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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 1998

Cuttack, this the 1st day of Sept. 1999

Maheswar Parida

.....

Applicant

Vrs.

Union of India and another

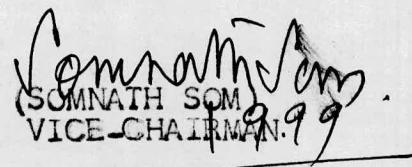
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Respondents

(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? No .

(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.78 OF 1998

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

....

Maheswar Parida,
son of late Kangali Charan Parida,
Head Constable, C.B.I., Rourkela Unit,
Rourkela,

Address for service of notice:

Maheswar Parida, son of late Kangali Ch. Parida,
Head Constable, Central Bureau of Investigation,
Rourkela Unit, Rourkela, District-Sundargarh

..... Applicant

Advocates for applicant - M/s N.C. Sahoo,
S.P. Panda,
A.K. Patnaik
D. Mohanty

Vrs.

1. Union of India, represented through Superintendent of Police (HQ), Central Bureau of Investigation, CGO Complex, Lodi Road, New Delhi.
2. Superintendent of Police, Special Police Establishment, Central Bureau of Investigation, Bhubaneswar, Nayapalli, District-Khurda

..... Respondents

Advocate for respondents - Mr. A.K. Bose,
Sr. G.G.S.C.

....

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative

2

Tribunals Act, 1985, the petitioner has prayed for refixing his salary in the Central Scale of pay with effect from 1.1.1986 along with pay protection as per circular dated 12.1.1994 (Annexure-6). The second prayer is for payment of other consequential service benefits with effect from 1.1.1986.

2. The applicant's case is that he initially joined Orissa Police in 1971. He was sent on deputation to Central Bureau of Investigation in 1982. He was absorbed on permanent basis in the C.B.I. on 1.1.1986. Five other persons, namely, P.Sahoo, B.K.Pallei, P.C.Das and S.C.Patnaik and P.Routray, who also came on deputation from Orissa Police as Constables were working as Constables in the same rank from 1982 to 1993. These five persons were absorbed on permanent basis in C.B.I. with effect from 1.3.1985. Of these five persons, B.K.Pallei and S.C.Patnaik are Head Constables but junior to the present applicant. They are getting more pay than the applicant. Further, the petitioner was promoted in September 1993 after clearing the departmental examination whereas those persons were promoted according to seniority. The applicant's promotion order is at Annexure-1. Prior to 1985 the pay of the petitioner along with other deputationists from Orissa Police was fixed in the State Police scale, i.e., they were allowed pay, special pay plus deputation allowance. Copies of pay fixation orders of the applicant and one P.Sahoo, Constable, are at Annexures 2 and 3. The applicant has stated that pursuant to the judgment of Central Administrative Tribunal, Principal Bench, New Delhi, in the case of Virpal Singh and others v. Union of India and others, pay of Constables was

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refixed with effect from 1.3.1985 and from 1.1.1986 to 1.1.1992 in order No.1469/92 and order No.1468/92, which are at Annexures 4 and 5. In terms of the above judgment, a circular dated 12.1.1994 was issued (Annexure-6) whereby pay of Constables permanently absorbed in C.B.I., who were from State Police organisation and were drawing pay in higher scale of pay than that of the C.B.I. had to be refixed. This had to be done by 30.3.1994. Accordingly, pay of all such permanently absorbed Constables was refixed in 1985 vide order at Annexure-4 and again from 1.1.1986 vide order at Annexure-5. Pay of the five persons referred to earlier was refixed according to the circular dated 12.1.1994. One such pay fixation order in respect of P.Sahoo is at Annexure-7. All the five persons who were permanently absorbed are getting higher pay than the petitioner. The petitioner has been singled out and denied higher pay. He has filed several representations under Annexure-8 series but without any result. His representation dated 7.10.1995 was strongly recommended by the Superintendent of Police, C.B.I., Bhubaneswar on 4.1.1996 but without any result. The applicant has stated that when in case of similarly situated persons pay has been refixed there is no reason why the same has been denied to the applicant. It is further stated that in an identical situation ^{of} Santosh Rana, Constable, Ranchi Branch, who was regularly absorbed in 1986, refixation of pay has been done by Ranchi Branch and payment made by the Bhubaneswar Branch in 1995. The applicant has indicated his entitlement vis- a -vis Santosh Rana who was also absorbed in C.B.I. like the applicant on 1.1.1986. It is

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further stated that in the Fourth Pay Commission report the basic pay of Rs.225/- was fixed at Rs.950/- whereas the basic scale of the petitioner and the State scale was Rs.780-1160/- and he is entitled to pay protection. On the above grounds, the petitioner has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant's prayer seeking pay protection from 1.1.1986 is hopelessly barred by limitation. Secondly it has been urged that the comparison with the case of Santosh Kumar Rana of C.B.I., Ranchi Branch, cannot be done because in case of Santosh Kumar Rana, pay fixation was wrongly done and the C.B.I., Ranchi Branch, has already reviewed the pay fixation of Shri Rana and has corrected the mistake. The respondents have stated that the case of the applicant is different from the five persons mentioned by him in his O.A. Shri P.C.Das joined the State Police on 12.3.56, came on deputation to C.B.I. on 9.11.1979 and was absorbed in the C.B.I. on 1.3.1985. Shri B.K.Pallei joined the State Police on 1.12.62, came on deputation to C.B.I. on 11.8.1980 and was absorbed in C.B.I. on 1.3.1985 and promoted as Head Constable on 29.6.1995. Shri P.Sahoo joined the State Police on 25.9.1963, came on deputation to C.B.I. on 10.8.1979 and was absorbed in C.B.I. on 1.3.1985 and promoted to the rank of Head Constable on 7.6.1995. Shri S.C.Pattnaik joined the State Police on 9.4.1975, came on deputation to C.B.I. on 8.8.1979 and was absorbed in C.B.I. on 1.3.1985 and promoted to the rank of Head Constable on

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7.6.1995. Shri P.Routray joined the State Police on 8.11.1977, came on deputation to C.B.I. on 16.11.1979 and was absorbed in C.B.I. on 1.3.1985 and promoted as Head Constable on 9.2.1998. The applicant on the other hand joined the State Police on 12.11.1971, came to C.B.I. on deputation on 9.7.1982 and got absorbed in C.B.I. on 1.1.1986. Thus the other five persons got absorbed on 1.3.1985 whereas the applicant got absorbed in C.B.I. on 1.1.1986. The respondents have stated that prior to 1.1.1986 the pay of the applicant and others was fixed in the State Police scale and they were allowed deputation allowance. At that point of time the scale of pay in the State Police was higher than that of C.B.I. On 1.1.1986 C.B.I. scale of pay was higher than that of the State Police. The respondents have stated that on 1.1.1986 the basic pay of the applicant was Rs.812/- + Rs.81/- D.A. and Deputation Allowance of Rs.75. Altogether it came to Rs.968/- whereas the basic scale in the C.B.I. was Rs.1175/- with personal pay of Rs.87/-. Therefore, the total came to Rs.1268/-. It is further stated that pay fixation in orders at Annexures 4 and 5 was done in accordance with the judgment of the Principal Bench in O.A.No.1680/89 (Annexure-R/1) and the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4536/92 (Annexure-R/2). Pursuant to these judgments, instructions were issued as at Annexure-6 and one sample copy of pay fixation is at Annexure-5. In pursuance of these judgments and the circular dated 12.1.1994 pay of the five Constables P.C.Das, B.K.Pallei, P.C.Sahoo, S.C.Pattnaik and P.Routray was fixed. The respondents have

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stated that the decisions at Annexure-R/1 and Annexure-R/2 make it clear that these judgments are only applicable to persons whose pay is reduced on permanent absorption in the C.B.I. from the pay they were already getting in their parent Department and were getting while on deputation. The respondents have stated that the applicant's pay on the date of his absorption was fixed at a level higher than the basic pay which the applicant was getting at that time. Therefore, these judgments have no application whatsoever in case of the applicant. The respondents have stated that in case of others whose examples have been cited by the applicant, their pay got reduced on account of their absorption on 1.3.1985 and therefore the judgments became applicable to their cases. It is stated that Annexures 4, 5 and 6 have no application to the case of the applicant. It is stated that on the date of applicant's permanent absorption in C.B.I. on 1.1.1986 he was drawing basic pay of Rs.812/- in the scale of Rs.780-1160/- whereas on absorption in C.B.I. he got the scale of Rs.950-1500/- and his basic pay was fixed at Rs.1175/-. As such the applicant was benefitted by Rs.294/- and his pay was not reduced and therefore the judgments relied upon by him are not applicable to his case. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has stated that the benefit of pay being a continuous cause of action, the plea of limitation is misconceived. It is stated that B.K.Pallei and S.C.Pattnaik are junior to the applicant but

