

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.205 AND 206 OF 2008
Cuttack this the 21st day of April, 2009

CORAM:

HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE MEMBER

IN O.A.NO.205/08

Manmohan Das, aged about 62 years, S/o. late Harekrushna Das, Ex-I.G. of Police, Home Guard and Fire Services, Orissa, Cuttack

...Applicant

By the Advocates: M/s.B.S.Tripathy-I
A.Mishra

-VERSUS-

1. Union of India, Ministry of Finance, Department of Expenditure, ew Delhi-1, represented by its' Secretary
2. State of Orissa, represented by its' Principal Secretary to Govt., Home Department, Orissa Secretariat, Bhubaneswar, Dist;Khurda

...Responde

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By the Advocates: Mr. U.B.Mohapatra, SSC
Mr.A.K.Bose(Govt. Advocate)

IN O.A.NO.206/08

Rabindranath Padhi, aged about 61 years, S.o. late Binayak Padhi, Ex.I.G of Police, Technical Orissa, Cuttack

By the Advocates: M/s.B.S.Tripathy-I
A.Mishra

-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

... Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC & Mr.A.K.Bose,
Govt.Advocate

ORDER
JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

1. Since the facts and question to be decided are same and similar, both the O.As. are being disposed of by this common order.
2. These two Original Applications have been filed by two retired Indian Police Service (in short 'IPS') officers of Orissa State Cadre 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 is violative of Articles 14,16,19,21 and 300A of the Constitution of India and the judgment dated 16.10.2007 of this Hon'ble Tribunal in OA No. 557/2005 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."
3. It is the case of the applicants that the 5th Central Pay Commission in its report dated 30.1.1997 recommended that D.A. should be converted into Dearness Pay each time the CPI increases by 50% over the



3

base index used by the last Pay Commission. While accepting the said recommendations, the Government of India in the Ministry of Finance, Department of Expenditure, issued Office Memorandum dated 1.3.2004 stating that with effect from 01.04.2004 the Dearness Allowance equal to 50% basic pay shall be merged with the basic pay and shall be shown distinctly as Dearness Pay (DP), which would be counted for the purposes, like, payment of allowances, transfer grant, retirement benefits, contribution of GPF, etc. It is also stated that the Ministry of Personnel, PG & Pension Department, in their letter dated 31.3.2004 asked all the Chief Secretaries of the State Governments and Union Territories for action in respect of members of All India Services working under their respective jurisdictions. In spite of the above order, the Government of Orissa has not yet given the benefit of the above O.M. to the present applicants. Hence, the applicants have approached this Tribunal with the prayers referred to above.

4. Heard Shri B.S.Tripathy-1, learned counsel for the applicants, Shri U.B.Mohapatra, learned SSC for the Union of India and Shri A.K.Bose, learned Government Advocate for the State of Orissa and perused the records produced along with the O.As.

5. Shri Tripathy, the learned counsel for the applicants invited our attention to the order of this Tribunal in OA No. 557 of 2005, decided on

16.10.2006, in the case of *Mahesh Chandra Mohanty v. Union of India and others*, wherein similar question was considered and decided. The Tribunal, while disposing of the said O.A. held as under:

“13. We do not find any justification in the denial of the benefit of O.Ms. dated 1.3.2004 and 31.3.2004 to the members of All India Services, including the applicant from 1.3.2004 when the pay and allowances, in particular the D.A. of the applicant, was regulated by all India Services (DA) Rules, 1951. As a member of All India Services, the applicant was entitled to the benefit arising out of the Memorandum dated 31.3.2004 from a date it was granted by the Central Government. As he has been denied on unreasonable ground it is contrary to rules and cannot be upheld.

14. Moreover the learned counsel for the applicant has submitted that the O.Ms. 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 Governments 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 Services 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 O.Ms. dated 01.03.2004 and 31.03.2004 to members of All India Services 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)



9
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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 O.Ms. dated 01.03.2004 and 31.03.2004, above mentioned, to the applicant w.e.f. 01.04.2004 and release the differential pay and allowances as well as pension, pensionary/retrial dues to the applicant within a period of four months from the date in which copy of this order is received by it.”

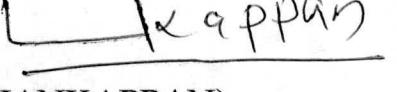
6. However, in the counter affidavit filed on behalf of the State Government of Orissa (Respondent No.2) it has been stated that the State Government have implemented the benefit of the merger of 50% DA in case of All India Service Officers with effect from 1.04.2006. It is the further stand taken in the counter that since the Government of Orissa is not financially sound, the Respondent-Department is not in a position to make payments in accordance with the orders passed by the Government of India. On anxious consideration of the contentions raised by the parties and on the principles laid down by this Tribunal in OA No. 557 of 2005, we are of the view that the question raised in these O.As. is no more res integra as it is already covered by the order of this Tribunal as stated above. However, having considered the stand taken by the Respondent in the counter, we direct the Respondent No.2 to take all possible measures to make payment of the dues and/or benefits arising out of the merger of 50% DA with pay with effect from 1.4.2004 within a period of six months from the date of receipt

10

of copy of this order. It is, however, made clear that if the amount as due and admissible is not paid to the applicants within the time indicated above, the amount to be so paid would bear interest at the rate of 8% per annum from the date of expiry of the stipulated period till the date of its actual payment to the applicants.

7. With the above observation and direction, both the Original Applications are disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER