

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.627 OF 2011
Cuttack this the ~~17th~~ day of January, 2012

Sri Alekha Panda Applicant

Vs

Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be sent to PB New Delhi for circulation?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

9
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.627 OF 2011

Cuttack this the 17th day of January, 2012

CORAM

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

AND

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

...

Sri Alekha Panda, son of late Rahasa Panda, aged about 56 years, at present working as Laboratory Attendant in the Institute of Hotel Management, Catering technology & Applied Nutrition, Bhubaneswar

...Applicant

By the Advocates:Mr.A.K.Mohanty

-VERSUS-

1. The Principal, Institute of Hotel Management and Catering Technology & Applied Nutrition, VSS Nagar, Bhubaneswar-751 007
2. The Chairman, Board of Governors, Institute of Hotel Management & Catering Technology & applied Nutrition, VSS Nagar, Bhubaneswar-751 007
3. Sri Sudama Barik, aged about 55 years, at present working as group-D (Watchman) in the Institute of Hotel Management and Catering Technology & applied Nutrition, VSS Nagar, Bhubaneswar-751007

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

...

O R D E R

MR. A.K.PATNAIK, MEMBER(I):

Applicant, at present working as Laboratory Attendant in the Institute of Hotel Management, Catering technology & Applied Nutrition, Bhubaneswar, being aggrieved with the order dated 9.9.2011(AnnexureA/11) rejecting his representation against the withdrawal of stepping up pay at par with his Junior

Alle

(Respondent No.3) has moved this Tribunal in this Original Application, has sought for the following relief.

- i) ...to quash the orders of Respondent No.1 dated 18.8.2011 as per Annexure-A/9 to this O.A. for being illegal, irregular, arbitrary and was in violation of the provision of Art. 14 of the Constitution of India.
- ii) To declare that the order of recovery of so called excess payments made to the applicant w.e.f. 1.1.2000 onwards was bad in law;
- iii) To pass such order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice; and
- iv) To order and direct that the cost of litigation be paid to the applicant.

2.It is the case of the applicant that he joined as Group D(Peon) under the Respondent-Department on **27.3.1982** whereas Respondent No.3 joined as group-D(Watchman) on **1.5.1982** in the scale of pay of Rs.200-250/-, revised to Rs.750-940/- w.e.f. 1.1.1996. According to applicant, he being senior to Respondent No.3 was promoted to the grade of Laboratory Attendant in the scale of Rs.800-1150/- w.e.f. 6.8.1986. While the matter stood thus, 5th C.P.C. having been effected w.e.f. 1.1.1996, the pay of the applicant was revised to Rs.2650-4000/- in consequence of which his pay was fixed at Rs.2910/- w.e.f. 1.1.1996. According to applicant, pay of Respondent No.3 having been revised to Rs.2550-3200/- as per 5th CPC recommendations, his pay was fixed at Rs.2900/- with effect from 1.1.1996. In the meantime, the Government of India

Al

introduced Assured Career Progression Scheme (in short ACP Scheme) w.e.f. 9.8.1999 in order to remove financial hardship caused due to stagnation. As per the said scheme, Respondent No.3 was granted 1st financial up-gradation and was placed in the scale of Rs.2650-4000/-, being his pay fixed at Rs.3105/- with effect from 9.8.1998. Thereafter, Respondent No.3 exercised his option for fixation of pay under FR-22(I)(a)(1) with effect from 1.1.2000, being his date of next increment; as a result of which his pay was fixed at Rs.3300/- with effect from 1.1.2000, whereas applicant being senior was in receipt of pay at Rs.3170/-. In view of the above anomalous situation, pay of the applicant was stepped up at par with his junior (Res.No.3) to Rs.3300/- with effect from 1.1.2000 vide Annexure-A/5 dated 20.2.2009. After the above anomalous situation was set at rest, the applicant was granted 1st financial up-gradation under ACP Scheme in the scale of Rs.2750-4400/- with effect from 27.3.2006 whereas Respondent No.3 was granted 2nd ACP in the scale of Rs.2730-4400/- with effect from 1.5.2006, the pay of both the applicant and Res.No.3 having been fixed at Rs.6920 (Rs.6920 + Grade Pay Rs.1800) in Pay band of Rs.5200 - 20200/- as per the recommendations of 6th CPC. While this was the ongoing state of affairs, Respondent No.1 issued office order dated 18.8.2011(Annexure-A/9) withdrawing stepping up

ble

pay that was granted to the applicant with effect from 1.1.2000 and at the same time recovering the excess amount drawn and disbursed to him in that behalf. The representation made by the applicant against the order withdrawing stepping up pay having been rejected vide order dated 9.9.2011 (Annexure-A/11), the applicant has moved this Tribunal in the present O.A. seeking the relief as referred to above.

3.The grounds, inter alia, urged by the applicant are that (i) he being senior to Res.No.3, his pay had rightly been stepped up at par with his junior; (ii) without asking the applicant to show cause against the proposed withdrawal of stepping up pay, the order so issued at Annexure-A./9 is violative of the principles of natural justice and (iii) since he was not contributing to step up pay, recovery of excess amount drawn on account of stepping up pay is bad in law.

4.Respondent-Department have filed their counter opposing the prayer of the applicant. Though there has been no dispute regarding factual aspect of the matter, yet, the main thrust of the counter is that according to audit report, stepping up pay of the applicant with effect from 1.1.2000 was not in order and as such based on the audit report, the pay of the applicant was

refixed with effect from 1.1.2000 thereby withdrawing the stepping up pay already granted to him.

5. Applicant has filed rejoinder to the counter wherein it has been stated that he along with Res. No.3 having borne on one cadre and admittedly being senior to Res.No.3, his pay had rightly been stepped up at par with his junior Res.No.3 and therefore, the manner in which order has been issued by the Respondents withdrawing the stepping up pay amounts to colourable exercise of powers.

6. We have heard Shri A.K.Mohanty, learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents and perused the materials on record.

7. From the pleadings of the parties, the sole point to be determined is whether the applicant is entitled to step up pay in a contingency where the pay drawn by his junior becomes higher on account of financial up-gradation under the A.C.P.Scheme.

8. Before coming to the point in issue, we would like to make it clear that the Respondent-Department, save and except making a bald assertion that it was due to infirmity in stepping up pointed out by the audit, the impugned order withdrawing stepping up pay granted to the applicant came to be issued have not adduced any cogent reason for such withdrawal. Besides the

W.A.

above, Respondent-Department have also not made any precise reply with regard to violation of the principles of natural justice before the impugned affecting adversely the interest of the applicant could be issued as has been pleaded in the O.A.

9. Recently, a similar matter came up before this Bench in O.A.No. 73 of 2010 - disposed of on 13.01.2012 wherein the applicant therein being senior had sought stepping up at par with his junior who was in receipt of higher pay scale on account of granting the financial up-gradation under the ACP Scheme. The Respondent-Department therein pleaded that financial up-gradation under the ACP Scheme is purely personal to the employee concerned and has no relevance to the seniority position and therefore, stepping up pay is not permissible.

9. The above matter reliance was placed on the decision of the Chandigarh Bench of the Tribunal. In the matter before the Chandigarh Bench of the Tribunal the aggrieved applicants had sought stepping up their pay at par with the junior, whose pay had been fixed at a higher stage on account of grant of benefits under the ACP Scheme. The Chandigarh Bench of the C.A.T. having allowed the prayer of the applicant therein vide order dated 19.1.2010, the matter was carried in appeal to the Hon'ble High Court of Punjab & Haryana and thereafter to the Hon'ble

Alc

Supreme Court of India which formed the subject matter of **Special Leave to Appeal (Civil) No.CC 7278 of 2011**. Hon'ble Supreme Court vide order and judgment dated 2.5.2011 upheld the view taken by the Chandigarh Bench of the Tribunal and in the end the applicant's pay therein was stepped up at par with their junior.

10. In another decision in **Commissioner and Secretary to Government of Haryana & Ors. vs. Ram Sarup Ganda & Ors.** dated 2.8.2006 in Civil Appeal No.3256 of 2006 (arising out of special Leave Petition (Civil) No.20264 of 2004)

"In the result, all the appeals are partly allowed. The applicants shall revise the pay scales of the respondents. In case of any anomaly, if the employees, who on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of copy of this order by the Government. However, if upon revision of the pay scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any relating to stepping up pay at par with his juniors (whose pay had been fixed at a higher rate due to financial upgradation under the Higher Standard Scale Scheme like ACP) the Hon'ble Supreme Court had also allowed the appeal, the relevant portion of which reads as under: amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government."

11. In view of the above, we find no reason to make a departure from the view already taken by us in O.A.No.673/2010. In the circumstances, we quash the impugned order dated 18.8.2011 vide (Annexure-A/9) withdrawing the stepping up pay and order dated 9.9.2011 vide and A/11, rejecting the representation of the applicant respectively. Accordingly, we direct the Respondent-Department to re-fix the pay of the applicant as had been fixed already vide office order dated 20.2.2009 (Annexure-A/5) and excess amount recovered from the salary of the applicant be drawn and disbursed to him within a period of three months from the date of receipt of this order. In the result, the O.A. is allowed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

BKS