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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.779 OF 1996

Cuttack, this the 8th day of

January, 2004

Bharat Chandra Patra Applicant

Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? yes

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


08/01/2004
(M.R. MOHANTY)

MEMBER (JUDICIAL)


B.N. SOM
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.779 OF 1996

Cuttack, this the one day of

CORAM:

January 2004

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

&

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

Sri Bharat Chandra Patra, S/O. Late Bhagaban Patra of Village.
Bramhanabati, P.O. Sailo Barbil, P.S. Gobindpur, Dist.Cuttack.

.....**Applicant(s)**

By the Advocate(s)

..... M/s. N. Jena,
P.K. Rout,

-Vrs-

1. Union of India, represented through its Secretary in Home Department, New Delhi-1.
2. Director General of C.R.P.F., C.G.O. Complex, Lidi Road, New Delhi -110003.
3. Inspector General of Police Eastern Sector, C.R.P.F., Calcutta-700007.
4. Addl. Deputy Inspector General of Police Group Centre, Central Reserve Police Force, Bhubneswar-751001 (Orissa).

.....**Respondent(s)**

By the Advocate(s)

..... Mr. A.K. Bose, (SSC)

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

Shri B.C. Patra, retired Subedar Major-Cum- Office Supdt. (In short SM/O.S.) C.R.P.F., Office of Addl. DIG Police, Group Center, Bhubaneswar, has filed this O.A. assailing the order No.P.I.16/92-93-PBC-GC dated 26.07.1993 (Annexure-3), the Last Pay Certificate, issued by the

Commandant Group Center, CRPF ordering that an amount of Rs.34,401/- be recovered from the DCRG of the applicant due to re-fixation of his pay and allowances from 5/1974 to 11/1992. The applicant has sought for direction of the Tribunal to quash the said order dated 26.07.1993 on the ground that the said order was issued without considering the representation of the applicant by the Respondent and thus the said order of recovery was illegal and violative of the principles of natural justice.

2. The facts of the case reveal that the applicant while working in the post of Assistant, Grade-II, in the scale of pay of Rs. 125-190 in the office of DIG, P.M (D&T), Cuttack was appointed on deputation as Head Clerk in the pay scale of Rs.210-380/- with effect from 02.06.1969 in the Respondent Organisation. The applicant's pay was fixed in the minimum of the scale prescribed for the post of Head Clerk without any deputation allowance. The terms and conditions of his appointment on deputation was issued by Govt. of Orissa vide Govt. order (in short G.O.) No.32148-P dt. 1969 (copy not supplied). He was, later on, permanently absorbed in that organization as UDC with effect from 20.05.1973 and it was ordered that his seniority in the rank of UDC would be reckoned from the date of his absorption in that grade i.e. from 20.05.1973. He was then confirmed in the rank of Head Clerk with effect from 01.10.1980. While the applicant was

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continuing in the post of Head Clerk his pay was revised from the scale of Rs.210-380/- to that of Rs.425 - 700 /- with effect from 01.01.1973 on account of implementation of the recommendations of the 3rd Pay Commission and his pay fixed at the stage of Rs.455/- in that scale. In the year 1976, he was allowed to cross efficiency bar at the stage of Rs.515 of that scale. He was then promoted to the post of Subedar-Major-cum-Office Superintendent (in short SM/OS) in September, 1989 fixing his pay at the stage of Rs.2,375/- in the pay scale of Rs.2000-3200/- . Thereafter, shortly before his retirement, on 31.05.1993 Respondent No.4 re-calculated his pay from the date of his absorption and re-fixed his pay first as UDC with effect from 20.05.1973 and then as Head Clerk with effect from 20.05.1973 at the stage of Rs.425/- instead of fixing it at Rs.455/- as ~~was~~ being drawn earlier. As a result of such a re-fixation after 20 long years the Respondents imposed on him the liability of refunding an amount of Rs.34,401/- over payment received by him on account of pay and allowances. This amount was ordered to be recovered from his retirement benefits. The grievance of the applicant is that the decision to re-fix his pay at a lower stage just before his retirement was taken by the Respondents without giving any notice to him causing financial loss to him on a permanent basis. He has further alleged that had it been made known to him in 1973 at the time of permanent

absorption in the Respondent organization, that his absorption in the grade of UDC would lead to downward revision of his pay in the grade of Head Clerk he would not have opted to continue in the CRPF and would have come back to the State Service in which the retirement age was 58 years against 55 years in the CRPF. Thus the action of the Respondents in altering the terms and conditions of his absorption 20 years after its happening was arbitrary, illegal and detrimental to the interest of the applicant. He has therefore submitted that unless the order re-fixing of his pay is quashed he would be seriously prejudiced.

