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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.373 OF 2008

Cuttack this the 19th day of April, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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1. Kumud Mitra, aged about 50 years, S/o. Krishna Kumar Mitra, At-Tulasipur, Mathasahi, Cuttack-8
2. Madhabananda Sahoo, aged about 51 years, S/o. Gadadhara Sahoo, At-Badamachhapur, PO-Renghalo, PS-Nimpara, Dist-Puri
3. Madhabananda Lenka, aged about 50 years, S/o. Dhoi Lenka, At-Tihudi, PO-Galadari, PS-Niali, Dist-Cuttack

All are working as Statistical Assistsant in Regional Offie for Health & Family Welfare, Govt. of India, Bj-25, BJB Nagar, Bhubaneswar, Dist-Khurda

...Applicants

By the Advocates: M/s.D.P.Dhalasamant & P.K.Behera

-VERSUS-

1. Union of India represented through its Secretary (Health) Ministry of Health & Family Welfare Department, Nirman Bhawan, New Delhi-110011
2. Director General of Health Services, Nirmal Bhavan, New Delhi-110108
3. Director, central Bureau of Health Intelligence, Directorate General of Health Services, Nirman Bhawan, New Delhi-110 108
4. Sr.Regional Director, Regional Office for Health & Family Welfare, BJ-25, BJB Nagar, Bhubaneswar-751014

...Respondents

By the Advocates:Mr.B.K.Mohapatra, ASC

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ORDER**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:**

1. In this Original Application, three applicants, who are at present working as Statistical Assistants under the Respondent-Department have sought for the following relief.
 - i) The Original application may be allowed.
 - ii) The order dated 08.09.2008 at Annexure-15 may be quashed.
 - iii) The Hon'ble Tribunal may kindly hold that the applicants are entitled to the scale of Rs.6500-10500/- towards the 1st ACP
 - iv) Any other order(s)/direction(s) may be given as deemed fit and proper in the facts and circumstances of the case".
2. Respondent-Department have filed their counter opposing the prayer of the applicant. They have stated that the O.A. being devoid of merit is liable to be dismissed.
3. This matter came up on 26.9.2008 for admission, when this Tribunal, while admitting the O.A., as an interim measure, stayed the operation of the impugned order of recovery vide Annexure-15 to the O.A. and this interim order is in force as on this date.
4. It is the case of the applicants that they were granted 1st financial upgradation under the ACP Scheme to the scale of Rs.6500-10,500/- with effect from 9.8.1999 vide office order dated 6.11.2000. While they were in receipt of the above benefit, vide order dated 8.9.2008(Annexure-A/15) the Respondent-Department, based on the letter dated 31.8.2004 of the Deputy Director(Administration), CBHI, DGHS, New Delhi, holding the applicants were entitled to pay scale of Rs.5500-9000/- for 1st financial upgradation under the ACP Scheme, sought to recover the excess amount paid to them in that behalf with effect from 9.8.1999. Being aggrieved, the applicants preferred representations vide Annexure-A/16 series dated 8.9.2008 and apprehending

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that the recovery would be effected, moved this Tribunal simultaneously, seeking the relief as referred to above.

5. The sole point urged by the applicants in support of their claim is that a similar matter in O.A.NO.674/2002 (Raj Kumar Srivastava & another vs. Union of India & Ors.) disposed of on 5.11.2003 came up before the C.A.T., Jabalpur Bench for adjudication. The C.A.T., Jabalpur Bench, vide order dated 5.11.2003 allowed the claim of the applicants, thereby by setting aside the order dated 27.9.2002 of the Directorate General of Health Services, Central Bureau of Health Intelligence, New Delhi, based on which the 1st financial upgradation granted to the Statistical Assistants in the scale of Rs.6500-10500/- was sought to be reduced to Rs.5500-9000/-. It is also the further case of the applicants that the decision of the C.A.T., Jabalpur Bench having been upheld by the judgment dated 8.2.2007 of the Hon'ble High Court of Madhya Pradesh in W.P.(C) No5673/2005, the Respondent-Department, vide Annexure-A/12 dated 16.5.2008 complied with the order passed by the Hon'ble High Court of Madhya Pradesh. In the circumstances, the applicants have urged that they being similar to those of the applicants in O.A.No.674/2002 before the C.A.T., Jabalpur Bench, if the proposed reduction in scale of pay and recovery is effected, they will be subjected to sheer discrimination.

6. We have heard Shri D.P.Dhalasamant, learned counsel for the applicants and Shri B.K.Mohapatra, learned Addl.Standing Counsel for the Respondents and perused the material on record.

7. The Respondents, in their counter have not categorically denied that the applicants are similarly placed persons as those of the applicants in O.A.No.467/2002 before the C.A.T., Jabalpur Bench. From this, it is clear that the applicants in the instant O.A. are similarly circumstanced as that of the applicants in O.A.No.674/2002

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before the C.A.T., Jabalpur Bench and therefore, the Respondent-Department should not be in paradox to extend the similar benefit to the applicants herein. In this connection, we may add that the Hon'ble Supreme Court in (2006) 9 SCC 406 (K.T.Veerapa vs. State of Karnataka) have held that "all similarly placed persons should also get the same benefits irrespective of the fact that they have not come to the Court". Viewed from this angle, the Respondent-Department should have considered the representations preferred by the applicants and taken decision on the relief sought as the matter in this regard had already been set at rest by the C.A.T., Jabalpur Bench and Hon'ble High Court of Madhya Pradesh, in cases cited supra.

8. For the reasons discussed above, we quash the impugned order dated 8.9.2008 at Annexure-A/15 and direct the Respondents to consider the case of the applicants in the light of the decision of Jabalpur Bench (supra) and communicate the decision to the applicant within a period of 60 days from the date of receipt of copy of this order

In the result, the O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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