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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 560 OF 2000
Cuttack this the 30th day of April, 2004


Upendra Prasad Guru ... Applicant(s)


- VERSUS -

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO*


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...
Shri Upendra Prasad Guru, I.A.S. (Retd.),
aged about 75 years, S/o. late D. Guru,
a Member of the Indian Administrative Service (Retd.)
at present residing At-G/3, Ganganagar, Bhubaneswar,
Dist-Khurda-751 001

By the Advocates

... Applicant
M/s. A.K. Mishra
B.B. Acharya
J. Sengupta
D.K. Panda
P.R.J. Dash
G. Sinha

- VERSUS -

1. Union of India represented through its Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Third Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003
2. State of Orissa represented through its Special Secretary, General Admn. Department, Government of Orissa, Secretariat, Bhubaneswar, Dist-Khurda
3. Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda

By the Advocates

... Respondents
Mr. S.B. Jena, A.S.C.
Mr. K.C. Mohanty, G.A.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application, under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant, Shri Upendra Prasad Guru, seeking the following reliefs:

"...to direct the Opp. Parties to pay the petitioner the minimum pension of Rs. 6378/- as has been fixed by the Opposite Parties as per the order in Annexure-5.

And to direct the Opposite Parties to recalculate/revise the pension of the petitioner,

taking into consideration the Rules/ instruction issued by the Government from time to time in which increments, stagnation increment should have been taken into consideration while fixing the pension;

... to direct the Opposite Parties to up-to-date(update) the pension/family pension by notional fixation of pay as on 1.1.1986 in the Junior Administrative Grade/scale of pay (non-functional) and the pension/family pension may be consolidated according to the revised scale of pay on 1.1.1986;


... to direct that the petitioner is entitled to higher pension than which has been fixed by the Opposite Parties".

2. The Respondents have filed their counter contesting the application.

3. We have heard Shri A.K.Mishra, the learned counsel for the applicant and Shri K.C.Mohanty, learned Govt. Advocate appearing on behalf of the State of Orissa and Shri S.B.Jena, learned Addl.Standing Counsel appearing on behalf of the Union of India in extenso.

4. One of the two issues raised in this O.A., i.e., granting him promotion to the Junior Administrative Grade of I.A.S. with effect from 1.1.1986 has already been answered by us in Original Application No. . In that O.A. we have held that J.A.G. in I.A.S. having been introduced with effect from 1.1.1986 and the applicant having retired from service with effect from 30.11.1983 is not entitled to relief as prayed. Accordingly, this prayer being devoid of merit is dismissed.

5. With regard to his first prayer, it has been submitted by the Respondents that vide representation dated 24.8.1998, the applicant had approached the Principal A.G.(A&E), Orissa, to take into account in his pay the element of special pay and stagnation increment and to



recalculate his pension entitlement. But the same was not considered by the Respondents as there was no provision in the A.I.S.(D.C.R.G.) Rules, 1950 to include special pay for the purpose of calculation of pension; besides, he was not in receipt of stagnation increment. During oral argument, the learned counsel for the Respondent Shri K.C.Mohanty pointed out that the concept of stagnation increment came into being only with effect from 1.1.1986 by the D.O.P.T. Notification No.11030/7/87-AIS(II) dated 13.3.1987 and a new para, called Para- 5 A was added to the Indian Administrative Service (Pay) Rules, 1954 consequent upon implementation of the recommendation of the 4th Central Pay Commission Report and below Rule-5(a) the same has also been appended, which reads as follows:

"...The stagnation increment shall be in the nature of personal pay and shall not be taken into account for the purpose of fixation of pay on promotion or for applying to scale of pay or special pay under these rules".

From the above quoted rules, it is clear that the Government allowed stagnation increment to officers who would stagnate at the maximum of the scale for two years with effect from 1.1.1986 and therefore, the question of applying it to these members of service who had retired earlier does not arise. Accordingly the 2nd prayer of the applicant will be of no avail to him.

Finally with regard to his prayer to pay him pension at the rate of Rs.6375/- as per order published by the Respondents on 5.4.1999 (Annexure-5), the Respondents have submitted that that order was issued erroneously while preparing a list of 19 retired I.A.S. officers whose

pensions/family pensions were under revision.

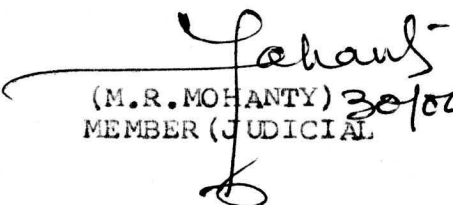
In the rejoinder the applicant has submitted that it was not open to the Respondents to have unilaterally withdrawn the P.P.O. issued in his favour on 5.4.1999 (Annexure-5) because, by issuing P.P.O. on 5.4.1999, a vested right was created in his favour for higher pension. Thus by rescinding that order subsequently the Respondents have violated the rules of natural justice and constitutional norms. He further submitted that the withdrawal of the P.P.O. dated 5.4.1999 was done on account of the representations that the Respondents had received from some of the pre 1986 retirees whose cases were neither comparable nor identical to that of the applicant's case herein.

The point raised here has been carefully examined the by us. The applicant has assailed ~~the~~ order of annulment of P.P.O. issued on 5.4.1999 by the Respondents being violative of the Constitution and the principles of natural justice. We find it difficult to agree with the applicant on this point for the reason that the Courts have repeatedly held the view that the administration/employer has inherent power to correct/rectify a mistake once it is detected. It is now the settled position of law that the administration has got powers to rectify an error as soon as the same is detected. This being the position of law, the question of denial of natural justice and/or violation of constitutional rights does not arise. The only exception while that the Courts have made ~~the~~ holding the right of the administration to rectify mistake is that if because of

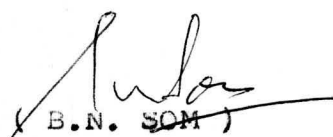
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such erroneous decision certain payment has been made to the employee in excess, no recovery should be made as that would cause hardship when more particularly the error is not attributable to the employee concerned. In the instant case, the Respondents have stated that the pay of the applicant was shown as Rs.12,750/- per month, as a result of which, the A.G.(A&E), Orissa issued P.P.O. by revising the pension of the applicant at 50% of that pay, i.e., Rs.6375/-. As the Respondents have found out the mistake before the P.P.O. could be acted upon and the P.P.O. dated 5.4.1999 was cancelled by their order dated 19.4.1999 (Annexure-6). The applicant has nowhere claimed that his last pay drawn in the minimum of senior time-scale of pay with effect from 1.1.1996 was not Rs.10,650/- but Rs.12,750/-.

For the reasons discussed above, we see no reason for us to intervene in the matter. In the circumstances, the O.A. fails. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

30/04/04


(B.N. SOM)
VICE-CHAIRMAN

BJY