3. The Respondents have opposed the application by filing a detail counter & additional counter to which the petitioner has filed a detailed rejoinder.

4. In the counter the Respondents have submitted that the fixation of the applicant's pay at the stage of Rs.2,375/- in the scale of pay of Rs.2000-3200/- in the rank of SM(OS) was an administrative error which was detected only ^{time of} ~~at the~~ finalization of his pension papers. They have exercised their right to correct an error. They have also submitted that as the applicant was permanently absorbed as UDC with effect from 20.05.1973 his pay was required to be fixed as UDC from that date and consequently his pay in the grade of Head Clerk and SM(OS) called for revision. They

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further submitted that the applicant did not raise any objection regarding re-fixation of his pay (Annexure-2) till after his retirement. Further that the Respondents were entitled to recover the excess payment made to him. It has been disclosed by them that the applicant after his retirement had submitted one representation dt.17.06.1993 to the Respondent No.2 which was duly examined and rejected by the competent authority in November, 1993. The said rejection order having been passed in the year 1993 the applicant ought to have approached this Tribunal within six months from the date of its rejection. The same having not been done the present application is barred by limitation and should be rejected on this ground alone.

5. In his rejoinder the applicant has pointed out that the action taken by the Respondents in fixing his pay in the rank of UDC was a technical requirement which did not warrant re-fixation of his pay as Head Clerk as he was holding that post and drawing pay and allowances in that scale since his deputation to CRPF with effect from 02.06.1969. His pay in the scale of Head Clerk with effect from 01.01.1973 was correctly revised as the pay scale of the post had undergone revision on the recommendation of the 3rd Central Pay Commission. He further submitted that the pay of the applicant fixed at various stages since 01.01.1973 had been audited from time to time by the internal audit party of the Department as well as by the Statutory

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audit party of the Auditor General who had found nothing wrong in the matter all these years. It was therefore not open to the Respondents to raise any objection at the time of his retirement and alter the condition of his service suo moto. He further submitted that this Hon'ble Tribunal in the case of one Shri Dasarathi Sahoo in O.A. No.226/92 has already ruled that the Respondents have no right to hold the pensionary benefit to the applicant's dis-advantages after the petitioner (Dasarathi Sahoo) was allowed uninterrupted to officiate as Head Clerk, promoted to the grade of Office Superintendent and finally allowed to retire thereafter.

6. We have heard the Ld. Counsels for the rival parties and have also perused the records placed before us. The applicant has also drawn our notice to the following two case laws:-

- 1) Secretary-Cum-Chief Engineer, Chandigarh Versus Hari OM Sharma and others, 1998 SCC (L&S) 1273.
- 2) Manmohan Singh Versus State of Punjab 1996 (5) SLR 371

7. We heard this matter on several occasions from 08.04.2003 to 29.08.2003 and heard the applicant in person also. We also called upon the parties to produce the departmental circular inviting deputation of the State Government Police officials on deputation to CRPF to know the terms and conditions of deputation which could not be produced by either of the parties. We then called upon the Ld. Senior Standing Counsel to produce

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the Service Book of the applicant along with the departmental circular/policy decision in the matter of obtaining State Police Personnel on deputation to the CRPF only. The Service Book was produced for our perusal.

8. We have given our anxious thoughts to the issues raised in this O.A by the applicant. We have also considered the limitation point raised by the Respondents in this matter. The question of limitation was considered by us while hearing M.A. No.163/97 filed by the applicant seeking condonation of delay in filing this O.A. on 10.03.1999. The Ld. Sr. Standing Counsel had opposed the prayer at that time also. Our finding at that time was that this O.A. was filed on 06.02.1996 challenging the order dated 26.07.1993 at Annexure-3, an order passed by the Respondents after the retirement of the petitioner, for making certain recoveries from his pension. We had held that as revision of pay is a continuing cause of action no question of delay was involved in this case. Accordingly, the delay in filing the O.A. was condoned by us.

