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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.461 of 2008
H.R.Tiwary Applicant
Versus
Union of India & Others Respondents
.....

Order dated: the 26th April, 2010

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THE HON'BLE MR.B.V.RAO, MEMBER (JUDICIAL)

And

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

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Succinctly, the case of the Applicant is that during April, 2003, in the capacity of TGT (Hindi), he was transferred from Kendriya Vidyalaya, Talcher to Kendriya Vidyalaya, Balasore. While he was at K.V on acceptance of the recommendations of the 5th Pay Commission the pay scales of TGT were revised to Rs.5, 500-175-9,000/- w.e.f. 01.01.1986. By issuing office order, the competent authority of the KV authorized the Principal to step up the pay of the employees so as to remove anomalies, if any, while fixing the pay of the employees. Accordingly, anomaly in the fixation of pay of the applicant was removed by the authority by stepping up of the pay of the applicant to Rs.6025/- as on 01.01.1996 with DNI to 01.01.1997. While the Applicant was working as TGT (Hindi) in KV Sunabeda, he received a communication dated 18.09.2006 addressed to Principal, KV Sunabeda, and copy to the applicant from Principal KV Balasore directing recovery of an amount of Rs.15310/- from the salary of the applicant in three installments. The reason for such recovery was stated as having been wrongly paid due to change of his date of increment i.e. the pay of the applicant was fixed at Rs.6,900/- w.e.f. 24.10.2000 with DNI on 01.10.2001 but the increment was sanctioned wrongly w.e.f. 01.01.2001 instead of 01.01.2001 and accordingly, recovery of the excess amount was started from the salary of the applicant

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from the month of November, 2006 and December, 2006 to the tune of Rs.10,000/-.

2. Being aggrieved by such action of the Respondents, Applicant approached this Tribunal in OA No.21/2007. This Tribunal after considering the cases of the applicant and the Respondents, in order dated 30th April, 2008 finely disposed of the matter. Relevant portion of the order is quoted herein below:

“6. Heard the Learned Counsel for both the sides and perused the material placed on record. The issue that emerges for consideration is-

- (a) Whether on appointment to the Senior Scale the applicant was asked to exercise his option under Rule 22 of the Fundamental Rules;
- (b) If option was called for and he did not exercise the same, whether it would be proper to allow him to do so at this point of time;
- (c) If the option was not called for during the relevant time whether the applicant will be within his rights to exercise this option at present, so that he will be saved of the financial hardship caused due to recovery.

As regards (a) above the applicant has categorically stated in the written notes of arguments that no option was called for by the Respondents while he was granted the Senior Scale w.e.f. 24.10.2000. The Respondents have, however filed an affidavit stating that the applicant has not exercised any option in accordance with the FR 22 (1) (A-1) of the Fundamental Rules in spite of being asked to give the opinion. When asked to produce the corroborating document in support of their contention in the affidavit, they were not able to produce the same. In spite of having been given adequate opportunity the Respondents during the final date of hearing pleaded their helplessness to produce the document as the same was stated to be not available.

7. In regard to (b) and (c) above, in view of the position stated regarding (a), it is quite clear that the provisions of the Fundamental Rule on the subject having not been adhered to by the Respondents. The applicant ought to have been given a choice regarding retention of his earlier date of increment in the lower scale prior to grant of the senior scale. Due to this deficiency the applicant has been inflicted with an order of recovery of excess amount by the Respondents. Non-adherence to the Rule has been detrimental to the interest of the applicant which cannot be legally sustained. Hence, the right of the applicant at the relevant point of time which was curtailed should be restored. **The applicant should be allowed to exercise his option even at this belated stage so that he is not**

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subjected to financial hardship. The applicants may exercise his option within a period of one month. The Respondents shall consider his option as on the relevant date and fix his pay accordingly with the opted date of increment within a period of one month. Thereafter, if any, amount is found to have been paid in excess, the same may be recovered." (emphasis supplied).

Applicant through Annexure-A/4 dated 21.05.2008 submitted

his option stating as under:

"In compliance as per order dated on 30.4.08 part in OA No.21 of 2007 of the Hon'ble CAT, Cuttack Bench as per FR 22 (1)A(1), I do hereby exercise my option for fixation of my pay in promotional grade of senior scale w.e.f. 01.01.2001, by allowing me to retain my date of increments as on 01st January of every year.

I may state that in view of the above, contingency excess differential pay in senior scale drawn from 24.10.2000 to 31.12.2000 may kindly be recovered/adjusted after fixation and calculation of arrears, payable to me."

In compliance of the order of this Tribunal and the option

furnished by Applicant under Annexure-A/4, Respondents passed order under Annexure-A/5 dated 09/10.09.2008. Relevant portion of the order reads as under:

"Whereas Shri Hare Ram Tiwari exercised his option on 21.05.08 for fixation of his pay in promotional grade of senior scale w.e.f. 01.01.01 by allowing him to retain his increment as 1st January of every year. Further, contingency excess differential pay in senior scale drawn from 24.10.2000 to 31.12.2000 may kindly be recovered/adjusted after fixation and calculation of arrears payable to him.

Whereas, the above said matter has been examined by the undersigned in consultation with the finance wing of KVS (HQ) and **found that option from DNI in lower scale causes greater financial hardship.** Hence not covered by CAT order dated 31.4.2008. Pay of Shri Hare Ram Tiwari may be allowed at Rs.6900/- w.e.f. 24.11.0.2000 with DNI on 01.10.2001 if otherwise admissible as under:-

Date	Scale of pay in TGT 5500-175-9000/-	Scale of pay in TGT Sr.Scale 6500-200-10500/-
01.01.2000	Rs.6725/-	
24.10.2000	Rs.6725/-	Rs.6900/-(grant of Sr. scale)
01.01.2001(as per option exercised)		
01.01.2002	-	Rs.6900/- with DNI on 1.1.02.
OR		
Date	Scale of pay in TGT 5500-175-9000	Scale of pay in TGT Sr.Scale 6500-2000-10500/-
01.01.2000	Rs.6725/-	-
24.10.2000	Rs.6727	Rs.6900/- with DNI on 1.10.01

As this is a case of Sr. Scale not a promotional grade he will not get any benefits of FR-22. As this is not a case of

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promotional grade his fixation of pay w.e.f. 24.10.2000 will be beneficial for him as he will draw basic of Rs.6900/-w.e.f. 24.10.2000 and as per the option exercise by him on 21.5.08 for fixation of pay w.e.f. 01.01.01 he has to repay the excess amount paid to him w.e.f. 24.10.2000 to 31.12.2000”

This order under Annexure-A/5 has been challenged by the Applicant in this second round of litigation filed under section 19 of the A.T. Act, 1985 seeking the following relief:

- “(i) To quash the order dated 09/10-09-2008 under Annexure-A/5;
- (ii) To direct the Respondents to refix the pay of the applicant as per his option exercised on 21.05.2008 and pay him all consequential service and financial benefits retrospectively.
- (iii) To pass any other order/orders as deemed fit and proper.”

The contentions raised by the Respondents in the counter are nothing but the reiteration of the contentions raised in order under Annexure-A/5.

3. Heard Learned Counsel for both sides and perused the materials placed on record. Applicant's Counsel contended that the Respondents over-reached the order of this Tribunal through their order under Annexure-A/5 with a view to vindicate their earlier action which was set aside by this Tribunal. Respondents' Counsel vehemently opposed such stand of the Applicant and stated that as this is a case of allowing Sr. Scale and not a promotion and hence he will not get any benefits of FR-22 and as such fixation of pay w.e.f. 24.10.2000 was beneficial for him as he will draw basic of Rs.6900/-w.e.f. 24.10.2000 and as per the option exercised by him on 21.5.08 for fixation of pay w.e.f. 01.01.01 he has to repay the excess amount paid to him w.e.f. 24.10.2000 to 31.12.2000 and as such his interest was protected through the order Annexure-A/5. There was nothing wrong about the same. Accordingly, Respondents' Counsel reiterated his prayer for dismissal of this OA.

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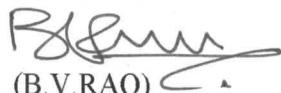
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4. We have considered the submissions made by respective parties and perused the materials placed on record. At the out set we would like to state that law is well settled that a judicial decision of Courts/Tribunal is not available to be tinkered by the Government or the Executive Branch. The Executive Branch of Government bears a great responsibility for upholding and obeying the judicial orders. Respect for law and its institution is essential in our democratic set up. By-passing the orders of the Court amount to willfully circumventing the decisions in indirect manner and as such, the authority or officer is liable to Contempt of Court. No authority can claim immunity from Contempt Liability. (Ref: 2002 (1) OLR 243). Even on cursory glance of the order of this Tribunal vis-à-vis the order under Annexure-A/5 a lay man having little sense would come to the conclusion that the order under Annexure-A/5 is in defiance of the order of this Tribunal. We have taken strong exception to the passing of the order at Annexure-A/5 in defiance of the direction made by this Tribunal but for the reason of the sincere requests of the Respondent's Counsel appearing in this Case we refrain from taking any adverse action and as pointed out by Learned Counsel appearing for the Applicant, the order under Annexure-A/5 is hereby quashed and the matter is remitted back to the Respondents with direction to consider the case of the applicant in the light of the discussions and decision given in the earlier OA keeping in mind the option submitted by the Applicant under Annexure-A/4 within a period of thirty days from today. In any event by applying the decisions of the Hon'ble Court made in very many cases in the past, there shall be no recovery of the excess amount if any found to have been paid in excess towards salary to the applicant even for wrong fixation of pay.

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5. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(B.V.RAO)
MEMBER (JUDL.)


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