

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 557 OF 2005
ORDER DATED 16TH OCTOBER, 2006

CORAM:

HON'BLE JUSTICE M.A.KHAN, VICE-CHAIRMAN

AND

HON'BLE SHIR V.K.AGNIHOTRI, MEMBER(ADMN.)

IN THE MATTER OF:

Mahest Chandra Mohanty, aged about 60 years, S/o. Late Ramachandra Mohanty, presently working as superintendent of Police, vigilance, Cuttack.

..... Applicant

Advocates for the Applicant

..... M/s. B.S. Tripathy-I,
J. Mohanty.

VERSUS:

1. Union of India, Ministry of Finance, Department of Expenditure, New Delhi-1 represented by its Secretary.
2. State of Orissa, represented by its' Principal Secretary, Home Department, Orissa Secretariat, Bhubaneswar, Dist: Khurda.
3. Secretary to Govt. of Orissa, General Administration (Vig.), Deptt., Orissa Secretariat, Bhubaneswar, Dist: Khurda.

Advocates for the Respondents

..... Respondents
..... Mr. U.B. Mohapatra
(Sr. SC)
Mr. A.K. Bose,
GA (State)



ORDER

JUSTICE SHRI M.A.KHAN, VICE-CHAIRMAN

In this O.A. the Applicant is seeking the following relief:

- i) hold and declare that denial of extension of benefit of merger of 50% of Dearness Allowance with Basic Pay w.e.f. 01.04.2004 to the Applicant as violative of Article 14,16,19,21 and 300A of the constitution of India and thereby;
- ii) direct/order/command the Respondents to forthwith extend the benefit of merger of 50% of Dearness Allowance with Basic Pay w.e.f. 01.04.2004 to the Applicant with grant of all consequential service and monetary benefits;
- iii) direct/order command the respondents No.1 to forthwith allow the Applicant to avail LTC in the manner applied in terms of Rule-3 of AIS(LTC)Rules,1975 before his retirement;
- iv) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case."

2. The background of the case is that the Applicant was inducted from Orissa Police Service to Indian Police Service by Government of India notification dtd.14.12.1999. He belonged to Orissa cadre of the Indian Police Service. He has now retired from service by attaining the age of superannuation on 31.12.2005. In pursuance to the recommendation of 5th Central Pay commission, the Government of India issued the OM dated 01.03.2004(Annexure-A/2)relevant extracts whereof is reproduced below:

" The recommendation of fifth CPC has been considered and the President is pleased to decide that, with effect from 1.4.2004, DA equal to 50% of the existing basic pay shall be merged with the basic pay and shown distinctly as



Dearness Pay(DP)which would be counted for proposed like payment of allowances, transfer grant, retirement benefits, contribution to GPF, Licence Fee, monthly contribution for CGHS, various advances, etc. The entitlements for LTC,TA/DA while on tour and transfer and government accommodation shall, however, continue to be governed on the basis of the basic pay alone without taking into account Dearness Pay. In case of existing pensioners, Dearness Relief converted into Dearness Allowance/Dearness Relief converted in to Dearness pay/Dearness Pension respectively would be deducted from the existing rate of Dearness Allowance/Dearness Relief."

3. Thereafter The Ministry of Personnel, P.G. & Pensions, Government of India sent letter dated 31.3.2004(annexure-A/3) to the Chief Secretaries of all the State Governments. It reads as under:

" I am directed to refer to the subject above noted and to enclose herewith a copy of the Ministry of Finance, department of Expenditure OM No.105/1/2004-IC dated 1st March,2004 regarding merger of 50% of Dearness Allowance/Dearness Relief with basic pay/pension to Central Government Employees/pensioners with effect from 1st April, 2004 for action in respect of members of All India Services working under the jurisdiction of various State Governments/union Territories."

Aforesaid decision of the Government of India was not implemented and the benefit thereof was not provided to the applicant, who was a member of All India Service, the Indian Police Service. The Applicant then made a representation dated 16.02.2005 for granting him benefit of the abovesaid OM dated 31.3.2004. His case was also recommended by the General Administration (Vigilance) Department, Government of Orissa in the letter dtd. 25.02.2005 which was sent to the Principal Secretary of the Home Department of the State of Orissa. Letter stated as under:



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“ His representation for implementation of the decision of the Government of India appears to be in conformity with the all India Service Rules pertaining to Pay and DA. Denying this benefit to Shri Mohanty being a member of IPS perhaps will amount to violation of the relevant rule of the AIS Rules.”

Subsequently the General Administration Department of Government of Orissa issued the following office order dated 25.04.2006:

“No.AIS/IV-16/2004-9231/AIS.I, In pursuance of the Government of India, Ministry of Finance, Department of Expenditure Office Memorandum f.No.105/1/2004-ic dtd.01.03.2004, the State Government have been pleased to decide that D.A. equal to 50% of the existing basic pay shall be merged with the basic pay of the members of All India Services working with the affairs of the State w.e.f. 01.04.2006.

2. D.A. equal to 50% of the existing basic pay shall be shown distinctly as Dearness Pay(D.P.)”

4. The order of the Government of India dated 01.03.2004 in relation to the Officers of All India Services that the DA equal to 50% of the existing basic pay shall be merged with the basic pay w.e.f. 1.4.2004 was implemented by the Government of Orissa by Office order dated 25.4.2006 but the benefit of the merger of DA was granted w.e.f. 1.4.2006. Meanwhile the Applicant retired from the service on 31.12.2005. As a result he could not be allowed the benefit of the said OMs and he was neither paid differential pay during the service nor was he given the pension, pensionary and retiral dues sanctioned on that basis. This is the first grievance of the Applicant.

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5. The second grievance of the applicant is that he wanted to avail of the LTC in terms of the Rule-3 of AIS(LTC)Rules,1975 being an officer in All India Services. But his prayer was declined by the Respondents/Government of Orissa vide letter dated 30.3.3005.

“Inviting a reference to the letter No.1420/VG., dt.23.02.2005 of G.A.(Vigilance)Department, Cuttack on the above subject, I am directed to say that Government have postponed the benefit of LTC to its employees as an economy measure in pursuance of OMNo.45439/F, dtd.27.9.2002. hence, it is not possible to accord permission in favour of Sri.M.C.Mohanty, IPS, S.P.Vigilance,Cuttack Division, Cuttack to avail LTC by him.”

6. Since the Applicant has retired from the service w.e.f. 31.12.05, the Ld.Counsel for the Applicant has admitted that he is not pressing the relief claimed in Clause-(iii) of para-8 of the O.A. with regard to LTC. It has become infructuous.

7. Respondent No.2(Government of Orissa) in its counter reply has submitted that the benefit of merger of D.A. equal to 50% of the existing basic pay was allowed to the members of All India services working with the affairs of the State with effect from 01.04.2006 vide office order dtd.25.04.2006 and since the Applicant had retired from the service w.e.f. 31.12.2005, he was not entitled to get this benefit retrospectively w.e.f.01.04.2004. With regards to the LTC, it is submitted that the expenditure of this account is borne by the State Governments as per the order of the Government of India, Ministry of Personnel, P.G.&Pension dated 22.03.2002. It was, therefore, for the State Government to take a decision whether to allow or not to allow the facility of home town LTC to their all India Service Officers. It is further submitted that the Government of Orissa vide Office

Memorandum, dtd.27.09.2002 had decided to suspend the benefit of surrender leave as well as leave travel concession w.e.f.1.4.02 till such time as the financial condition of the State improved.

8. Ld. Standing Counsel for the State of Orissa has placed before us the comments recorded by the G.A. Department which stated :

“As per the stipulation contained in the Fiscal Responsibility and Budget Management Act, the State Government is mandated to reduce the revenue deficit to Zero by 2008-09, In order to achieve the above Fiscal Target there us a need to reduce the expenditure on salary. As such to overcome such fiscal challenges the State Government decided to merge 50% of the dearness allowance with the Basic Pay of the all India Service Officers w.e.f.1.4.2006.”

9. However , the Ld.Standing Counsel was fair enough to concede that provisions of the Fiscal Responsibility and Budget Management Act could not be used by the state Government to economise on pay and allowances, including DA, of All India Service Officers. Even otherwise the contention that implementation of OM dated 01.03.2004/31.3.2004 will impose additional financial burden on the State Expenditure to our view is misconceived. The service conditions including emoluments of All India Service Officers being governed by Statutory provisions, the State Government cannot deter the implementation of the Government of India which has power to fix the pay and allowances.(See All India Judges Association and Ors Vrs. Union of India and Ors. AIR1993 SC 2493 and State of Mizoram and ors,vrs. Mizoram Engineering Srvce Association and another, AIR2004 SC3644).

10. As such so far as LTC is concerned it does not survives for consideration since the applicant has already retired from service w.e.f. 31.12.05. Ld.Counsel for the applicant also did not press the relief

prayed for in clause(iii) of paragraph -8 of the O.A. The only question that requires consideration is whether the State Government should have implemented the OM dated 01.03.2004(Annexure-A/2) in respect of the Officers of All India Services, which will included the Applicant, from 1.4.2004 instead of 01.04.2006.

11. The Ld.Counsel for the Applicant has drawn our attention to Section-2 of all India Services Act,1951 which defines the expression "All India Service" to mean the service known as the Indian Administrative service or the service known as the India Police Service." He also referred to the All India Services (Dearness Allowance)Rules,1972 which came into force on 1.4.1972. rule-3 of the said Rule reads as Under:

"3) Regulation of Dearness Allowance-

Every members of the Service and every officer, whose initial pay is fixed in accordance with Sub-Rule(5),or Sub-Rule(6-A),of Rule-4 of the Indian Administrative Service(Pay)Rules,1954 or sub-rule(5)of rule-4of Indian Police Service (Pay)Rules,1954 or sub-rule(6)of Rule-4 of the Indian Forest Service(Pay)Rules,1968,shall be entitled to draw dearness allowance at such rates and subject to such conditions, as may be specified by the Central Government from time to time in respect of the officers of Central Civil services, class-I."

It is submitted on behalf of the Applicant that in terms of Rule-3 of the above mentioned rule, and the decision of the Government of India in Annexure-A/2&A/3 of the O.A. and the recommendations of the G.A., Government of Orissa in Annexure-5, the applicant will be entitled to the benefit of merger of 50% of DA with basic pay w.e.f. 01.04.04. He has further submitted that the benefit of OM dated 01.03.04 and OM dated



31.3.04 which have been issued on the basis of the recommendations of 5th Pay commission is applicable to the Central Government employees and has been extended to the members of the all India Services (including the pensioners) who are working in the state Government and the applicant is one of such officer who is entitled to the benefit of those OMs. The denial of such benefit would be violative of All India Service Rules as well as the AIS(Dearness Allowance)Rules which are mentioned above.


12. The Ld.Standing Counsel for the Respondents, conversely submitted that on account of financial stringencies, the State Government was unable to extend the benefit of the OM dated 01.03.04 and 31.3.04 to the members of the All India Services working under the jurisdiction of the State Government with effect from 01.04.2004 since it would have cascading effect on the employees of the State services and other employees working in the state. It is submitted that the State Government was taking all steps for economizing the expenditure on the services therefore it decided to grant the benefit of OM dated 1.3.04 and dated 31.3.04 to All India Officers/Pensioners w.e.f. 1.4.06.

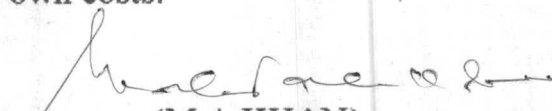
13. We do not find any justification in the denial of the benefit of OMs dated 01.03.04 and 31.3.04 to the members of all India Services, including the applicant from 1.3.04 when the pay and allowances, in particular the DA of the applicant, was regulated by all Indian services(DA)Rules,1951. As a member of All India Services, the applicant was entitled to the benefit arising out of the Memorandum dated.31.3.04 from a date it was granted by the Central Government. As he has been denied on unreasonable ground it is ^{be}contrary to rules and cannot be upheld.

14. Moreover the Learned Counsel for the applicant has submitted that the OMs dated 01.03.2004 and 31.3.2004 have been implemented w.e.f. 01.04.2004 in respect of members of All India Services by all the State Government except the Government of Orissa which is arbitrary and discriminatory. This claim has not been rebutted on behalf of the respondent State of Orissa. We do not find any good reason for discrimination between members of All India Service working under one State Government and the other, or under the Central Government, for that matter, in the matter of pay and allowances determined by the Central Government. For this reason also the decision of the Government of Orissa for extending benefit of OMs dated 01.03.2004 and 31.03.2004 to members of All India Service w.e.f. 01.04.2006 instead of 01.04.2004 cannot be legally upheld as it will violate the principles of equality before law between same class of persons. There cannot be inequality among equals otherwise it will be violative of principles of equality before law enshrined in Article 14 of the Constitution of India.

15. Having regard to the above discussion, we partly allow the O.A. by granting relief prayed for in clauses(i) and(ii) of paragraph -8 of the O.A. and dismiss the O.A. as infructuous and not pressed in respect of relief claimed in clause(iii) of paragraph-8 of the O.A.

16. The Respondent, Government of Orissa is directed to extend the benefit of OMs dated 01.03.2004 and 31.3.2004, above mentioned, to the applicant w.e.f. 01.04.2004 and release the differential pay and allowances as well as pension, pensionary/retiral dues to the applicant within a period of four months from the date in which copy of this order is received by it. Parties shall bear their own costs.


(V.K.AGNIHOTRI)
MEMBER(ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN(J)