9. On the merit of the case the question to be answered in this case is whether it was open to the Respondents to re-open the case of fixation of pay of the applicant on his permanent absorption in CRPF twenty years after he was absorbed without hearing him.

10. In this connection we would like to observe that the law is already well settled in this regard in a catena of cases. In the case of Pranab Mukherjee and Other Vrs. U.O.I; 1990 (1) ATJ 366 it was held that no order for cancelling the fixation of pay can be passed without giving an opportunity to be heard. In the case of P.G. Sivlingam and Others Vrs. Director General of Telecommunications and Others 1991 (1) ATJ 682 it has been ruled that re-fixation of pay after several years on account of correction of mistake without giving opportunity to represent against such re-fixation is violative of the principles of natural justice and hence held invalid. It was further held that the revised policy involving civil consequences, 'particularly emoluments of low paid employees' can be effected only prospectively and not retrospectively. We would like to quote here the finding of their Lordship's which eminently answers the issue raised in this Application also.

"We are also of the same view in so far as the present cases are concerned the impugned orders are bad in law, on account of the obvious infringement of the principles of natural justice as pointed out above. In addition, we are as certain that an attempt to re-fix the settled pay of the applicants unilaterally and arbitrarily after several years, and to order recovery of huge amounts, when there is not even a whisper of allegation of any default or remissness on the part of these applicants, is wholly unfair. The act of the respondents is extremely offensive to the principles of fairness and sense of justice. Can the settled pay of the government servant fixed in accordance with the extent rules, be re-opened and unsettled at the sweet will of the officials on the pretext of interpreting obvious orders at any time,

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and there by, could huge amounts be recovered from the low paid ex-servicemen after several years? We are of the opinion that such action is totally impermissible in terms of law as well as equity. We may, in support of our view in this matter, referred to the decision and observations of the Supreme Court in Management of M/s Nally Bharat Engineering Co. Ltd., Vrs. State of Bihar (1990 (2) SCC 48)."

We are in respectful agreement with this decision .

11. We also in the case between Dasarathi Sahoo Vrs. U.O.I and
4th May 94 had
others decided on ~~Z~~ in O.A. No.226/92 ~~Z~~ held that the delay and incorrect
fixation of pay of the applicant if takes place wholly due to the inaction or
incorrect action by the Respondents and no part of the blame can attach to
the applicant himself no order of revision is sustainable. It is also a fact in
this case that he was neither made aware of the problems involved nor was
he ever apprised of the incorrectness of his pay fixation " until much after
retirement". Our attention has also been drawn to the judgement of Punjab
and Haryana High Court (D.B) in the case between Monmohan Singh Vrs.
State of Punjab in which case it was held that it was not open for the Govt.
to raise objection regarding wrong fixation of pay of the petitioner after 20
years specially when it was duly verified earlier and that also without
affording opportunity of hearing to the petitioner.

12. From the above citations of the case laws it is clear that the law is
well settled that objection regarding wrong fixation of pay can not be raised
after long years, what to talk of raising it before the retirement of the Govt.

servant without affording him any opportunity of hearing. Armed with these rulings we need not go further into the merit of the case as to whether on permanent absorption of the applicant in the grade of UDC the Respondents were duty bound to re-fix the pay of the applicant in UDC grade first & then fix his pay in the scale of Head Clerk in which post he was appointed regularly on deputation with effect from 02.06.1969. We have therefore no hesitation to hold that it was not open to the Respondents to revise the pay of the applicant after twenty year and just before his retirement without giving him an opportunity to be heard. We are also unhappy to note that the Respondents did not apply the ratio of the judgement in the case of Dasarathi Sahoo in deciding the matter relating to the applicant in this case both cases being identical in facts & law.

