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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.221/02

Cuttack, this the 12th day of February, 2004

Pratap Ch. Das

.....

Applicant

Vrs.

Union of India & Others

.....

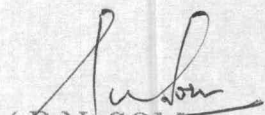
Respondent

FOR INSTRUCTIONS

- (1) Whether it be referred to the Respondents or not ?
(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

yes

yes


(B.N. SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.221/02

Cuttack, this the 12th day of February, 2004

CORAM:

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

Pratap Ch. Das, aged about 48 years, S/o Late Govinda Chandra Das, At present working as D.F.O. (Stores), Central Logistics, Aviation Research Centre, Airwing, Charbatia, At/P.O. Charbatia, P.S. Choudwar, Dist-Cuttack. Applicant.

By the Advocate(s) M/s P.K. Mohapatra
S. Mohanty

-Vrs-

1. Union of India, represented through the Cabinet Secretary, Cabinet Secretariat, Beekaneer House, Shahajahan Road, New Delhi-100 001.
2. The Director, Aviation Research Centre, Directorate General of Security, Cabinet Secretariat, East Block-V, R.K. Puram, New Delhi-110 066.
3. Assistant Director, Administration, Aviation Research Centre, Charbatia, At/Po-Charbatia, P.S. Choudwar, Dist-Cuttack.

.....Respondent(s)
By the advocate(s) Mr. A.K. Bose, Sr.S.C

ORDRE

SHRI B.N. SOM, VICE-CHAIRMAN: Shri Pratap Ch. Das, at present working as Deputy Field Officer (in short D.F.O.) (Stores), Central Logistics, Aviation Research Centre (in short ARC), Charbatia has filed this O.A. assailing the order passed by Respondent No.3 directing the Accounts

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Officer ARC, Charbatia to effect recovery of the amount of special pay for promoting small family norms already paid to him (Annexure-3).

2. The facts of the case in brief are as follows. The applicant after serving in Indian Air Force for 15 years was released from that employment and was appointed as Deputy Field Officer (Stores) (in short D.F.O.) (Scale of Pay (Rs.1640-2900/-) Charbatia with effect from 28.09.87. While continuing in this employment he had undergone sterilization operation and claimed grant of special increment in the form of personal pay and the same was sanctioned to him with effect from 07.06.89. His employment as DFO (Stores) came to an end on closure of the project in which he was appointed. The Respondents served on him a termination order dated 30.06.94. This notice issued to him in terms of Rule 5 (1) of the CCS (Temporary Service) Rules 1965. Soon thereafter vide the Respondents Memo No.ARC/AW-177/94 dt. 29.07.94, he was offered another appointment as Junior Stores Officer- II, (in short JSO-II) in the ARC (Air wing service) in the scale of Rs.1640-2900. On his re-appointment the applicant requested the Respondents to extend the benefit of special pay for promotion of small family norms as he was availing during his earlier appointment. The Respondents obliged him by issuing the order dated 23.02.99 extending the benefit to him and allowed him to draw the same

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with effect from the date of his re-appointment i.e. August, 1994. However, all on a sudden without giving any notice to him an amount of Rs.175/ was deducted from his salary of the month of January, 2002 and thereafter by issuing their order dated 18.03.02 (Annexure-3). Respondent No. 3 cancelled benefit of special pay granted to him and ordered recovery of the amount already paid to him. His grievance is that the impugned order was passed in clear violation of the principle of natural justice and that the said order was passed in violation of the Govt. order on the subject.

3. The Respondents have opposed the application by filing a detailed counter. However, there is no dispute over the facts of the case as submitted by the applicant. The Respondents have defended their action of cancelling grant of special pay to the applicant on the ground that the order dt. 23.02.99 passed by them sanctioning personal pay was erroneous and therefore was withdrawn. They have argued that personal pay was granted to him during his service as DFO (Stores) and his appointment as JSO-II had no link with his earlier appointment as DFO (Stores) nor was he given pay protection taking his previous service in view, as his appointment as JSO II with effect from 11.08.94 was a fresh one. As such there is no link of his service in the earlier project and the present post in which he was appointed afresh. Further that when he was appointed afresh with effect

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from 11.08.94 he did not claim the benefit of small family norms till 1999 which would go to prove that he was aware of the fact that the said benefit was not admissible to him on re-employment. In support of their argument they have placed on record the note dated 12.11.92 of the Ministry of Finance in which that Ministry had ruled that the re-employment after retirement is treated as a fresh employment and that as per the existing Govt. policy the incentive increment for promoting small family norms cannot be allowed to continue on re-employment. They have, therefore, submitted that as this case of the applicant is one of re-employment it is not covered by the Govt. policy on the subject.

