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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00193 of 2010

Date of Order : *March, 16*, 2017

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S. K. PATTNAIK, MEMBER(J)

1-Surendranath Samal aged about 63 years S/o Late Shri B.B.Samal, retired Commandant (Ordinance) A.R.C., Charbatia, District Cuttack at present Plot No. 1150/16-D, CDA Markatnagar, Cuttack – 14.

2-S.A.Ganesan, aged about 65 years S/o Late Shri A. Subbriah, retired Assistant Commandant (Ordinance), A.R.C. Charbatia, at present residing at H.No. 3/1321, AnnaiAnjugamnagar,Settmandapur,Kumtakonam-1,Tamilnadu.Applicants

By the Advocate(s)- Mr. C.A.Rao

-V E R S U S-

- 1- Union of India represented by the Cabinet Secretary, Cabinet Secretariate, Bikaner House, Sahajan Road, New Delhi.
- 2- Union of India represented by the Secretary, Ministry of Finance (Department of Expenditure), New Delhi.
- 3- Directorate General of Security (Cabinet Secretariat), Block-V (East), R.K.Puram, New Delhi – 66.
- 4- Deputy Director(Admn),A.R.C.Charbatia,District Cuttack ..Respondents

By the Advocate-Mr. S. Behera

ORDER

Per R.C.MISRA, MEMBER(A):

This O.A. has been filed by two retired officials of the ARC Charbatia which is functioning under the control of the Cabinet Secretariat and their prayer in the OA is that the respondents may be directed to extend the revised pay scale of Rs. 8000-13500 retrospectively w.e.f. 13.10.1997 i.e. the date of their joining in promotional post of Assistant Commandant (Ord) in place of 22.7.2004 and to pay the differential arrear amount to them. The applicants have further prayed that order dated 20.1.2010 passed by the respondents may be quashed.

2. The brief facts of this case are that the applicants had earlier filed OA Nos. 574 and 583 of 2006 before this Tribunal seeking a direction that the date of effect of the benefits of the revised pay scale which was given from 22.7.2004 may be modified to be effective from 13.10.1997 and the arrears should be paid to the applicants. The Tribunal was of the opinion that the matter was still under

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consideration of the Ministry of Finance and therefore disposed of the matter by order dated 14.7.2009 in which after discussing various aspects of the case, the Tribunal noted that the respondent No. 1 would do well in meeting the queries made by the Ministry of Finance within a short span of time and communicate the result to the applicants expeditiously. In obedience to this order the Ministry of Finance was consulted by the respondent department and by a Memorandum dated 20.1.2010 it was decided that the applicants were not entitled to the grant of retrospective benefit of the higher pay scale w.e.f. 13.10.1997. This has given rise to further grievance for the applicants who have challenged this order by filing this O.A.

3. In the grounds for seeking a relief the applicants have submitted that the Assistant Commandant (Ordinance) CSD Staff were having historical parity with SFO and ATOs of ARC and they were recommended the same pay structure in the III, IV and V Central Pay Commission. There is no dispute that the SFO, ATO and Assistant Commandant used to draw the same scale of pay earlier to the revision made in the V Pay Commission. In case of the SFOs and APOs of the ARC Charbatia sanction was conveyed for revision of pay scales w.e.f. 1.1.1996 but in the case of the Assistant Commandants who were applicants in this OA sanction was conveyed for revision of pay w.e.f. 22.7.2004. This action of the respondents has been challenged by the applicants as discriminatory and violative of Articles 14 and 16 of the Constitution. Therefore, in their cases also the revised pay scale may be made effective from 13.10.1997 from which date they have been functioning in this post.