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are getting more pay than the applicant. It is stated that the applicant was promoted to the post of Head Clerk in September 1993 whereas B.K.Pallei and S.C.Pattnaik were promoted later in 1995 and 1998 but they are getting more pay than the applicant. The applicant has given calculation indicating that on his absorption on 1.1.1986 his pay was reduced by Rs.591/-. The applicant has made various other averments indicating that the judgments relied upon by him are applicable to his case. He has also stated that Santosh Kumar Rana of Ranchi Branch is continuing to get his pay till date even though it has been stated by the respondents that his pay has been wrongly fixed and the mistake has been corrected. On the above grounds, the applicant has reiterated his prayer in the rejoinder.

5. We have heard Shri N.C.Sahu, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioner has filed written note of submissions enclosing therewith copies of the circulars of the State Government for fixation of pay under the Orissa Revised Scales of Pay Rules 1985. We have also taken note of that.

6. From the above recital of facts, it is clear that the controversy here is regarding correctness of fixation of pay of the applicant on his absorption in C.B.I. with effect from 1.1.1986. It is important to note that the Fourth Pay Commission pay scales applicable to Central Government employees also came into force from 1.1.1986. It is also important to note that the Orissa Revised Scales of Pay Rules 1985 came into force from 1.1.1985. It is

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admitted between the parties that prior to the applicant's absorption in the C.B.I. with effect from 1.1.1986 he was getting pay in the Central Bureau of Investigation on the basis of his pay in the State pay scale plus deputation allowance and D.A. The State pay scale for Constable was Rs.255-390/-. With effect from 1.1.1985, according to the Orissa Revised Scales of Pay Rules, 1985, the corresponding revised pay scale was Rs.780-1160/-. It is stated by both the sides that the Central pay Scales were revised in accordance with the Fourth Pay Commission recommendations with effect from 1.1.1986. Prior to this revision, the State pay scale was higher than the Central pay scale. Whatever it may be the position is that the applicant was permanently absorbed in C.B.I. from 1.1.1986. Therefore, his pay in the Central pay scale has to be fixed as on 1.1.1986. This has to be fixed with reference to the pay he was getting on the previous day, i.e., 31.12.1985. His pay on 31.12.1985 was on the basis of revised scale of pay of State Government, which is Rs.780-1160/-. The pay scale in the C.B.I. on 1.1.1986 was Rs.950-1400/-. The respondents have stated and the applicant has also mentioned in his rejoinder that his pay as on 31.12.1985 ~~was~~ in the pay scale of Rs.780-1160/- was Rs.812/-. With this he was getting D.A. of Rs.81/- and deputation allowance of Rs.75/-, totalling Rs.968/-. As on 1.1.1986 his pay in the C.B.I. was fixed at Rs.1175/- in the Central pay scale of Rs.950-1400/- and he was given personal pay of Rs.87/-; the total amount coming to Rs.1268/-. From this it is clear that his basic pay

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in the State scale as on 31.12.1985 was Rs.812/- as against which on 1.1.1986 his basic pay in the C.B.I. in the Central pay scale (revised) became Rs.1175/-. He therefore did not suffer any reduction of emoluments in the matter of basic pay unlike the persons covered in the two judgments at Annexures R/1 and R/2. Even taking into account his D.A. and deputation allowance at Rs.81/- and Rs.75/-respectively, his total pay as on 31.12.1985 was Rs.968/- as against which on 1.1.1986 he got the pay of Rs.1268/-. This aspect does not concern us because the Hon'ble Supreme Court in their judgment at Annexure-R/2 have held that what is required to be seen is that the person on absorption does not suffer any reduction in his basic pay. In this case there is no such reduction. Moreover, the total pay has also been increased. From the above it is clear that the two decisions at Annexures R/1 and R/2 have no application to the case of the applicant. The applicant has compared his case with the five other persons referred to in this order. Those persons were all absorbed on 1.3.1985 whereas the applicant was absorbed in C.B.I. on 1.1.1986. Those five persons were in the Central pay scale from 1.3.1985 whereas the applicant came over to Central scale of pay from 1.1.1986. After the absorption of those five persons in the C.B.I. with effect from 1.3.1985, they suffered reduction in the basic pay and that is how they got the benefit of the two judgments referred to earlier. The applicant's case is totally different and therefore he cannot draw comparison with the cases of five other persons referred to by him.

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16

-10-

7. In the result, therefore, we hold that the application is without any merit and the same is rejected but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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