1992 passed Miscellaneous Application No. 402 of 1992 and hence Secretary to the

Government of India in the Ministry of Supply and Rehabilitation was arrayed as Respondent No.3.

3. Counter has been filed on behalf of Respondent No.1, Secretary to the Government of India, Department of Personnel and Training, and also on behalf of Respondent No.2, i.e. State of Orissa represented by the Special Secretary to the Government of Orissa, General Administration Department.

4. In the counter, filed on behalf of Respondent No.1, it is maintained that the first stage of eligibility for holding the post of Joint Secretary and equivalent post is that the name of the Officer irrespective of the service to which he belongs should be included in the Joint Secretary Suitability list. Each year the cadre controlling authorities of various services are asked to recommend names of officers for consideration for appointment to various posts covered under the Senior Staffing Scheme. After the suitability list is prepared, officers are considered keeping in mind the job requirements of each post and qualifications and experience of the officers in the field of choice. According to the Respondent No.1, the applicant was eligible for consideration for inclusion of his name in the Joint Secretary suitability list in the year 1980. Though the case of the applicant was considered, he was not found suitable for such inclusion by the competent authority. His case was reviewed in the year 1981 for empanelment for holding post in the level of Joint Secretary under the Government of India. The applicant's case along with others

was considered by the Screening Committee in its meeting held on 28.12.1981 and thereafter recommendations of the Screening Committee were placed before the Board in its meeting held on 15.2.1982. On the recommendations of the Board, the competent authority had approved the empanelment of the applicant to hold the post in the level of Joint Secretary in the Government of India with effect from 3.3.1982. Since the empanelment took some time to be finalised, the pay of the applicant was restricted to Rs.2500/-per month and soon after his name found place in the list, it was ordered that the restriction imposed would be effective only till 3.3.1982. In a crux it is maintained that the case being devoid of merit is liable to be dismissed.

5. In its counter, it is maintained by the Respondent No.2 that the applicant at first was not found suitable by the Government of India to be empanelled for the post of Joint Secretary in the Government of India, but the Joint Screening Committee at the State level met on 12.3.1981 and the applicant was found fit for promotion to the supertime scale in the State. Other grounds stated in the counter filed on behalf of the Respondent No.2 is not relevant for the present purpose.

6. Incidentally it may be mentioned here that Mr.U.B.Mohapatra, learned Additional Standing Counsel (Central) had submitted that Respondent No.3, i.e. Secretary to the Government of India, Ministry of Supply and Rehabilitation does not intend to file a separate counter and it would adopt the counter filed by the Respondent No.1.

7. I have heard Mr.J.Das, learned counsel for the applicant, Mr.K.C.Mohanty, learned Government Advocate (State) for the respondent No.2 and Mr.U.B.Mohapatra, learned Additional Standing Counsel (Central) for the Respondent Nos. 1 and 3 at a considerable length.

8. The undisputed fact before me is that vide Annexure-1 dated 7.6.1980, the applicant was appointed as the Chief Administrator, Dandakaranya Project with effect from the forenoon of 28.5.1980 after the post of Chief Administrator was down graded making the same equivalent to the post of Joint Secretary of the Government of India.

9. Further admitted case of the parties is that while Presidential order was issued appointing the petitioner as Chief Administrator, Dandakaranya Project, Pay Scale of Chief Administrator was fixed at Rs.2500-125/2-2750 from the forenoon of 28th May, 1980 which is evident from Annexure-2 dated 7th June, 1980. Further admitted case of the parties is that the Ministry while passing such an order and endorsing a copy of the order to the F.A. & C.A.O. observed that the pay of the petitioner would be restricted to Rs.2500/- per month till further orders. Subsequently vide Annexure-5 dated 15th June, 1982, the Ministry of Supply and Rehabilitation Department further informed the Financial Adviser and Chief Accounts Officer that the restriction imposed earlier stands withdrawn with effect from 3rd March, 1982. In these circumstances, the petitioner was given a fixed pay of Rs.2500/- from 28th May, 1980 to 3rd March, 1982 and it was further observed in Annexure-5 that the petitioner will be eligible to get the