4. The learned Additional Standing Counsel on behalf of the respondents has filed a counter reply in which he has averred that in case of the applicants higher pay scale was granted prospectively since VI CPC had not specifically recommended the upgradation and the same was done as the post concerned was a left out category. As per the policy of the Government in cases where the VI CPC has made specific recommendations the benefit of the higher pay scale is given w.e.f. 1.1.1996. But in other cases, the benefits were given on a prospective basis. In the present case, the upgradation was not based upon the recommendation of the VI CPC and therefore the benefit was granted prospectively. The pay scale of Assistant Commandant (Ordinance) in ARC was upgraded from 6500-10500 to Rs. 8000-13500 w.e.f. the date of issue of the order dated 22.7.2004. Accordingly, the pay scale of Rs. 8000-13500 was sanctioned w.e.f. July 2004 to the applicant. The



decision of the respondents in the matter of the present prayer has been communicated to the applicant by Memorandum dated 20.1.2010 which is placed at Annex.A/3. The rejection of the prayer of the applicants in this memorandum is based upon the ground that since the V CPC had not specifically recommended the upgradation for the post held by the applicants, the revised benefits were given on a prospective basis and no retrospective benefit was given to the applicants. Thus, the respondents are trying to justify their decisions made in the case of applicants by citing the above reasons.

5. No rejoinder has been filed in this case and the matter was heard on merits on 7.2.2017 and the orders were reserved for pronouncement.

6. The issue to be addressed in this OA is whether the applicants are entitled to the revised pay scale w.e.f. 1.1.1996 even though the pay scale of the Assistant Commandant was upgraded from the date of issue of the order i.e. 22.7.2004.

7. Having heard the learned counsels for both sides, we also have perused the records in this case.

8. It has been brought to our notice that fixation of pay scales is a matter to be decided by the executive authority taking into account several factors. It is also the settled law as decided by the Hon'ble Apex Court that the Courts and the Tribunals will not normally interfere in the matter of fixation of pay unless the Government decision is found to be patently irrational. In this regard the decision of the Hon'ble apex Court in the case of ***State of Haryana vs. Civil Secretariat Personnel Staff Association*** as reported in AIR 2002 SC 2589 is of significance. The Hon'ble Apex Court has observed in this case that fixation of pay and determination of parity in duties and responsibilities is a complex matter for which a number of factors have to be taken into account. The decisions taken in this matter are of quite far reaching consequences, therefore, the executive authorities should be normally empowered to decide these matters. The Courts and the Tribunals are not ordinarily supposed to ~~dwell~~ ^{delve} deep in to the administrative decisions pertaining to pay fixation and pay parity. The matter is no doubt justiciable and could be challenged in a Court of law but the Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of the employees. In the case of Secretary, Finance Department and Ors. Vs. West Bengal Registered Service Association and Ors. reported in 1993 (Suppl.)



(1) SCC 53, while dealing with the question of equation of post and equation of salaries of government employees made the following observations :

"12. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees."

9. Therefore, merely on the basis of the arguments that same pay should be paid for similar work the Courts and the Tribunals should not interfere in the matter of fixation of pay scales. The basic highlight of this decision is that pay fixation is the executive decision of the Government which in a normal course should not be interfered with by the Tribunal. In the present case, the ground on which the applicant's prayer for retrospective revision of pay was rejected is that for this post there was no specific recommendation of the V Pay Commission and, therefore, the post is in the left out category. On the basis of subsequent decision, the revised scale of pay was given and this was made effective from 22.7.2004 i.e. the date of issue of the order. Against this background, the respondent department has rejected the claim of the applicant for giving retrospective effect to the revised pay scale from 1.1.1996. We do not find any irrationality in this order and since a rational distinction has been made, we would not like to interfere considering the larger picture that pay scales are matters of executive decisions of the Government and the Courts and the Tribunals have the least to say as per the decisions of the Hon'ble Apex Court as mentioned above.

10. We, therefore do not find any merit in the prayer made in the O.A. and the same is dismissed with no order as to costs.

S.K.Pattnaik
(S.K.Pattnaik)
Member (J)

R.C.Misra
(R.C.Misra)
Member (A)