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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.187/2010

Dated : 25.11.2011

CORAM : THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Madhu Pati,
At/P.O. Barmunda,
Bhubaneswar – 751003,
Dist Khurda,
Orissa.

...Applicant

(By Advocate Shri K.C.Kanungo)

Vs.

1. Comptroller and Auditor General of India,
Pocket-9, Dindayal, Upadhya Marg,
New Delhi – 110 124.
2. Accountant General (A & E), Orissa,
Bhubaneswar, Dist. Khurda.
3. Senior Deputy Accountant General (Adm.),
Office of the Principal AG (A&E) Orissa,
Bhubaneswar, Dist. Khurda.
4. Director of Canteen, Department of
Personnel and Training,
Ministry of Personnel, Public Grievances and
Pension, Lok Nayak Bhawan, Khan Market,
New Delhi – 110 003.

...Respondents.

(By Advocate Shri S.B.Jena, ASC)

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O R D E R (O R A L)

{C.R.MOHAPATRA, MEMBER (A)}

Heard Learned Counsel for both sides and perused the materials placed on record. In this Original Application, the prayer of the Applicant is as under :

- (i) Your Lordship may be graciously pleased to quash Annexure-A/3 in so far as it has reduced the pension amount and commutation value of pension of the Applicant and direct the Respondents to appropriately modify the pension payment order at Annexure-A/3 for the purpose of revision of pension and commutation value of pension for the ends of justice;
- (ii) Your Lordship may be graciously pleased to quash Annexure-A/4 in so far as it has reduced the amount of the gratuity from Rs.2,31,099/- (Rupees two lakh thirty one thousand ninety nine) to Rs.2,06,589/- (Rupees two lakh six thousand five hundred eighty nine) for the ends of justice;
- (iii) Be further pleased to direct the Respondents to count the qualifying service of the Applicant from the date of his initial regular appointment (Dt.01.08.1976) and accordingly calculate the qualifying service which would be 32 years 10 months to be rounded upto 33 years for ends of justice;
- (iv) Be further pleased to direct the Respondents to revise and pay the monthly pension w.e.f. Dt. 01.06.2009 with arrears and interest @ 14% thereof including penal interest till the actual payment is made for the ends of justice.
- (v) Be further pleased to direct the Respondents to release the gratuity amount of Rs.24,510/- (Rupees twenty four thousand five hundred) to the Applicant with interest including penal



interest @ 14% p.a. till the actual payment is made for the ends of justice;

- (vi) Be further pleased to issue any other/further order (s) or direction(s) as deemed fit and proper in the circumstances of the case."

2. Respondents have filed their counter in which it has been stated that counting the service of the applicant from 1.10.1979 instead of 01.08.1976 does not affect his pension since full pension has been sanctioned in his favour as he had completed minimum service of 20 years as required for earning full pension. The Applicant does not incur any loss in so far as the Family Pension is concerned since it was calculated on the basis of his last pay drawn as is done in other cases. As regards gratuity, it has been stated that the amount of gratuity of Rs.2,31,099/- due to the applicant was initially calculated taking into account his service of 32 years 10 months i.e. from 1.8.1976 to the date of his retirement dt. 31.5.2009. Thereafter clarification was sought in regard to counting the period of service of the applicant for the purpose of gratuity. On receipt of instruction under Annexure-R/3 & R/4, the amount of gratuity so calculated was revised to Rs.2,06,589/- taking into consideration the total period of service from the date when the canteen employees were declared as holders of Civil Posts under the Central Government i.e. w.e.f. 1.10.1979 to his date of retirement i.e. 31.5.2009. In the above circumstances, the Respondents have stated that there was no wrong committed by



them in the matter of payment of the gratuity amount to the applicant to the extent stated above. Hence, they have prayed to dismiss this OA.

3. Learned Counsel appearing for the respective parties have tried to justify the stand taken in their respective pleadings. We are not inclined to deal with all such arguments advanced by the respective parties as it is seen ~~that~~ from the order under Annexure-R/3 that counting the entire past service rendered on regular basis by the non statutory departmental canteen employees came up for consideration before the Principal Bench of the Tribunal in OA Nos.572/96 and 2135/98. The OAs were disposed of on 3.12.1999 and 13.1.2000 respectively. Relevant portion of the order as dealt in the order under Annexure-R/3 reads as under :

"....The respondents are, therefore directed to grant the benefits of the entire past service prior to the Applicants having been declared as Government servants for counting towards pensionary benefits"

"....Respondents are directed to take a decision in terms of the decision given by the Tribunal in OA No.572/96 i.e. to take into account the entire past service of the applicants for purpose of counting towards pensionary benefits."

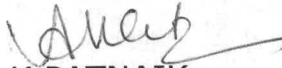
4. The Respondents challenged the said orders of the Tribunal before the Hon'ble Delhi High Court in WP No.5695/2000. Hence, the order under Annexure-R/3 for counting the period of


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service of the retirees was subject to the outcome of the WP pending before the Hon'ble High Court. In view of the above, the Comptroller and Auditor General of India in letter under Annexure-R/4 issued clarification to await the decision of the Hon'ble Delhi High Court. Through additional rejoinder it has been brought to the notice of this Tribunal by the Applicant that meanwhile the WP pending before the Hon'ble Delhi High Court has been dismissed on 7.7.2011 thereby upholding the order of this Tribunal. In view of the above, we are left with no option but to direct the Respondents to recalculate the gratuity amount of the applicant by taking into consideration his full service and pay him the differential amount within a period of 120 days from the date of receipt of copy of this order. Since the non payment of the differential amount was due to the pendency of the case before the Hon'ble Delhi High Court, we refrain from awarding any interest.

However, it is ordered that ^{for} failure to pay the differential amount within the stipulated period stated above, the applicant shall be entitled to interest at the rate of 6% per annum till the date of actual payment.

5. With the aforesaid observation and direction this OA stands disposed of.


(A.K. PATNAIK)
MEMBER (JUDL.)


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