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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 704/1996
Original Application No. 705/1996

Cuttack this the 20th day of June, 2003

CORAM :

THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN

AND

THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

In Original Application No. 704/1996

Bipini Bihari Mallick, aged about 44 years,
S/o Late Dinabandhu Mallick, at present
working as LSC, PA, SBCO, Cuttack G.P.O. Cuttack

In Original Application No. 705/1996

Gobardhan Naik, aged about 44 years,
S/o Nakul Ch. Naik, at present working
as LSG, PA, SBCO, Cuttack

.....Applicants

Advocate for the Applicants:

Mr. A. Routray, Advocate

Versus

Mrs. S. Rout, Advocate

In both the cases

1. Union of India, represented through its
Secretary, Department of Posts, Dak Bhawan,
New Delhi.
2. Chief Post Master General, Orissa, Bhubaneswar.
3. Superintendent of Posts, Cuttack Central Division,
Cuttack.
4. Ramakanta Satpathy, at present working as
LSG, PA, SBCO, Cuttack G.P.O. Cuttack

Advocate for the Respondents :
in both the cases

Mr. D. Dash,
Addl. Standing Counsel

O R D E R

MR. B. N. SOM, VICE CHAIRMAN : These Original Applications have
been filed under Section-19 of the Administrative Tribunals' Act,
1985 challenging the legality of the order of the Respondent No. 2

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dt.16.05.1994 rejecting the prayer of the Applicants to stop up of their pay at par with that of the Respondent No.4.

2. Since both the Original Applications have raised common questions of fact and law, we are proceeding to dispose of the same by this common order. However, for the purpose of deciding the issues involved in both the Original Applications we are referring to the detailed averments and submissions made in Original Application No.704/1996.

3. In Original Application No.704/1996, the facts of the case are that both the Applicant and the Respondent No.4 were appointed as L.D.C. in the SBCO organisation on 11.11.1977 and 04.03.1978 respectively. The Applicant is senior to the Respondent No.4 in the Gradation list of L.D.C. as well as in the gradation list of U.D.C. to which both of them have been promoted. However, the Applicant was given regular promotion to the post of U.D.C. with effect from 01.03.1983 but the Respondent No.4 was regularly promoted from 06.02.1986. Both the Applicant and the Respondent No.4 were given financial upgradation under Time Bound Promotion Scheme with effect from 21.09.1991. However, it is alleged by the Applicant that the Respondent No.4's pay was fixed on upgradation at Rs.1720/- with effect from 01.02.1996 and his next date of increment was 01.02.1997 whereas the Applicant's pay was fixed at Rs.1720/- with effect from 01.09.1996 with his next date of increment on 01.09.1997. Thus the pay of the junior (Respondent No.4) was fixed higher than the senior (applicant). This anomaly had started from February, 1980. He further alleged that he had represented for stopping up of his pay to the Respondent No.1 but without any effect.

4. Aggrieved by the in-action of the Respondents, he has approached this Tribunal for redressal of his grievances.

5. The Respondents have contested the application by filing counter. They have admitted the facts of the case as stated by the Applicant. They, have, however, submitted that the Respondent No.4 was drawing more pay than the Applicant in the pre-revised scale of pay of Rs.330-560/- (UDC) because of his officiation ⁱⁿ to the higher grade on local arrangement basis on a stop gap vacancy during the period from 09.02.1980 to 01.05.1983. On the other hand, the Applicant who was working in SBCO, Dhenkanal Division had got opportunity to officiate as U.D.C. during the period from 01.10.1980 to 10.12.1980 and again from 30.11.1981 to 25.05.1986 in SBCO, Jajpur. The pay of Respondent No.4 was fixed in the U.D.C. cadre taking into account his earlier officiating period in U.D.C. cadre from 09.02.1980 to 01.05.1983. They have also submitted that the Applicant is not entitled for stepping up of his pay as his case is not covered by Government of India, Department of Personnel & Training O.M.No.4/7/92-ESTT-PAY-I dt.04.11.1993.

6. We have heard the counsels of both the parties and perused the records placed before us. The main issue involved in this case is whether the stepping up of pay of the Applicant is permissible under Government of India, Department of Personnel & Training O.M.No.4/7/92/ESTT-PAY-I dt.04.11.1993 referred to earlier. This matter has already been examined by us in O.A.No.573/95 where we held that the O.M. dt.04.11.1993 cannot be attracted so as to deny the stepping up of pay of the officers which arose much earlier than issuance of this letter of the Department of Personnel & Training. This O.M. cannot be given retrospective effect because

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it is firmly settled position of law that by an executive act, a personnel cannot be divested of right which has already vested in him.

7. On the strength of our earlier decision, we propose to examine the claim of the applicant further. From the chronology of officiation to the grade of U.D.C. made by the Applicant and the Respondent No.4 as disclosed by the Respondents in their counter, the Respondent No.4 was officiating in the higher grade with effect from 09.02.1980 first at Bolangir Head Post office then with effect from 07.05.1983 at Bhubaneswar G.P.O. On the other hand, the Applicant started officiating at Dhenkanal Head Post Office, SBDO in the first spell from 1.10.1980 to 10.12.1980 then from 13.11.81 to 25.05.1986 at Jajpur and then from 26.05.1986 onwards at Cuttack G.P.O. Thus, the Respondent No.4 though junior was allowed to officiate in the post of U.D.C. about 03 months earlier than the Applicant and that arrangement remained unbroken all-through. The Applicant officiated for 03 months in the higher grade in the year 1980, and again started officiating on long term basis in the higher grade only from 13.11.1981. By that time the Respondent-4 had officiated for over 21 months and had earned one increment in the higher scale. The date of increment was also earlier than that of the applicant and these two conditions caused anomaly in the pay of the senior and the junior.

8. The question now arises as to why the junior was asked to officiate in higher scale earlier than the senior. Was such an arrangement permissible under the rules? We have perused the instructions issued by the Respondent/Department relating to the procedure to be adopted for promotion of officials against short term and long term vacancies to find an answer to the question

raised. In terms of Rule 50(2)(b) of Postal Manual Vol.IV and D.G.P. & T. Order No.5-10/71-SB(SEP.I) dt.24.12.1971

" Vacancies of more than four months duration may be considered as long term vacancies and filled up on circle basis ". It is thus clear that the vacancy of U.D.C. post which occurred at S.B.C.O., Bolangir was long term one being more than four months duration and the Respondents in terms of D.G.P. & T. Circular of 1971 as well as the provisions of Postal Manual were duty bound to offer officiating promotion to the senior most official in the L.D.C. cadre. Had this instruction been followed the anomaly in pay of the applicant and the Respondent No.4 would not have arisen. Neither in their counter nor during the oral argument the Respondents have furnished any information to us to suggest/prove that the senior most official in the L.D.C. cadre i.e., the applicant, was ever offered the position of U.D.C. at Bolangir. Being the senior he had the right for consideration for adhoc promotion first before his juniors. That was his vested right. We have no doubt from the facts of the case that he was denied his right by the Respondents without any valid reasons. The Respondents had thus prejudiced the interest of the applicant for which ^{he} has to be compensated.

9. In view of the foregoing facts and circumstances of the case and also the rule position, the Original Application is allowed and is disposed of with the order that the Respondent-1 to No.3 shall step up the pay of the applicants so as to bring it at par with that of the Respondent-4 with effect from the date of promotion of the applicant to the post of U.D.C. with all consequential benefits as admissible under rules.No order is however made as to cost.

Sd/- M.R. MOHANTY
MEMBER-JUD

Sd/- B.N. SOMI
VICE-CHAIRMAN