4. We have heard Shri P.C. Das, Ld. Counsel for the applicant and Shri A.K. Bosc, Ld. Sr. S.C. for the Respondents and have also perused the records placed before us. The learned counsel for the applicant has drawn our notice to the following case laws in support of his plea that recovery made after long period is not permissible even if it is established that the payment made was irregular or if recovery order was issued without affording the individual the benefits of natural justice.

“(1995) 31 ATC – 657
Harjit Singh Vs. Union of India & Others.

AIR – 1994 – S.C. – 2480
Bhagwan Shukla Vs. Union of India & Others.

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(1993) 25 ATC. 535 (Madras)
National Union of Extra Departmental Agents and another
Vs.
Union of India.

(1996) 2 S.L.J (CAT) -434
Mahaveer Singh Vs. Union of India & Others."

5. The issue involved in this case are two fold. Firstly, whether the applicant in this case comes within the mischief of the Ministry of Finance (Dept. of Expenditure) ruling that "Re-employment after retirement is treated as a fresh employment" and, secondly, whether the case of the applicant is one of re-employment after retirement (emphasis supplied). To answer these issues we have referred to the Govt.. of India, Ministry of Finance, Department of Expenditure O.A. No.F(3)/E.III/79 dt.04.12.79 introducing the payment of incentive increment amount to Central Govt. employee for promoting small family norms. In the said O.M. it has been provided that a "Central Govt. employee who undergoes sterilization after having two or three surviving children may be granted the special increment in the form of personal pay, not to be absorbed in future increases in pay either in the same post or on promotion to higher post." The grant of concession will remain fixed during the entire service (emphasis supplied).

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6. We have also referred to FR 56 to know the meaning of the word 'retirement' used in the note of Ministry of Finance dt. 12.11.92. Retirement has been defined in FR-56 as follows:-

"FR-56 (a) Except or otherwise provided in this rule, every Govt. Servant shall retire from service on the after noon of the last day of the month in which he attains the age of sixty years.

FR 56(i) a military officer in a Civil Department shall cease to be civil employment on the date he attains the age of sixty years."

Thus the word retirement in Govt. employment is defined to mean cessation of service at the age of sixty years.

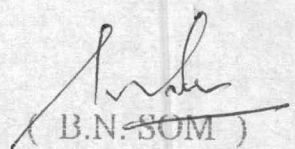
7. From the above discussion it is clear that as per the scheme of payment of incentive to Central Govt. employees for promoting small family norms the incentive is payable at a fixed rate during the entire service period of the employee. In terms of the definition of retirement as given under FR-56 and the clarification given in the note dt. 12.11.92 of the Ministry of Finance, this incentive scheme will not be applicable in re-employment after the age of sixty. The Respondents are emphatic in their submission that the Ministry of Finance has ruled that a person re-employed after retirement is not entitled to get the incentive increment. With this logic in view they had withdrawn the benefit of incentive increment earlier granted to the applicant. We are, however, unable to agree with this decision of the Respondents as we find that the ruling of

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Ministry of Finance has not been properly implemented by the Respondents. The Ministry of Finance in the note dt. 12.11.92 has referred to those cases of re-employment which take place after retirement from service i.e. after sixty years of age in respect of the civilians. On the other hand, the present case involves an appointment of a defence service personnel employed in Civil Service before attaining the age of sixty years. The scheme provides that the incentive increment will be payable at a fixed rate during the entire service period. In this case the applicant was first appointed from September, 1987 to July, 1994 and again from August, 1994 till date. His re-employment in August 1994 having been made long before his age of sixty years, I am of the view that this case does not come within the restriction imposed on payment of incentive increment by virtue of the ruling of the Ministry of Finance dated 12.11.1992. It is also to be kept in view the reasons for which the Govt. introduced incentive for Central Govt. employees for promoting small family norms. This scheme was introduced to create a significant impact in the society in the matter of population control which is so vital to the overall development of the nation. It is with this aim in view that this scheme which was introduced with effect from 04.12.1979 provided that the benefit will be available during the entire service period till retirement and retirement being at the age of sixty years.

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Having regard to the aims and objectives of the scheme for promoting small family norms and the fact that the applicant became eligible for grant of incentive increment during his employment with the Respondents organization with effect from September, 1989 and he is still continuing in service and has not attained the age of sixty years, I see no merit in Annexure-3 which therefore, is hereby quashed. I accordingly direct that the applicant who is an employee of the Respondent's organization is entitled to payment of incentive increment as personal pay till he ceases to be in this employment or attains the age of sixty years. Accordingly this O.A. succeeds. I also direct the Respondents to refund to the applicant whatever amount they would have recovered from his pay before receipt of the order dated 19.04.02 of this Tribunal following the law settled in this regard by the Tribunal in the case of Mahaveer Singh Vs. Union of India & Others.


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar