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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 335 OF 2001  
Cuttack, this the 5th day of April, 2002

Guru Charan Das ..... Applicant

Vrs.

Union of India and others .... 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

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M.R. MOHANTY  
MEMBER (JUDICIAL) 5/4/2002

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.335 OF 2001  
Cuttack, this the 5th day of April, 2002

CORAM:

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

.....

Guru Charan Das, aged about 80 years, son of late Balabhadra Prasad Das, Asst.Executive Officer (Retd.), Dandakaranya Development Authority, Koraput, Permanent resident of Village/PO-Bharatpur, District-Kendrapara, at present Goudasahi, Khannagar, P.S-Madhupatna, Town/District-Cuttack..... Applicant

Advocates for applicant - M/s B.H.Mohanty,  
B.Das, D.P.Mohanty,  
J.K.Bastia, T.K.Mohanty &  
P.Sahoo.

Vrs.

1. Union of India, represented by Secretary, Department of Home Affairs (previously Ministry of Rehabilitation), Rehabilitation Division, Jaisalmer House, Mansingh Road, New Delhi-110 011
2. UnderSecretary, Department of Home Affairs, Rehabilitation Division, Jaisalmer House, Mansingh Road, New Delhi-110 011.
3. The Pay &Accounts Officer (Pension & Misc.), Ministry of Finance, Government of India, Department of Pensions & Pensioners' Welfare, Trikot-11 Complex (Behind Hotel HYATT REGENCY), BHIKAJI CAMA PLACE, NEW DELHI-110 066.
4. The Incharge, DNK Sub Cell, Union Ministry of Home Affairs, Settlement Wing, Jaisalmer House, Mansingh Road, New Delhi-110 011.
5. Settlement Officer, Government of India, Ministry of Home Affairs, Rehabilitation Division (Settlement), Jaisalmer House, New Delhi-110 011.

..... ....Respondents

Advocate for respondents - Mr.J.K.Nayak,  
ACGSC

O R D E R  
(ORAL)

M.R.MOHANTY, MEMBER(JUDICIAL)

The applicant initially started his career in Government of India service under Hirakud Dam Project and later he was taken to Dandakaranya Project, and ultimately faced retirement on attaining the age of

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superannuation on 31.7.1979. While taking him to Dandakaranya Project, a promise was held out to him to give 25% of his salary as deputation allowance/ special pay. Such benefits having not been given to him, he carried the matter to the Orissa High Court in a writ application (OJC No.1015 of 1979) which stood transferred to this Tribunal and registered as T.A.No.262 of 1986. This Tribunal ultimately held on 26.5.1987 that the applicant was really entitled to deputation allowance at the rate of 25%. In the meantime, the applicant has already been paid that 25% as special pay, by calculating the arrears. The said judgment of this Tribunal was subject-matter of challenge before the Supreme Court of India in Civil Appeal No.676 of 1988 where the judgment of this Tribunal was virtually affirmed on 10.4.1997.

2. While the applicant was continuing in Dandakaranya Project, under Government of India letter dated 14.4.1961 it was intimated that special pay should not be counted towards pension. However, by Government letter dated 18.1.1964 (Annexure-7), Government of India, in supersession of its earlier order dated 14.4.1961, decided that the Special Pay should count towards pension. This Annexure-7 was in force by the time the applicant faced retirement on 31.7.1979 and therefore, the applicant prays that he is entitled to get revised pension with effect from 31.7.1979; by taking into consideration the 25% special pay paid to him under the orders of this Tribunal, affirmed in the

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Apex Court. Since this prayer for revised pension was turned down by the respondents, the applicant has filed the present O.A. His prayer is for a direction to the respondents to provide him revised pension by taking into consideration the special pay paid to him.

3. In the counter filed in the O.A. the respondents have raised, mainly, two points. Firstly, the applicant having not worked out his remedy for getting enhanced pension in the earlier round of litigation (OJC No.1015 of 1979/TA No. 262 of 1986), his present claim is barred. The respondents have placed a recent Government circular at Annexure-R/1 dated 19.12.2000, to say that the applicant is not entitled to compute the Special Pay towards determination of his pension.

4. Under Annexure-R/1, dated 19.12.2000, the Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioner's Welfare, has clarified as to how special pay should be treated under 1986 pay revision which came into effect from 1.1.1986. The relevant portion of Annexure-R/1, dated 19.12.2000, is extracted below:

".....Since special pay ceased to be reckoned for the purpose of pensionary benefits after 1.1.86, this element was to be excluded for the purpose thereafter and as such should not be included for updating the pension of pre-86 retirees."

This Office Memorandum dated 19.12.2000 being a circular for new pay revision, made applicable with effect from 1.1.1986, is not to govern the pensioners of pre-1985 retirees. Undisputedly, the applicant faced retirement on 31.7.1979 and he has got nothing to

do with the pay revision with effect from 1.1.1986. Law is well settled that one is to receive the benefit of the law existing on the date of retirement and he is not to be affected by the amendment brought subsequently; unless the law is retrospective for valid reasons. The pay revision, which came with effect from 1.1.1986, was not of retrospective character and therefore, executive instruction issued under Annexure-R/1, dated 19.12.2000, should not affect the applicant. It should not be allowed to overreach the statutory provisions. By this executive instruction of 19th December 2000, the Rules, which came into force with effect from 1.1.1986, cannot affect the persons who faced retirement long before 1.1.1986 and as such the applicant, who faced retirement in 1979, ought not to be affected in any manner by the pay revision which came with effect from 1.1.1986.

In the case of Y.V.Rangaiah and others v. J.Srinivasa Rao and others, AIR 1983 SC 852, the Supreme Court of India held as follows:

".....The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.....We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the new rules."

Again in the case of P.Mahendran and others v. State of Karnataka and others, AIR 1990 SC 405, the Apex Court held as follows:

".....If a candidate applies for a post in response to advertisement

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issued by Public Service Commission in accordance with recruitment rules, he acquires right to be considered for selection in accordance with the then existing rules. This right cannot be affected by amendment of any Rule unless the amending Rule is retrospective in nature."

Adopting the law as laid down by the Apex Court in the above referred cases, the Orissa High Court in OJC No.811 of 1990 (Gayadhar Sahoo v. State of Orissa and others), decided on 26.4.1991, held as follows:

".....we hold that inasmuch as the process for filling up the vacancy which occurred prior to 3.6.1988 and commenced before Rule 8(2)(b) was substituted by Rule 8(3), we are of the view that the process was to be completed and the vacancy was to be filled up following the provisions contained in Rule 8(2)(b) and not by following the provisions as contained in Rule 8(3)....."

Keeping in mind the aforesaid three judicial pronouncements, I am inclined to hold in this case that the executive instruction issued under Annexure-R/1, dated 19.12.2000, really affects the applicant in no way to get the pensionary benefits, by taking into account the special pay granted to him, with effect from 31.7.1979.

5. As a consequence, the respondents are directed to re-calculate the pensionary benefits of the applicant as on 31.7.1979, by taking into account the Special Pay at the rate of 25% paid to him, within a period of three months from the date of receipt of copy of this order.

6. Simply because the applicant did not work out his remedy for getting higher pensionary benefits in the earlier round of litigation, his claim



to get the benefit in the present O.A. cannot be throttled. Where injustice is glaring, the hyper-technicalities of law should not be allowed to operate to throttle the justice. Therefore, the technical objection of the Respondents, as raised in paragraph 11 of the counter, is hereby overruled.

7. In the result, the Original Application is allowed. However, in the peculiar circumstances of the case, there shall be no order as to costs.

  
(M.R. MOHANTY) 05/04/2002

MEMBER (JUDICIAL)

AN/PS