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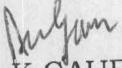
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 107 of 2007
Cuttack, this the 25th day of November, 2008

Purna Chandra Panigrahi Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(A.K. GAUR)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 107 of 2007

Cuttack, this the 25th day of November, 2008

C O R A M:

THE HON'BLE MR.A.K.GAUR, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Purna Chandra Panigrahi, Aged about 65 years, S/o.Late
Banchanidhi Panigrahi, Village/PO Guamal, Dist. Bhadrak.

.....Applicant

Legal practitioner : M/s.J.Sengupta,D.K.Panda, G.Sinha,
A.Mishra, S.Mishra, Counsel.

- Versus -

1. Union of India represented through its Secretary to Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director of Postal Services Office of CPMG, Bhubaneswar-751 001.
3. Director of Accounts (Postal), Mahanadi Vihar, Cuttack-01.
4. Superintendent of Post Offices, Bhadrak Division, Bhadrak.

....Respondents

Legal Practitioner :Mr. S.Mishra, ASC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

The factual matrix of the case to state briefly, is that in compliance of the order of this Tribunal dated 13th February, 2004 in OA No.659 of 1996, the Respondents vide order under Annexure-A/3 dated 28.12.2005 granted the benefit of BCR scheme by way of placing him in the up-graded scale of pay of Rs.1600-2600/- w.e.f. 01.10.1991 and also promoted him to HSG I cadre w.e.f. 31.08.2001 retrospectively on notional basis. Applicant retired from service w.e.f. 28.02.2002 i.e. prior to the implementation of the order of this Tribunal under Annexure A/3 dated 28.12.2005. The Applicant was not allowed the financial benefits on his retrospective promotion and notional fixation of pay in the higher post; nor

even his pension was revised. Being aggrieved, he submitted representation under Annexure-A/4 dated 20.03.2006 for grant of such benefits. As it reveals, the Respondents under Annexure-A/6 dated 11.07.2006 denied the applicant to get the actual benefit consequent to the notional fixation of pay in the higher grade on his promotion retrospectively on the ground that CCS (Pension) Rules do not permit fixation of pay when the Applicant was not in receipt of the salary at the time of his retirement. This is also the stand taken by the Respondents in their counter objecting to grant of the relief prayed by the Applicant in this OA. The order under Annexure-A/6 dated 11-07-2006 regarding revision of pension speaks as under:

"In this context, it is to state that the revised form-7 incorporating the modified pension calculation of pensionary benefits accrued to the ex-official consequent on implementation of CAT judgment as called for vide this office letter of even no. dated 25.04.2006 is still waited.

Moreover vide this office letter of even vide this office letter of even case mark bearing No.R-395 dated 25.04.06, it was reiterated that as per Note-I below Rule 34 of CCS Pension Rules, 1972, any increase in pay which is not actually drawn shall not form part of emoluments for calculation of average emoluments for pension. As such the revised pension calculation sheet submitted vide your letter dated 28.10.2005 could not be acted upon and hence returned for resubmission with orders of the competent authority to take notional pay actually not drawn for purpose of allowing pensionary benefits.

It is confirmed by your letter dated 05.04.06 that the official would not get the arrears of pay and allowances during the period in question and hence no arrear was drawn and paid.

It was further intimated vide your aforesaid letter that Note-I below rule 34 of CCS Pension Rule does not vest power for any specific instruction to this effect pursuant to C.O. letter No. ST/26-3(2)/PCP/04 Dated 20.03.2006. As specific order of the competent authority as to revision of pension on the basis of notional pay which was not drawn and paid is not submitted along with your revised pension calculation sheet, the office is not in a position to process the revision of pension case as desired.

Hence necessary approval of the Postal Directorate may please be sought for and submitted early for settlement of the case in question."

2. We have gone through the provisions of Rule 33 and 34 of CCS (Pension) Rules, 1972, based on which the Applicant was denied revision of pay/pension. As it appears, in compliance of the direction of this Tribunal dated 13th February, 2004 in OA No. 659 of 1996, the competent authority vide its order under Annexure-A/3 dated 28.12.2005 passed the following orders:

"In pursuance with CO Memo No. ST/26-3(2)/PC/04 dated 12.08.20005, Shri Purna Chandra Panigrahi, Ex-SPM, Guamal SO retired on 28.2.2002 is hereby ordered for the Financial up-gradation under BCR Scheme in the next higher scale of pay of Rs.1600-2600/- with effect from 01.10.1991 after completion of 26 years of qualifying service in the basic grade of Postal Assistant Cadre.

Further Shri Panigrahi in pursuant to aforesaid CO order is hereby ordered for promotion to HSG I cadre on notional basis on par with his immediate junior with effect from 31.08.2001 consequent upon his financial up-gradation under BCR scheme with effect from 01.10.1991.

The pay of the retired official will be fixed under provision of FR 22(1)(a)(1). The retired official may exercise option within one month of the receipt of the orders."

Note I of Rule 33 provides as under:

"Note-1- If a Government servant immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be the emoluments for the purpose of this rule:

Provided that any increase in pay (other than the increment referred to in note 4) which is not actually drawn shall not form part of his emoluments.

Rule 34 deals with average emoluments which provide as under:

"Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service."

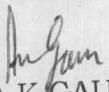
3. From the above, it is clear that by the time the order was passed giving benefit of promotion retrospectively the applicant superannuated from service on reaching the age of retirement. Due to unexpected and unanticipated developments/changes in pay scale occurred notionally. Under notional fixation, there are certain benefits which accrue to the individual. Otherwise, issue of such an order by the concerned authority would tantamount to hoodwinking. It was in the knowledge of the concerned authorities that on 28.12.2005 the individual had already superannuated and hence physical drawal of salary/emoluments at the higher scale/pay was a near impossibility. Hence, average emoluments have also to be calculated on notional basis keeping in view the letter and spirit of the order dated 28.12.2005. On retrospective promotion, the Applicant may not have any right to get the actual pay on the principle of no work no pay but on retrospective financial up-gradation under BCR scheme (analogous to ACP), certainly he is entitled to actual pay and allowances because one is not required to discharge ^{higher} his responsibility while being placed in the higher scale under the BCR Scheme. Therefore, even if the Applicant retired from service in the old scale, on his retrospective financial up-gradation under the BCR Scheme under Annexure-A/3 dated 28.12.2005 he is entitled to re-fixation of his pay and the payments thereof. Denial of the benefits of differential arrear of pay on such up-gradation under BCR scheme and re-fixation of pay and pension on his notional promotion cannot be countenanced in Rule and law and the Application ought to succeed.

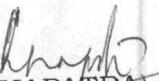
4. In view of the above findings, the Respondents are hereby directed to fix/re-fix his pay and pension pursuant to the order under Annexure-A/3 dated 28.12.2005 and pay him the differential arrear salary on

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up-gradation of his pay under BCR scheme and also revise his pension by determining the average emoluments on notional basis forthwith, in any event within a period of 90 days from the date of receipt of copy of this order failing which, the Applicant shall be entitled to interest at the rate of 9% per annum till the date of actual payment. However, by applying the ratio of the decision of the Hon'ble Apex Court in the case of **Union of India v B.M.Jha, 2008(1) SLR 488(SC)**, the applicant is not entitled to actual financial benefits on his retrospective promotion.

5. In the result, this OA stands allowed to the extent indicated above. There shall be no order as to costs.


(A.K. GAUR)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)