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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 218 of 2010
Cuttack, this the 9th day of March, 2011

Bimal Chandra Mohapatra Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 218 of 2010

Cuttack, this the 9th day of March, 2011

CORAM:

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

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Bimal Chandra Mohapatra, aged about 66 years, son of Late Bhagirathi Mohapatra, resident of Plot No. A-5, Saheednagar, At/Po.Saheednagar, Bhubaneswar, Dist. Khurda.

.....Applicant

By legal practitioner: M/s.Balaram Rout, L.N.Patnaik, S.R.Das, J.Rout, Counsel.

-Versus-

1. Union of India represented through the Comptroller and Auditor General of India, No.10, Bahadur Shah Jafer Marg, New Delhi, PIN 110 011.
2. Accountant General (A&E), Orissa, At/Po.Bhubaneswar, Dist. Khurda.
3. Joint Director, Central Government Health Scheme, Unit-4, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicant seeks direction to the Respondents to sanction and pay him Patient Care Allowance during his period of deputation as Accountant to CGHS i.e. from 01-08-2000 to 29.09.2003 as has been granted to his successor as well as predecessors working on deputation and even to the employees working on regular basis in the post of Accountant in the CGHS. He also claims that as his legitimate dues have been unjustly denied he

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is entitled to interest on the arrear Patient Care Allowance (in short PCA) and, therefore, direction be also issued to the Respondents to pay his dues with interest. It is not in dispute that the applicant while working as Supervisor under the Respondents, joined the post of Accountant on deputation basis in the Respondent No.3's office on 01-08-2000 and worked in the post there upto 29.08.2003. According to the Applicant while his counterpart employees working in the post of Accountant was being paid the Patient Care Allowance he was unjustly denied the same and series of representations made by him requesting sanction of the Patient Care Allowance did not yield any result. Hence, he has approached this Tribunal in the present OA.

2. Despite adequate opportunity no separate counter has been filed by Respondent No.1. However, denying the entitlement of the Applicant of the PCA, counter has been filed by the Respondent No.2. According to the Respondent No.2 the applicant is not entitled to the allowance, as PCA is admissible only to the non-ministerial cadre Group C & D employees of the CGHS in terms of the Government of India, Ministry of Health and Family Welfare letter dated 10.7.1999 and 2.11.1999 whereas the applicant was holding the post of Supervisor which comes under the category of Group B and that the post of Accountant in CGHS became Group

B as per the notification dated 20.04.1998. According to Respondent No.2, the Scheme relating to grant of patient care allowance to employees posted in CGHS organization was introduced vide Government of India, Ministry of Health and Family Welfare letter dated 10.7.1990. In terms of the letter payment of allowance was extended to the Group C and D (Non-ministerial) employees' w.e.f. 1.4.1987 including Nursing Personnel posted in CGHS organization. If the applicant had any claim in this respect he could have claimed the same during his period of deputation but not at this belated stage. In regard to payment of the PCA to the Accountant in past, it was stated that the post of Accountant was coming under Group C category then and as such persons deputed to the post was paid such allowance in consonance with the rules in vogue on the recommendation of the Deputy Director, CGHS, Bhubaneswar. In the counter, much emphasis was led, besides this OA being devoid of any merit, on the ground of limitation.

3. Applicant filed rejoinder more or less reiterating his stand taken in the OA and also rebutting some of the stand taken by the Respondents.

4. A short reply has been filed by the Respondent No.3 (CGHS) in which it is stated that earlier the post of Accountant in the CGHS was under the category of Gr. C. Personnel working as

Accountant on regular basis in the CGHS comes within the category of Gr.C (Non-Ministerial) Staff. The Patient Care Allowance is paid to the Group C & D (Non-Ministerial) Staffs of the CGHS. As the applicant, before his joining as Accountant on deputation basis under the CGHS was holding a Group B post and that the PCA is only admissible to Group C&D(Non-Ministerial) staff, he was not entitled to PCA.

5.. Having heard Learned Counsel for the Applicant and Mr. U.B.Mohapatra, Learned SSC appearing for the Respondents, both on merit as also on the law of limitation, at length, perused the materials placed on record.

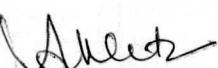
6. We are not at all convinced that this OA is liable to be dismissed on the ground of limitation in view of the law laid down by the Hon'ble Apex Court that this being a recurring loss each day, the applicant is getting a cause of action. Hence the submission of the Respondents that this OA is liable to be rejected on the law of limitation is hereby over ruled.

7. As regards the merit of the matter, it is pointed out that the very object of granting the PCA only to the employees whose regular duties involve continuous and routine contact with patients infected with communicable diseases etc. Grant of the benefit to the Accountants working under the CGHS on regular basis obviously

implies that the duties of the Accountants involve continuous and routine contact with patients infected with communicable diseases and the PCA is attached to such a post. From the evidences/materials placed on record, it is conclusively proved that the Applicant assumed the post of Accountant on deputation basis in the CGHS on 01-08-2000. The predecessor of the Applicant while holding the Gr.B post in AG being selected had joined the post of Accountant in CGHS on deputation basis. He was allowed to draw the PCA. The Applicant came back to his parent department on 29.09.2003 and one Shri Mishra was the successor of the Applicant and was a regular employee of the CGHS. He was allowed to draw PCA. The letter under Annexure-9 also shows that the staff working in the post of Accountant in the office of the CGHS at Ranchi has been drawing the PCA. Annexure-10 shows that PCA has been sanctioned and paid to one Shri K.Nandi who while working in the post of Section Officer (Gr.B) went as Accountant on deputation to CGHS. In the aforesaid circumstances the plea taken by the Respondents that as the applicant was holding the Gr.B post in his parent department and joined in the post of Accountant on deputation basis is not entitled to PCA does not stand to reason especially when similarly situated employees have been allowed to draw the PCA. In view of the above, it is clear that

discretion left with the Respondent No.2 has been exercised discriminatorily which per se is illegal, arbitrary and is in violation of the provisions mandated under Article 14 and 16 of the Constitution of India. Hence, we are left with no option but to hold that denial of the PCA to the applicant being unjustified is not sustainable in the eyes of law. Therefore, the Respondent No.2 is hereby directed to sanction and pay the amount to the Applicant for the period from 010-08-2000 to 29-09-2003 within a period of 60(sixty) days from the date of receipt of copy of this order; failing which the Applicant shall be entitled to interest at the rate of 6% per annum from the date it became due to him till the amount is paid to the applicant of course the interest part of the amount may be recovered from the officer(s) responsible for the delay, if any, in complying with the order of this Tribunal.

8. For the reasons recorded above, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)