13. The admitted facts of the case of the applicant are that he was appointed as Head Clerk (Rs.210-380/-) on deputation basis from his substantive post of Assistant of Grade-II (Rs.125- 190/-) in the State Police Service. He was granted the benefit of higher scale in lieu of substantive pay plus deputation allowances. He continued in the higher grade of Head Clerk during which period he was permanently absorbed in CRPF with effect from 20.05.1973 in the grade of UDC. His absorption in the grade of UDC did not have any effect on his officiating appointment as Head Clerk which was continuing in the pre-revised scale of Rs.210 - 380/- since

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02.06.1969. He continued to draw his pay and allowance in the grade of Head Clerk (Rs.210-38/-) with effect from 02.06.1969 with due increments without any break. As the pay of the Head Clerk was revised from Rs.210-380/- to Rs.425-700 on the recommendation of the 3rd Pay Commission which was implemented with effect from 01.01.1973 his pay was revised and fixed at the stage of Rs.455/- in the scale of Rs.425-700/- along with others in that grade. We have also perused the Service Book of the applicant where the following remarks are found recorded at page 26 of that book:-

“ Permanently absorbed in the C.R.P.F. as U.D.C. with effect from 20.05.1973 and will take his seniority in the rank of UDC from the date of absorption i.e. 20.05.1973.”

14. Entries have been verified by the competent authority as correct and audited from time to time as stated by the applicant in his application and not denied by the Respondents in the counter.

15. It is also an admitted fact that the pay of the applicant was revised with effect from 20.05.1973 in pursuance to the instruction of 13.10.1990 issued by Respondent No.2 at Annexure.2. No reason is available in the said order at Annexure 2 as to what necessitated downward revision of pay of the applicant nor any notice was issued to him in this regard to show cause.

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On the other hand, the Respondent No.3 vide his letter dt. 06.08.1993 forwarding the representation submitted by the applicant against recovery of Rs.34,782 had recommended his case to be decided keeping the following points in view.

"(a) On initial entry in CRPF as Head Clerk his pay was fixed correctly at the minimum of the pay scale applicable to Head Clerk at that time in accordance with FR 22(1) (a)(1) read with GOI order No.(13) below FR-22.
(b) He was not provided with any deputation (duty) allowance while engaged in CRPF.
(c) At no time he was reverted to the rank of UDC in CRPF.
(d) As per entry in S/Block, it appears that he was absorbed in CRPF as UDC and assigned seniority w.e.f. 20.05.1973 for technical reasons only i.e. for further promotion. His further promotion from Head Clerk to OS was done according to seniority assigned.
(e) Since he was continuously holding the post of Head Clerk, reduction of pay at a latter stage i.e. with effect from 01.01.98 is causing hardship to the individual, which is against the norms of Fundamental rules.
(f) Since the individual had efficiently discharged his duties of higher responsibility assigned to him on entry to CRPF from State Government Service, as per his record of service, it is justified to invoke provisions contained in FR-27 and GOI Order No.(3) there under by the Competent Authority, to avoid undue hardship to the applicant."

The points mentioned in that letter correctly put the matter of fixation of pay of the applicant in true perspective & the suggestions made at sub-para (a), (b) & (c) were apt in all respect.

16. But it appears from Annexure 6 that Respondent No.2 failed to examine the matter properly keeping the above points in view and rejected the representation erroneously without assigning any reason and that was in violation of the principles of natural justice. Further, the Respondents also failed to see that having absorbed the applicant in the grade of UDC with

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effect from 20.05.1973 when he was officiating as Head Clerk with effect from 02.06.1969 it was incumbent upon them to protect his pay in the grade of Head Clerk. In any case it is the well established principles of service jurisprudence that the terms and conditions of service of an employee cannot be revised to his detriment without his knowledge as that would be arbitrary and bad in the eye of law. And for these reasons the order of recovery of Rs.34,782/- is unsustainable in the eye of law.

17. In these circumstances this O.A. succeeds. We accordingly quash the Annexure-2, Annexure-3 & Annexure-6 and direct the Respondents to refund Rs.34,782 to the applicant and also pay interest on the said amount at the rate of 9% per annum from the date of recovery till the month preceding the month of payment of the amount to the applicant to mitigate the hardship the applicant had sustained all these years. No costs.

M. Mohanty
08/01/2004

(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som

(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar