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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.447 of 2008
Cuttack, this the 19th day of January, 2010

Rabindra Nath Kar Applicant
Versus
Union of India & Others 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?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.447 of 2008
Cuttack, this the 19th day of January, 2010

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

Rabindra Nath Kar, Aged about 43 years, son of Rasananda Kar, Village-Kutilo, Post-Baghuni, PS-Salepur, Dist. Cuttack working as Postman Kendrapara Head Post Office, Kendrapara (under suspension)

.....Applicant

Legal practitioner :M/s. Debasis Pratihari, D.K. Mohanty, Counsel.
- Versus -

1. The Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhavan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda, PIN 751 001.
3. Director of Postal Services, Office of the CPMG, Orissa, Bhubaneswar, Dist. Khurda, PIN-751 001.
4. Superintendent of Post Offices, Cuttack North Division, Cantonment Road, Cuttack.
5. Assistant Superintendent of Post Offices, Kendrapara Sub Division, Kendrapara.

....Respondents

Legal Practitioner : Mr. S. Barik, ASC

O R D E R

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

Applicant, in this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeks for a direction for payment of differential amount of pay and other allowances pursuant to the Revised Pay Rules, 2008 which has been made effective w.e.f. 1st January, 2006 till his date of suspension i.e. 13.04.2007 and differential amount of subsistence allowance on the revised scale of pay till his reinstatement. It is contended by the Applicant that other employees who are continuing in service have already been paid the benefits of the VIth CPC but there has been a departure in his

case only because he has been continuing under suspension though he was very much in service as on the effective date of the revision of pay. Further case of the applicant is that once the pay scale of the applicant is revised w.e.f.01.01.2006, he would be entitled to the subsistence allowance at the higher rate than what he has been paid during suspension. Accordingly, alleging non-consideration of his case in spite of representation, he has approached this Tribunal in the present Original Application seeking the relief to the above effect.

2. Respondents raised no dispute in regard to the date of suspension of the applicant and the effective date of implementation of the Revised Pay Rules, 2008. But they have contested the case of the Applicant by stating that in view of the note 4 below Para 7 of the Ministry of Finance GSR 622 (E) providing that "a Government servant under suspension shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised structure will be subject to the final order on the pending disciplinary proceedings", the Applicant is not entitled to the relief claimed in this OA.

3. Learned Counsel appearing for both sides laid emphasis on submissions taken in their respective pleadings and having heard them at length, perused the materials placed on record. Since this case can be decided by interpretation of the Rules based on which applicant was denied the benefit, I do not see any justifiable reason to record all the arguments advanced by the parties. The fact remains that revision of pay of Central Government employees became effective in letter and spirit w.e.f. 01.01.2006 and the applicant was very much in service as on 01.01.2006 as his date of suspension is 13.04.2007. Also it is not in dispute that by the time the revised pay Rules were issued the Applicant was continuing under suspension. On going through

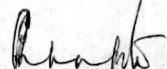
the Pay Rules and the provision made in note 4 below para 7, I find no such restriction that one is not entitled to the revised pay in the circumstances as in the instant case. Hence, I have no hesitation to hold that non-fixation of the pay and payment of differential dues as has been paid to other employees, pursuant to the Revised Pay Rules, 2008 is in any manner justified on the part of the Respondents. I would have restrained to come to the aforesaid finding had the applicant been placed under suspension on or before the Revised Pay Rules made effective i.e. w.e.f. 01.01.2006. Certain percentage of pay is paid to an employee towards Subsistence Allowance during the period of suspension. Once the revision of pay in terms of the Revised Pay Rules 2008, as directed above has taken effect, the applicant is entitled to subsistence allowance on the basis of the revised scale. This view is also fortified by the FULL BENCH of the Central Administrative Tribunal, Mumbai in the case of **J.S.Kharat v Union of India and others**, 2002 (3) A.T.J 276 in which payment of subsistence allowance at the revised scale of pay came into consideration. The FULL BENCH consisting of five members, after taking note of various provisions of the Rules as also decisions rendered on the subject, held as under:

“14.....Thus in view of the above judicial pronouncement, we consider that a government servant during suspension is entitled for subsistence allowance on the basis of revised pay scale where a revised pay scale comes into effect during his suspension. If any contrary view is taken then it will frustrate the very purpose for which subsistence allowance is paid.”

“15.....If the rules are to be construed keeping in view the object for which it has to fulfill the minimum requirement of the two and save the rule in respect of amount of subsistence allowance to be paid from frustrating the very object for which it is framed, the employee suspended before revision of pay scale is to be kept at par with similar Government employees who has been suspended after revision of pay scale. Therefore, the payment of subsistence allowance on the basis of scale of pay before revision cannot be a

reasonable classification keeping in view the object to be achieved in praying subsistence allowance. For aforesaid reasons also we consider that a suspended employee is entitled for subsistence allowance on revised pay scale and his subsistence allowance which is payable month to month has to be paid on the basis of revised pay scale which he would have been entitled had he been in service..."

4. In the light of the discussions made above and in view of the decision of the FULL BENCH, referred to above, the Respondents are directed to fix the pay of the applicant under the Revised Pay Rules 2008 w.e.f. 01.01.2006 and thereafter re-fix his Subsistence Allowance on the basis of the said revision of pay w.e.f. 13.04.2007 in the light of the FULL BENCH decision referred to above. The differential amount so reached in view of revision of the scale, as directed above, shall be drawn and paid to the Applicant. The entire exercise shall be completed within a period of 45 days from the date of receipt of this order. In the result, this OA stands allowed to the extent stated above. No costs.


(C.R.MOHAPATRA)
Member (Admn.)