

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.136 OF 1996
Cuttack this the 6th day of September/2002

Syed Saliha

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

1. whether it be referred to reporters or not ? 1/9
2. whether it be circulated to all the Benches of the No
Central Administrative Tribunal or not ?

Label
06/09/2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

V. Srikanth
(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

9

ORIGINAL APPLICATION NO. 136 OF 1996
Cuttack this the 6th day of September/2002

CORAM:

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

THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL)

...

Syed Saliha, S/o. Late Syed Amir,
aged about 55, resident of Koraput
presently working as Deputy Manager (I)
Postal Printing Press, M.I. Estate,
Bhubaneswar-751 010

...

Applicant

By the Advocates

M/s. Dr. D.B. Mishra
N.C. Mishra

-VERSUS-

1. Union of India represented through its
Secretary-cum-Director General, Department
of Post, Dak Bhawan, Sansad Marg,
New Delhi-110 001
2. The Chief Post Master General, WB Circle,
Yogajog Bhawan, Calcutta-700 012
3. The Chief Post Master General, Orissa
Circle, Bhubaneswar-751 001
4. Sri Sridhara Panda, Asst. Manager (Admn.),
Postal Printing Press, M.I. Estate,
Bhubaneswar-751 010

...

Respondents

By the Advocates

Mr. S.B. Jena,
Addl. Standing Counsel
(Central)

10

10

11/2/1

ORDER

MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE) :-

The Applicant, prior to the operation of the scale recommended by the Fourth Pay Commission, was promoted to the cadre of ASRM vide Memo dated 02-01-1980 from the feeder cadre of IRM and his junior, Respondent No. 4 was promoted to the rank of ASRM vide Memo dated 30-06-1980. The pay of the Applicant, on promotion to the cadre of ASRM was fixed at Rs. 550/- in the scale of Rs. 550-900/- whereas the pay of his junior, Respondent No. 4 was fixed at Rs. 600/- in the said scale w.e.f. 30-06-1980. On coming to know of the disparity in the pay with reference to his junior, the Applicant had represented for stepping up of his pay at par with his junior, Respondent No. 4 w.e.f. 30-6-1980. The Applicant had preferred number of representations to the Respondents 1 to 3 starting from 29-7-1987 to 26-10-1995. The Applicant was informed by the Respondents, through letter dated 26-10-1987 that though Respondent No. 4 was junior to the Applicant in ASRM cadre, had earlier officiated in the said cadre in the local vacancy which conferred the benefits of increment in the pay of the Respondent No. 4 and, therefore, the claim of the Applicant for stepping up of his pay cannot be acceded to. However, it appears that even after this reply, the matter continued to be under consideration at various levels in the office of the Respondents.

4

11

(11)

//3//

2. Heard Dr.D.B.Mishra, Learned Counsel for the Applicant and Mr.S.B.Jena, learned Additional Standing Counsel for the Union of India appearing for the Respondents.

3. The contention of the Applicant is that Respondent No.4 was given Ad-hoc promotion instead of the same being offered to the Applicant, who is/was senior in rank and such officiating arrangement has been made behind the back of the Applicant and hence is arbitrary, bad in law and unjust. It is because of this officiating arrangement, behind the back of the Applicant, the Respondent No.4 has been benefitted by having his pay fixed at the stage of Rs.600/- drawing higher pay than the applicant in the ASRM cadre. On the above grounds, the Applicant has come up in this Original Application, under Section 19 of the Administrative Tribunals Act, 1985 with the prayer to direct the Respondents 1 to 3 to step up and release the arrears of pay of the applicant w.e.f. 30-6-1980 at par with his junior, the Respondent No.4; and further prayed for a direction to the Respondents to dispose the representations of the Applicant in the light of the judgment dated 29.10.1993 delivered by the Ernakulam Bench reported in Swamy News page 51, January, 1994.

4. Respondents while accepting the facts have stated that Respondent No.4, who is junior to the Applicant, has been benefitted because of the earlier

9

12

19

//4//

officiating promotion in the cadre of ASRM held by him. It is also the contention of the Respondents that since the vacancy in which Respondent No.4 officiated occurred on short term basis from time to time, therefore, there was no alternative on their part except to make local arrangement to manage the day-to-day work and it was not possible to make a regular posting as the vacancy was on a short term Divisional vacancy. This being the position, the vacancy could not be offered to the applicant and arrangement had been made at the divisional level to manage the short term vacancy. It is also the contention of the Respondents that in such a situation the applicant is not entitled to have his pay stepped up with reference to the higher pay drawn by the Respondent No.4. In this context, the Respondents relied on the instructions contained in OM dated 04-11-1993 (Annexure-R/1). Finally, the Respondents have argued that the Applicant cannot claim the benefit as the ^{is} same made after a lapse of 19 years and hence, this application is not maintainable. Besides, the Respondents have also stated that the discrepancy in the pay scale ^{which} happened in the cadre of ASRM ~~in~~ between the Applicant and Respondent No.4 ceased to exist when the Applicant was promoted to the higher selection grade I and PSS Group B cadre, and the applicant has got more pay than the Respondent No.4 w.e.f. 30.10.1992.

Para [further] it has been stated by the Respondents that the

u

//5//

Applicant is not entitled to have his pay stepped up with reference to his Junior, Respondent No.4 in the cadre of ASRM in view of the instructions contained in OM dated 4-11-1993. However, these instructions ^{of 4/6/93} are not applicable in the case of the Applicant as grievance of the Applicant for stepping up of his pay at par with his junior in the cadre of ASRM pertains to the year 1980. The Rule applicable in such cases, at that time was FR-22-C(Old). Under FR 22-C(Old), the pay was required to be stepped up only if the anomaly should be directly as a result of the application of FR 22-C and in terms of the decision No.23 under FR-22, stepping up pay is not permissible if the junior officer drew, from time to time, at higher rate of pay in the lower scale by virtue of grant of advance increments than the senior. This is not the case here and accordingly, the Applicant, in our view, was entitled to have his pay stepped up with reference to higher pay drawn by his junior, Respondent No.4. However, having said this, we have to take note of the fact that this claim for stepping up of his pay relates to the year 1980 and as such, is hit by delay and laches/ Section 21 of the Administrative Tribunals Act, 1985. Further, even if this benefit was to be allowed, it would be beyond the powers of this Tribunal to grant the arrears as normally, arrears ^{for} preceeding three years from the date of judgment can only be given.

14

14

//6//

Finally, it is seen from the reply of the Respondents that this anomaly existed only as long as the Applicant held the post of AS RM and that subsequently on his promotion to HSG, the applicant has been ^{drawing} rank in higher pay than the Respondent No.4.

5. For the above reasons, we do not find any merit in this Original Application and accordingly the same is dismissed.No costs.

Label
06/09/2012
MANORANJAN MOHANTY
MEMBER (JUDICIAL)

V. Srikantan
(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

KNM/C.M.