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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.864 OF 2011

Cuttack this the 20th day of June, 2017

Bhabagrahi Sanibigraha. ...Ap.0plicant

-VERSUS-

K.V.S. & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)

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*HOH'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)*

Sri Bhabagrahi Sanibigraha, aged about 44 years, S/o. late Biswanath Sanibigraha, At-Ohada Sasan, PO-Achyutapur, Via-Turigadia, Dist-Balasore - presently working as Primary Teacher, Kendriya Vidyalaya No.1, Cuttack, C.D.A. Bidanasi, Sec.-1, Cuttack-753 014

....Applicant

By the Advocate(s)-M/s.D.D.Dhalasamant
N.M.Rout

-VERSUS-

1. Commissioner, Kendriya Vidyalaya Sangathan (HQ), 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 602
2. Deputy Commissioner, Regional Office, Kolkata, EB Block, Sector-1, Labony Salt Lake, Kolkata-700 064
3. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional office At Pragati Vihar, Mancheswar, Bhubaneswar, Dist-Khurda, Orissa-751 017
4. Principal, Kendriya Vidyalaya No.1, C.D.A., Bidanasi, Sec.1, Cuttack-753

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy

ORDER

A.K.PATNAIK, MEMBER(J):

Applicant is presently working as a Primary Teacher in Kendriya Vidyalaya, Cuttack. Being aggrieved by the orders issued by the Respondents dated 19/20th. January 2009 vide A/8 and 3rd./9th.

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August 2011(A/10) by virtue of which his prayer for removal of anomaly in the pay fixation has been rejected, he has moved this Tribunal in the instant O.A. seeking for the following relief.

- i) ...order dated 19/20.01.2009(A/8) and order dated 3/9.08.2011(A/10) be quashed.
- ii) ...respondents be directed to refix the pay of the applicant as per his option exercised on dated 1.11.2006 and pay all the consequential service and financial benefit; or
- iii) ...to direct the respondents to step up payoff the applicant at par with his junior as per letter No.F/15036/1149.2010/69 and 10.02.2010 w.e.f. 1.01.2006;
- iv) ...and to pass any other order/orders, as it would deem fit and proper to complete relief to the applicant.

2. Shorn of unnecessary details, it would suffice to note that on being selected through a regular selection process, the applicant was appointed as a Primary Teacher being posted to Kendriya Vidyalay, SECL, Kusmunda Project, Korba in the State of Chhatisgarh and accordingly he joined as such with effect from 30.11.1993. Subsequently, his service was confirmed with effect from 30.11.1995. The applicant was granted Senior Scale of Pay with effect from 30.11.2005 vide order dated 12.06.2006. Thereafter, he was transferred to Cuttack Kendriya Vidyalaya where he joined on 1.8.2006. While working at K.V. Cuttack, the applicant's pay was fixed at Rs.5850/- with the Date of Next Increment to be on 01.11.2006 in the Senior Scale of Pay of Rs.5500-9000/-. While the matter stood



thus, he submitted a representation to respondent no.2, i.e. Assistant Commissioner, KVS, Kolkata on 1.11.2006 with a request for reviewing the order of pay fixation in the Senior Scale having regard to his option submitted in the prescribed format. Since the applicant had been transferred under the administrative control of respondent no.3, he also submitted a representation to respondent no.3 on 8.7.2008 seeking review of his pay fixation, followed by a further representation on 18.09.2008. In the meantime, Respondent No.2 vide communication dated 6.10.2008(A/6) intimated Respondent No.4 that removal of pay anomaly in respect of the applicant is not possible inasmuch as he had not exercised his option within one month from the date of grant of senior scale of pay. It was indicated therein that for the purpose of waiving out the condition of exercising of option at a later date, Commissioner, KVS(Q) is the only competent authority and accordingly, it was mentioned that if the applicant so desires, he may represent to the Commissioner, KVS(HQ) through proper channel. On receipt of this communication, the applicant submitted a representation dated 20.10.2008(A/7) along with option form to respondent no.1 through proper channel with a prayer to remove the pay anomaly. Respondent No.3 vide his letter dated 19th /20th. January 2009(A/8) intimated the Principal, KV, Cuttack (Respondent No.4) that there is no provision in CCS(CCA) Pay Rules to waive out the condition of exercising option at a later date. Thereafter, respondent no.3 vide Memo dated

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12th/15thJanuary 2010(A/9) asked all the Principals, of the Kendriya Vidyalayas under his administrative control to inform all the employees to submit their application forms in the prescribed format along with proof of pay fixation order along with their juniors within one month. It was indicated that the pay fixation order of employees along with their juniors may be verified before sending the same for settlement of anomaly cases. In response to this, the Respondent No.4 vide his letter dated 10.02.2010 submitted the application form of the applicant in the prescribed format to respondent no.3 for settlement of pay anomaly. Respondent No.3 vide his letter dated 3/9.08.2011(A/10) intimated the applicant that his case could not be considered for removing pay anomaly because he failed in exercising his option in the right time. Hence, this Original Application with the prayers as referred to above.

3. In support of his case, applicant has urged that he ought to have been asked by the Respondent-KVS to exercise his option as per the provision of FR 22(I1)(a)(i). According to the applicant, the Respondent No.3 while granting senior scale of pay to similarly situated employees vide order dated 3.7.2006 specifically asked the concerned employees to exercise their options for fixation of pay within one month from the date of issue of the order either from the date of grant of senior scale or after getting increment in the present basis scale. Therefore, it is the case of the applicant that his pay was fixed in the senior scale as per order dated 18.08/04.09.2006(A/3),

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whereas the same has not been done as per FR-22(1)(a)(i) and thereby his pay was fixed at Rs.5850 with date of next increment on 01.11.2006, which is bad in law. As per DoP&T O.M. No.13/2/97-Estt.(Pay-1) dated 12.12.1997, the order of promotion/appointment covered by FR 22(a)(a-1), a clause which should invariably be incorporated to the effect that the employee has to be asked to exercise his option for fixation of pay whereas he has not been asked to do so. According to applicant, it is the settled principle of law that if option has not been asked to be exercised, then an opportunity should have been given to the employee concerned to exercise the same.

4. Resisting the claim of the applicant, the respondent-KVS have filed a detailed reply statement. According to them, since the applicant did not exercise his option at the right time, his case could not be considered for the purpose of removing the pay anomaly. It is the case of the respondent-KVS that the applicant had to exercise his option within one month from the date of order granting him the senior pay scale and since, he did not choose to exercise his option, at this stage, it is not possible to step up his pay at par within his juniors. In the end, it has been submitted that since the applicant did not exercise his option within the time frame, his claim has rightly been rejected and the O.A. being devoid of merit is liable to be rejected.

5. Applicant has not filed any rejoinder.

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6. We have heard the learned counsel for both the sides and perused the records including the written notes of arguments filed by the applicant.

7. In the written note of arguments, the applicant has reiterated that as per DoP&T OM dated 12.12.1997 (para-5.4 of the O.A.) and as per the account code for KVS(23-fixation of pay) and note appended thereto, it is mandatory on the part of the authorities to mention in the said order itself an enabling clause so as to enable the employee to exercise his option within a month and the respondents having failed to do so, they cannot blame the applicant for not exercising his option within the stipulated time.

8. We have given our anxious considerations to the arguments advanced by the parties concerned. The entire gamut of the case is that because the applicant could not exercise his option for fixation of pay within the time frame of one month, his pay cannot be refixed now. In this connection, it is to be noted that the effect of this has now given rise to anomalous situation as a result of which juniors to the applicant are in receipt of higher pay. Therefore, even if the applicant is estopped to exercise his option at this stage, but stepping up of his pay at par with his juniors to which he is legally entitled to cannot be ruled out. If the plea of the respondent-KVS that the applicant is not permitted to exercise his option beyond one month from the date of grant of senior scale of pay is accepted to be reasonable, then what prompted the Respondent No.3 to intimate

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the applicant to submit his application forms in the prescribed format along with the proof of pay fixation order along with his juniors? What also prompted the Respondent No.3 to communicate that in the matter of removal of pay anomaly, Commissioner, KVS(HQ) is the only competent authority to waive out the condition of exercising option at a later date. As it reveals from the O.A. the applicant's representation dated 30.10.2008(A/7)addressed to the Commissioner, KVS(HQ) has not at all been considered. At this juncture, we would like to note that after the pay fixation vide A/3 dated 18.8.2006was issued, the Applicant submitted a representation 01.11.2006 to the Assistant Commissioner, KVS, Regional Office, Kolkata enclosing thereto the option in the prescribed format for fixation of his pay and for the reasons best known to the authority concerned, the respondent-KVS did not take any action thereon. If at all the Regional Office at Kolkata was not competent to relax the condition of exercising of option by the applicant after a few months from the issuance of the office order granting senior pay scale to the applicant, the same could have been referred to the Commissioner, KVS (HQ) seeking relaxation of the condition of exercising option at a later date by the applicant. However, no such efforts were made in that direction. This shows an administrative laxity, which resultantly dragged the matter upto the year 2011 when the applicant filed the instant O.A. This being the

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position, it cannot be said that the respondent-KVS have reasonably and fairly dealt with the matter.

9. For the reasons discussed above, we quash the orders dated 19/20.01.2009(A/8) and dated 03/09.08.2011(A/10) and direct the respondents to accept his option as submitted by the applicant vide his representation dated 01.11.2006(A/4) and consequently, re-fix his pay with effect from 30.11.2005 on account of grant of senior pay scale of Rs.5500-175-9000/- and grant him the consequential financial benefits accrued thereon. This exercise shall be completed within a period of 120 days from the date of receipt of this order.

10. In the result, the O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)