increment in the time scale only after completion of the required service from 3rd March, 1982 which in other words means that after 3rd March, 1984 the petitioner will be entitled to his due increment. In order to justify this action on the part of the concerned authority, it is maintained in their counter affidavit filed on behalf of Opposite Party No. 1 that the empanelment of the petitioner to hold the post at the level of the Joint Secretary, Government of India was made effective from 3rd March, 1983. At the cost of repetition it may be stated that in April, 1980 the Department of Rehabilitation proposed the appointment of the applicant as Chief Administrator, Dandakaranya Development Authority in the Joint Secretary's scale of pay. This evidently means that the petitioner was discharging the duties and responsibilities of a Joint Secretary to the Government of India having been endowed with the same status. Once an officer is vested with the status, duties and responsibilities of a post in a particular cadre, he is definitely entitled to the scale of pay prescribed for the said post. No Rule could be placed before me authorising the concerned authority to restrict the pay of the petitioner to Rs. 2500/-, because of the fact that he had not been empanelled. If the empanelment was a pre condition to confer the benefit of the increment due to an officer of the Joint Secretary's level then in my opinion for the compliance of the principle of natural justice, the officer namely the petitioner should have been informed of this fact. It

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would have remained open to him to either accept the same or decline to accept the same and in case the petitioner would have accepted the same principle of estoppel would have arisen against him. Apart from the above, it requires to be noted that in the year 1981 the case of the petitioner was reviewed for empanelment and in its meeting held on 28th December, 1981. The Screening Committee recommended the case of the petitioner which was placed before the Board on 15th February, 1982. The competent authority approved the empanelment with effect from 3rd March, 1982. Even though the petitioner was found ^{unfit} ~~unfit~~ for empanelment during his incumbency as Chief Administrator of the Dandakaranya Project he was allowed to continue in a post which was equivalent to the status and responsibility of a Joint Secretary. Therefore, there is no escape from the conclusion that ~~despite the fact~~ ^{that the petitioner was found to be unsuitable} for empanelment as Joint Secretary, the Government of India did not deprive the petitioner from the status and responsibility of a Joint Secretary. Rather the Petitioner was allowed to discharge the duties and responsibilities of a Joint Secretary continuously and without any break from 28th May, 1980 to 3rd March, 1982. The restriction should have been lifted from the date on which the petitioner had discharged the duties and responsibilities of a Joint Secretary i.e. 28th May, 1980 especially keeping in view the fact that the

Petitioner was eligible for consideration for inclusion of his name in the Joint Secretary's suitable list in the year 1980.

10. Another important fact cannot go un-noticed. Suppose a particular officer serving in a particular grade is given the post of higher responsibilities and status in the higher grade, would he not be entitled to the pay scale prescribed for the post in the higher grade on the principle of equal pay for equal work. The only answer would be in the affirmative. Rightly and fairly this settled position of law was not disputed at the Bar. In this connection I feel persuaded to adopt the view taken by the Orissa High Court in a judgment reported in 1985 (1) O.L.R. 492 (Dibakar Parida Vs. State of Orissa and others). In this case the Division Bench observed as follows:

"An employee appointed on a graded scale is entitled to his salary according to the scale. He is entitled to the increments at regular intervals according to the scale of pay. His entitlement to increments can only be taken away in accordance with law, for example, if the increment is withheld by way of penalty in a disciplinary proceeding or where the rules authorise such withholding on failure of the employee to comply with or satisfy a particular requirement, namely, passing a specified examination or test etc. Therefore, unless deprived by law the employee is entitled to increments at regular intervals".

The only point on which the respondents could emphasise is the increment would not be allowed as the requirement namely passing of specified examination or test has been complied with. In the case of the present applicant

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he was not required to pass any examination or test. Therefore, in my opinion the principles laid down (quoted above) apply in full force to the facts of the present case and it would be against all canons of equity, Justice and fair play to deprive the petitioner of the emoluments prescribed for the post of a Joint Secretary to the Government of India.

11. In view of the discussions made above, I am of opinion that the petitioner is entitled to the increment due to him soon after completion of two years with effect from 28th May, 1980 and therefore, it is directed that due increment be given to the petitioner with effect from 28th May, 1982. The arrear financial benefits on this account be calculated and paid to the petitioner within sixty days from the date of receipt of a copy of this judgment.

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



[Signature]
12.4.93
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/Saranghi/
12.4.93.