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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.731 OF 1995
Cuttack this the 6th day of September/2002

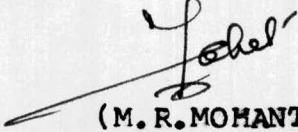
Durga Madhaba Choudhury ... Applicant(s)

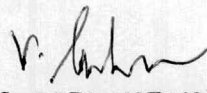
-VERSUS-

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

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(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.731 OF 1995
Cuttack this the 6th day of September/2002

CORAM:

THE HON'BLR MR.V.SRIKANTAN, MEMBER(ADMINISTRATIVE)

AND

THE HON'BLR MR.M.R.MOHANTY, MEMBER(JUDICIAL)

...

Sri Durga Madhaba Choudhury, S/o. Late Ganapati
Choudhury, working as Postal Assistant, Head
Post Office, Berhampur, Dist-Ganjam

...

Applicant

By the Advocates

M/s.S.S.Rao
P.Kr.Misra
A.K.Rout

-VERSUS-

1. Union of India represented by Chief Post
Master General, Orissa Circle, Bhubaneswar
Dist-Khurda
2. Senior Superintendent of Post Offices,
Berhampur Division, Head Post Office,
At/PO-Berhampur, Dist-Ganjam

...

Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

ORDER

MR.V.SRIKANTAN, MEMBER(ADMINISTRATIVE): The applicant was appointed to the post of Postal Assistant in Berhampur Postal Division on 1.1.1991 against ex-serviceman quota and after his appointment, his pay was fixed at Rs.975/-, i.e., at the minimum of the scale prescribed for Postal Assistant(Rs.975-1660/-) with next increment on 1st January of each year. It is the contention of the applicant that on being re-employed his pay should have been fixed under C.C.S.(Fixation of Pay of re-employed Pensioners) Order, 1986 (in short R.P.Order, 1986), which states that fixation of pay of re-employed

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Combantant shall be fixed on the basis of unignored pension and P.E.G. and interim relief after seeking option of the person concerned. However, the applicant contends that in his case the Respondents deliberately failed to obtain his option for fixation of pay and arbitrarily fixed his pay under Rule-4(b)(1) of C.C.S. (Fixation of Pay of re-employed Pensioners) Order, 1986, and that this sub-rule 4-(b)(1) is not applicable in his case as it is applicable only to ex-Combatant Clerk/Storekeeper on re-employment in civil posts, whereas the applicant was a Combatant in the Air Force holding the post of Telephone Operator. Being aggrieved by the pay fixation done by the Respondents, the applicant has filed this Original Application.

2. Heard the learned counsel for the applicant and Shri A.K. Bose, learned Senior Standing Counsel for the Respondents.

3. It is the contention of the applicant that his pay should have been fixed in terms of U.O. dated 29.11.1988 (Annexure-A/6). By fixing his pay under Rule-4(b)(1) of R.P. Order, 1986, the applicant was in the basic pay of Rs.975 + D.A. + M.R.A., But had the pay fixation been done under the notification dated 29.11.1988, he would have been entitled to initial basic pay of Rs.975/- + unignored portion of pension and P.E.G. + M.R.A. and accordingly, he would have drawn higher house rent allowance and wrong fixation of pay has led to financial loss. Accordingly the applicant has sought the relief to direct the Respondents to fix his pay in terms of notification

dated 29.11.1988 on payment of differential amount of pay as due and admissible along with interest and costs.

4. The Respondents contended that the pay of the applicant has been correctly fixed in terms of C.C.S. (R.P.) Orders, 1986; and that prior to confirmation of the applicant in the civil post from 16.7.1993, he had expressed his unwillingness to count his past military service for computation of civil pension vide his letters dated 27.3.1992 and 26.5.1992, addressed to Respondent No.2 (Annexures-R/2 and R/3) and that representation of the applicant made subsequently during 1992 was considered by the P.M.G., who rejected the same vide letter dated 29.11.1994 (Annexure-A/6). It is the further contention that the provisions laid down in the notification dated 29.11.1988 are not applicable in respect of the applicant since it requires ^{applies} to re-employed military pensioners, whose pay is fixed not ignoring their pensionary benefits. But in the case of the applicant his pay has been fixed only ignoring his pensionary benefits and as per rules 11 of CCS(Pension) Rules, 1972 and Govt. of India decision 1 below this Rule, military pensioners on re-employment are required to exercise their options within three months from the date of issue of orders of confirmation in the civil post as to whether they would draw military pension or ^{choose to} should draw military pension for counting previous military service for civil pension. Though the applicant was confirmed in the civil post w.e.f. 16.7.1993, even before confirmation the applicant had already exercised his option expressing his unwillingness on 27.3.1992 and

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and 26.5.1992 to count his past military service for computation of pension. This being so, no fresh option was sought for when the applicant was confirmed in the civil post. Further, the applicant is also not entitled to protection of pay drawn by him while serving as ex-Combatant in the Air Force as Radio Telephone Operator. In terms of Govt. of India orders, re-employed ex-servicemen/pensioners are entitled to exercise their options as to whether their past services should be counted for the purpose of civil pension or not and basing on such options, the pay fixation is required to be done. The case of the applicant as seen is that he not once but twice on 27.3.92 and 26.5.92 had given his unwillingness to count his past military service for computation ~~(of pension)~~ of civil pension. Thus this being so, the Respondents have rightly fixed the pay of the applicant in terms of Rule 4(b)(i) of (R.P.) Orders, 1986. The applicant's case, however, appears to be slightly different as his claim is that he is getting less D.A. & M.R.A. In this connection it is pertinent to refer to O.M. Dated 21.11.1997 (Enclosure to Annexure-R/4), which deals with payment of D.A. in respect of person re-employed in a civil post, and it is found that the pay of the applicant has been fixed without taking into account the entire pension or part thereof. Under these instructions, the amount of pension so ignored shall also be taken into account for the purpose of calculating the D.A., M.R.A. and C.C.A. For example, if a retired pensioner is re-employed in a civil post and his pay is fixed in the civil post by ignoring the entire pension, and if he was drawing pension

an amount of Rs.1000/- and his pay on re-employment is fixed at Rs.2000/- then such re-employed pensioner is entitled to D.A. + H.R.A. on the basis of Rs.3000/- and not Rs.2000/- . However, this is subject to the condition that such a re-employed pensioner will only draw the basic pension during the period of re-employment and not the ^{DA} pension due on that basis. It is not clear from the averments made in the O.A. as to whether this is the grievance of the applicant and that the respondents have not given him D.A. and H.R.A. by taking into account his pension plus pay on re-employment.

Accordingly, this application is disposed of by directing the applicant to give a fresh representation to the Respondents within a period of 30(thirty) days from the date of receipt of copy of this order and if such a representation is received from the applicant, the Respondents shall consider the same and pass a speaking order thereon within three months from the date of receipt of such representation from the applicant. In the circumstances, there shall be no order as to costs.

Filed
06/09/2002
(M. R. MOHANTY)
MEMBER(JUDICIAL)

V. Sri Kantan
(V. SRIKANTAN)
MEMBER(ADMINISTRATIVE)

BJY/