

For Reference

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

D.A.NO.728 of 2006

Cuttack, this the 29th day of July, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

1. Nathuram Sahoo, aged about 54 years, S/o.Late Pagala Charan Sahoo presently working as PA (SBCO) Cuttack GPO, Buxibazar, Dist. Cuttack.
2. Raja Kishore Mohapatra, aged about 55 years, S/o.Late Rankarath Mohapatra, presently working as PA (SBCO) Bhubaneswar GPO, Bhubaneswar, Dist. Khurda.

.....Applica its

By legal practitioner: M/s. Sadashiva Patra-I, D.K.Mohanty, Counsel.

-Versus-

1. Union of India represented through Director General, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Director Postal Services (HQ), Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda, PIN 751001.

.....Respondents

By legal practitioner: Mr. R.N.Mishra, Counsel.

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ORDERMR. C.R.MOHAPATRA, MEMBER(ADMN.):

Briefly stated, the Applicants on being recruited to the posts of Assistant Teacher under the Dandakaranya Development Authority 'in short DNK' (Rehabilitation Wing under the Ministry of Home Affairs) joined the posts on 17.02.1973 and 12.02.1973 respectively. After the closure of the DNK, the Applicants were declared surplus and their names were sent to the Central (Surplus Staff) Cell, New Delhi by the concerned authority. However, both the Applicants were redeployed/absorbed in the posts of LDC(SBCD) in Postal Department of the Government of India vide DG Posts, New Delhi letter No. 4 (122)/87/Ch.III dated 24.06.1987 on 06.10.1987 and 09.11.1987 respectively. Thus, they continued to be regular employees of the Central Government. Consequent upon merger of two posts of LDC/UDC and creation of Postal Assistant, both the Applicants are, at present, continuing as Postal Assistant. A scheme was formulated by the DG Posts, New Delhi called as 'TBOP/BGR' scheme for extension of the benefits of financial up-gradation to the employees.

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of the Postal Department after completion of 18 and 26 years of service. But

the benefits available under the Scheme were denied to the Applicant on the

ground that the past service rendered by Applicant prior to re-deployment in

Postal Department cannot be taken into consideration for counting the

qualifying years of service for the purpose of the benefits under TBOP/BCR

scheme. By drawing the attention of the authorities to various judicial

pronouncements, on the subject, holding that past service rendered by an

employee under his previous employer shall have to be counted for the

purpose of granting the benefits under TBOP/BCR, the Applicants requested

their authorities for counting their past service for the purpose of granting

them financial up-gradation under TBOP/BCR scheme. But the said requests of

the Applicants were rejected and communicated to them under Annexure-1/4

dated 18.09.2005 and Annexure-A/5 dated 10.05.2006; the contents of the

aforesaid orders are extracted herein below:

"Annexure-A/4"

With reference to your letter No. B/G-23/Ch.I dated 26.09.2005 regarding the subject mentioned above, I am directed to intimate that the Directorate, New Delhi in their

letter No. 93-33/2004-SPB.II dated 8/4/2005 (a copy of which is enclosed herewith) have clarified that the official who was not an applicant in OA NO. 406/2000 cannot get the benefit granted by the Hon'ble CAT, Cuttack Bench on 07.10.2004."

"Annexure-A/5

On consideration of your representation dated 07.02.2006 on the captioned subject it has been intimated vide C.O. letter No. ST/25-4/2005-06 dated 09.05.2006 that the Directorate in their letter No. 93-33/2004-SPB-II dated 08.04.2005 have clarified that the official who was not an applicant in OA No. 406/2000 cannot get benefit granted in judgment dated 07/10/2004.

You have entered in the Department of posts in the year 1987 and will complete 26 years of service in the year 2003 and will be eligible for financial up-gradation under BCR scheme in the year 2013."

2. Being aggrieved by the aforesaid orders under Annexure-A/4 &

A/5, two Applicants have filed the present Original Application U/s.19 of the A.T.

Act, 1985 jointly seeking the following relief(s):

- "(a) Orders dated 19.09.2006 and 10.05.2006 be quashed after declaring those illegal;
- (b) That direction be issued to the respondents to computing the past services of the applicants under the Rehabilitation Deptt. For the purpose of promotion under the TBOP and BCR Scheme as similarly situated person have been promoted the TBOP and BCR scheme as per the judicial pronouncement of the

Hon'ble Supreme Court of India and Learned Central Administrative Tribunal, Kolkota and Learned CAT, Cuttack Bench.

(c) Respondents be directed to promote the Applicants to the next higher scale of pay under TBOP scheme with effect from 01.08.1991 and BCR after completion of their 26 years service with consequential benefits."

3. Respondents' contention in the counter is that as per the DG (Posts), New Delhi letter No. 51/14/92-SPB.I dated 28.12.1994, service rendered in the Department of Posts will only be taken into account towards promotion under TBOP/BCR scheme. It has been stated that though Shri Nathuram Sahu/Applicant No.1 has completed more than 26 years of service if the entire period of service is taken into consideration, yet he is not entitled to the benefits under TBOP/BCR as per the DG (Posts) New Delhi instruction under Annexure-B/2 dated 20.12.1994. As regards the decisions relied on by the Applicants, it has been stated that since the Applicants were not parties to the said case, they cannot claim any relief based on the said decisions. Accordingly, the Respondents opposed the prayer made in this OA by the Applicants.

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4. We have heard Learned Counsel for both sides and perused the materials placed on record including the decision of this Tribunal dated 7th October, 2004 in OA No. 406 of 2000 (**Manatosh Hira & five others v. Union of India and others**). From the arguments as also record, it is revealed that the Applicants based their right on the basis of the decisions rendered by the Hon'ble Supreme Court, as also of this Tribunal of Kolkata as well as this Bench but the Respondents denied to extend the benefits of those decisions on the ground that they are not parties. We are of the opinion that the present matter can be decided on the basis of the decisions rendered by this Tribunal in the case of **Manatosh Hira (surpa)**. For this purpose, it is necessary to record what was the issue raised and decided by this Tribunal in the above case. In this context, the ^{relevant} portion of the order dated 7th October, 2004 is quoted herein below:

“5. The short point to be answered in this OA is whether the erstwhile employees of the Dandakaranya Development Project who were redeployed in the Postal Department are entitled to the benefit of TBOP/BCR scheme as introduced by the Respondent department in the SBCO. It has also been admitted by the Respondents in their counter

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that the Supreme Court has ruled that the benefit of pay up-gradation under TBOP/BCR which is based on the length of service cannot be denied to the employees of that department who joined in that department laterally by way of redeployment. The law is well settled in a catena of judicial decisions that the judgment of a court of law which is declaratory in nature must be extended to all similarly placed person without driving them to the Courts/Tribunal. In the case of P.K.Rangachari v Union of India reported in (1993) 24, ATC 884 (Madras), their Lordships have observed that decision rendered on principles in a case is automatically applicable to all those similarly placed, unless stayed. Where the court deals with a matter which is individual and personal to the government servant like pay fixation or disciplinary proceeding, that decision would apply to that government servant. If however, the decision even in a case filled by a single government servant pertains to a question of principle relating to the conditions of service, it applies automatically to all those who are in the same situation, even though it is not couched in the form of a general principle. The Apex Court in the case of B.N.Nagarajan & Other v State of Mysore and others reported in AIR 1966 Supreme Court 1942 had observed as under:

"We may mention that some of the appellants have not prosecuted their appeals but there is no reason why they should not have the benefit of this judgment, and in exercise of powers under Article 142 of the constitution, we direct that in order to do complete justice they should also have the benefit of the judgment given by us.

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In another decision K.I.Shepherd vrs Union of India reported in AIR 1988 Supreme Court 686, the Apex Court had observed as follows:

"Some of the excluded employees have not come to Court. There is no justification to penalize them for not being litigated. They too shall be entitled to some benefits as the petitioners."

6. In the face of the above judgments, the decisions of the Apex Court and those judgments being pronounced in exercise of the powers conferred under Article 142 of the Constitution, these judgments which are declaratory in nature have to be extended to all the similarly placed persons.

7. Having regard to the above position of law, we call upon the Respondents to extend the benefit of TBOP/BCR schemes the applicants in the present case. We also hope and trust that the Respondent department will rescind their decision as communicated to their field units vide their letter No. 51-14/92-SPB-I, dt. 28.12.94(Annexure-R/2) and extend the benefit of TBOP/BCR Scheme to all similarly placed persons who have completed 16/26 years of service in the Central Government, without driving them to avoidable litigation.

8. In the conspectus of the mater, we therefore, hold that the applicants in this OA having completed 16/26 years of service in the Government of India are entitled to the benefits of TBOP/BCR Scheme under the Respondents Department and accordingly, they should be given the benefit from the date they completed the eligibility period of service in the Central Government including the period

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spent in the erstwhile Department as enshrined in the scheme. No costs."

The above view is also fortified by the decisions of the Hon'ble Apex Court in the case of **K.T.Veerappa v State of Karnataka**, 2006 SCC (LGS) 1823 that persons similarly situated cannot be discriminated against. Service jurisprudence evolved by the Hon'ble Apex Court from time to time also postulates that all persons similarly situated should be treated similarly and only because one person has approached the Court that would not mean that persons similarly situated should be treated differently - **State of Karnataka v Drs. V. C.Lalitha**, 2006 (I) ATT (SC) 259. Since the only ground of rejection of the claim of the Applicants in the present OA is that they are not parties to the decisions relied on by the Applicants, in the light of the above observations of this Tribunal in the case of **Manatosh Hira and Anrs** (Supra) and the Hon'ble Apex Court cited above, we do not find any justifiable reason to sustain the impugned orders of rejection under Annexure-A/4 and A/5. Hence, by applying the ratio of the aforesaid decisions, the orders under Annexure-A/4 and A/5

are hereby quashed and as a consequence, the Respondents are hereby directed to count the past service of the Applicants rendered in ~~the~~ project for counting the service of 16/26 years for grant of the benefits under TBOP/BCR and grant them all service and financial benefits retrospectively. The entire drill shall be completed within a period of 90 (Ninety) days from the date of receipt of this order.

6. In the result, the OA stands allowed, in the afore-stated terms. There shall be no order as to costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

KNM/PS.