

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.343 OF 2012

Cuttack this the 22nd day of JUNE, 2017

Bijay Kumar Sahoo & Ors. ...Applicants

-VERSUS-

Union of India & 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)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.343 OF 2012

Cuttack this the 22nd day of JUNE, 2017

CORAM

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

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Sri Bijay Kumar Sahoo
Aged about 49 years,
S/o-Late Kunjabihari Sahoo
At present working as Halwa
2. Sri Arnada Prasad Sahoo
Aged about 47 years,
S/o-Late Karuni Sahoo
At present working as Tea/Coffee maker
3. Sri Durga Charan Mallik
Aged about 44 years,
S/o-Sri Chakradhar Mallik,
At present working as Bearer
4. Sri Abhiram Behera
Aged about 45 years,
S/o-Sri Hagar Behera
At present working as Bearer
5. Sri Laxman Pradhan
Aged about 51 years,
S/o-Sri Khali Pradhan
At present working as Wash Boy

(All above are employed in Bhavishyanidi Departmental Canteen, Office of the Regional Provident Fund Commissioner, Janpath, Unit-9, Bhubaneswar-22, Dist-Khurda).

....Applicants

By the Advocate(s)-M/s.K.C.Kanungo

Ms.C.Padhi

Mr.R.C.Behera

-VERSUS-

Union of India represented through,

1. Central Board of Trustees,
Central Provident Fund Commissioner,

47
14, Bhikaji Cama Place,
Hudco Vishal,
New Delhi-1110066.

2. Regional Provident Fund Commissioner,
Orissa, Unit-9, Janpath,
Bhubaneswar-751022,
Dist-Khurda, Odisha

...Respondents

By the Advocate(s)-Mr.S.S.Mohanty

ORDER

R.C.MISRA, MEMBER(A):

Five applicants in this Original Application are the employees of Bhavisyanidhi Departmental Canteen in the Office of Regional Provident Fund Commissioner (in short RPFC), Bhubaneswar. Aggrieved with the order dated 4.11.2011(A/11) issued by the RPF Commissioner (Res.No.2) whereby and whereunder their claims for payment of arrear salary, bonus, HRA, CCA and IR for the period from 1.4.1995 to 4.11.2000 have been rejected. Their further grievance is that the Respondents did not treat the period from 01.04.1995 to 15.11.2000 as period of regular service thereby adversely affecting the pay fixation of the applicants as a result of which they have been highly prejudiced. In the above background, questioning the legality and validity of the aforesaid orders, applicants in this Original Application have sought for the following relief.

- i. ... to quash Annexure-A/10 to the extent the order rejected the claim of the applicant for payment of arrear salary bonus, HRA, CCA

and IR for the period from 01.04.1995 to 14.11.2000 for the ends of justice.

A N D

- ii. ... to direct the respondents to pay the applicants' 30% arrear pay and allowance, HRA, CCA, IR and bonus from 02.02.1995 to 15.11.2000 with interest for the ends of justice.

A N D

- iii. ...to pay direct the respondents to pay the Applicants' pay and allowance from August, 1997 to 15.11.2000 for the ends of justice.

A N D

- iv. ...to direct the Respondents to pay the Applicants' 30% arrear pay and allowance, HRA, CCA, IR and bonus w.e.f. October, 1991 to 02.02.1995 since other canteen employees working in different offices under Respondent No.1 have been paid for the ends of justice

A N D

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

2. Shorn of unnecessary details, it would suffice to note that applicants of this O.A. (excluding applicant no.1) along with others had approached this Tribunal in O.A.No.81 of 1995 for direction to be issued to Respondent Nos. 1 and 2 to make payment of 30% of the arrear pay and allowance in their favour for the period from 1.4.1989 to 28.2.1993 and from 1.5.1993 onwards, bonus for the period from 1991-92, 1992-93 and 1993-94 and Interim Relief from 1.9.1993 onwards along with interest. This Tribunal vide order dated 11.08.2000 disposed of the said O.A., the relevant part of which, as indicated in Paragraphs-6, 7 and 8 reads as under.

"6. The prayer of the applicants in this case is to get 30% of their wages from 1.4.1989 to 18.2.1993 and from 1.5.1993 onwards. The

49

applicants have stated that the concept of paying 70% of the wages through subsidy and 30% of wages through interest free loan to the Canteen Committee is against all principles of labour law. In this connection it must be noted that prior to their regularization the applicants cannot be treated as employees of the PPF organization. Their regularization would notionally take effect from 1991 and effectively from 2.2.1995. In case of employees working in canteens in Central Government Offices, the Hon'ble Supreme Court have ordered that they should get their wages at par with the employees of the statutory canteens from 1.10.1991. The Department of Personnel & Training have also issued instructions to this effect. But the decision of the Hon'ble Supreme Court applies to the employees of canteens in the Central Government of offices. The instructions of Government of India are not ipso facto applicable to EPF Organization until the same are adopted by the Board of Trustees. This has been done by the Board of Trustees in their 17th meeting on 2.2.1995. In terms of this order of regularization the canteen employees of the EPF Organization will be regularized notionally from October, 1991, the same date as the order of the Hon'ble Supreme Court, but the actual benefits will be given from 2.2.1995. The applicants' prayer is to get 30% of arrear pay and allowance from 1.4.1989 to 28.3.1993 and again from 1.5.1993 onwards. In O.A.No.82 of 1995, the applicants have submitted their orders of initial appointment and these orders specifically provide that 70% of the pay and allowances will be borne by the organization and 30% will be paid from the profits of the canteen. This condition is there in the initial appointment order of all the applicants except in the case of Halwai in whose case it has been mentioned that he would be paid at the same rate and in the same manner as canteen employees. In consideration of this, it is clear that the applicants have joined knowing fully well that 70% of their salary will be paid by the Organization and the rest 30% will have to be paid from the profits of the canteen. As

50

the canteen has not made profits, naturally they have not been paid. ***During the period prior to their notional or actual regularizations, they were not employee of the EPF Organization and therefore, they have no claim for getting 30% of the wages from the EPF Organization. Moreover, this claim relating to 30% of the wages for the period from 1.4.1989 to 28.2.1993 and from 1.5.1993 has been made only from 1995.*** It has been stated by the applicants that three of them had got this 30% of wages prior to 1.4.1989. The respondents have denied this. The applicants have not filed any document in support of their statement that prior to 1.4.1989 three of the applicant who had joined as canteen employees, had got 30% element of their wages. ***In view of this, we hold that they have no right to claim from respondent nos. 1 and 2, 30% of their wages prior to their regularization as employees of EPF Organization.*** These applicants have been ordered to be regularized notionally from October, 1991 and actually from February, 1995. ***This order dated 9.3.1995 of the Central Provident Fund Commissioner has not been challenged by the applicants with regard to notional application of this order from October, 1991. In view of this, it is held that the applicants are not entitled to get 30% of the wages prior to 2.2.1995.***

7. The second prayer of the applicants is for bonus from 1991-92 onwards. The order dated 9.3.1995 provides that bonus will be paid from 2.5.1995 and therefore, the applicants will not be entitled to bonus for the years 1991-91, 1992-93 and 1993-94. ***We however note that under respondent nos. 1 and 2 there are a large number of such non-statutory departmental canteens and if in case of employees of such departmental canteens 30% of the wages and bonus from 1991-92 have been allowed from October, 1991, then the same should be allowed in respect of these applicants as well.***

8. ***As regards House Rent Allowance, City Compensatory Allowance and Interim Relief, we direct that these claims of the applicants for the above period should be disposed of within a period of 90 days from the date of receipt of copy of this order following the same approach which respondent nos. 1 and 2 have adopted with regard to the canteen employees of EPF Organization in other cases.***

With the above observations and directions, the Original is disposed of No costs”.

3. It is the case of the applicants that since the aforesaid order of the Tribunal was not implemented, they had moved this Tribunal in O.A.No.197 of 2011 seeking for the following relief.

- i) To direct the Respondents to pay the applicants' 30% arrear pay and allowance, HRA, CCA, I.R., and bonus from Dt.02.02.1995 to Dt.15.11.2000 with interest for the ends of justice.
- ii) To direct the Respondents to pay the applicants' pay and allowance from August, 1997 to Dt.15.11.2000 for the ends of justice.
- iii) To direct the Respondents to pay the applicants' 30% arrear pay and allowance, HRA, CCA, I.R. and bonus from w.e.f. October, 1991 to Dt.02.02.1995 since other canteen employees working in different offices under Respondent No.1 have been paid for the ends of justice.

4. This Tribunal vide order dated 15.4.2011 disposed of the said O.A. with direction to Respondent No.2 to consider and dispose of the pending representations vide Annexure-A/9 series and pass a reasoned order within a period of one month from the date of receipt of this Order.



5. Respondent-authorities in obedience to the orders of this Tribunal, as aforesaid, rejected the claims of the applicants vide Office Memorandum dated 4.11.2011(A/10). For the sake of clarity, detailed order (A/10), which is impugned herein is extracted hereunder.

"IN THE MATTER OF REPLY TO SRI B.K.SAHOO AND OTHERS REPRESENTATION DATED 21.09.2010 ARISING OUT OF OA No.196 2011 and 197 of 2011.

In response to the O.A.No.196 of 2011 filed by Sri B.K.Sahoo, Halwai and others before Hon'ble CAT Cuttack Bench, Cuttack, the Hon'ble Tribunal vide its order Dt.13/04/2011 directed to dispose of the representations (A/12) within a period of 60 days from the date of receipt of copy of this order.

Similarly, in O.A.No.197/2011 filed by Shri B.,K.Sahoo & Others, the Hon'ble CAT, Cuttack Bench, Cuttack vide its order dated 15th April, 2011 has directed to dispose of the representations of the applicants vide Annexure-A/9 series and to pass a reasoned order within a period of one month from the date of receipt of copy of this order.

As the matter could not be disposed of due to some unavoidable reasons extension of time was sought from Ho'ble CAT Cuttack Bench, Cuttack and Hon'ble Tribunal vide its Order Dt.22/09/2011 has directed to dispose of both the cases within a period of 45 days to implement the said order.

Shri Bijay Kumar Sahoo and others in their representation to RPPC for timely disposal filed OA No.196 of 2011 in the Hon'ble CAT, Cuttack Bench, Cuttack for regularization of Service and payment of arrear Salary, Bonus, HRA, CCA and IR in respect of the period from 01/04/95 to 14/11/2000(Annexure-A/12).

53

Similarly Sri Bijay Kumar Sahoo, Halwai and others for early disposal of their representation filed O.A.No.197 of 2011 in Hon'ble CAT, Cuttack Bench, Cuttack(Annexure-A/9 series) for payment of arrear salary (30%) in respect of the period from 01/10/91 to 01/02/95),

Scrutiny of representation O.A.No.196 of 2011

I have gone through all the relevant records and orders of Hon'ble CAT Bench, Cuttack including the guidelines issued by Head Office (EPFO) to regularize the service of Canteen Employees including the opinion of Departmental Counsel. As per the letter of Head office dt. 09/03/1995 the regularization of the Canteen Employees shall be notionally effective from October, 1991 and the benefit in this effect shall be granted from 0/02/95(the date of approval of the Scheme by the Executive Committee. Accordingly, in compliance to the Order of Hon'ble CAT, Cuttack Bench, Cuttack in OA No.81/95 and 82/95, the service of the applicants have been regularized in their respective posts notionally from October, 1991 and effectively from 01/02/95 vide this Office Order dated 08/11/2000. So far as payment of arrear salary, bonus, HRA, CCA and IR in respect of the applicants for the period from 01/04/95 to 14/11.2000 is concerned, the same cannot be granted as the applicants have not rendered their service during this period and the principle of 'No work, No Pay can be invoked.

Scrutiny of Representation in OA No.197 of 2011

Hon'ble CAT Bench, Cuttack vide its order dt. 11th August, 2000 in O.A.No.81/95 and 92/95 states that "We hold that they have no right to claim from respondent nos. 1 & 2 (CPFC & RPFC), 30% of their wages prior to their regularization as Employees' of EPF Organization. These applicants have been ordered to be regularized notionally w.e.f. 012/10/91 and actually from February, 1995. The Order dt.09/03/1995 of the CPFC has not been challenged by the applicant with

54

regard to notional application of this order from October 1991. In view of this, it is held that the applicants are not entitled to get 30% of the wages prior to 01.02.95.

In view of the above order of Hon'ble CAT Bench, Cuttack, their request for payment of arrear salary (30%) in respect of the period from 01/10.91 to 01/02/95 cannot be acceded to.

Findings:

In view of the above facts, it is observed that there is no merit in the application of the applicants relating to payment of arrear salary, Bonus, HRA, CCA and IR for the period from 01/04/95 to 14/11/2000 since the employees have not served during the period as per the principle of No work of No wages. For the payment of arrear salary (30%) in respect of the period from 01/10/91 to 01/02/95 the same cannot be considered as per the direction of the Hon'ble CAT Bench, Cuttack vide its order no....11/10/2000.

Considering all the above facts, I am of the opinion that the application of Sri Bijaya Kumar Sahoo, Halwai and others Dt.21/09/2010 does not have any justification for the payment of arrear salary, Bonus, HRA, CCA & IR for the period from 01/04/95 to 14/11/2000. Hence their applications are rejected".

6. In the above backdrop, it is to be noted that the present applicants had also filed an O.A.No.344 of 2012, in which they had sought for the following relief.

Ito direct the Respondents to treat the period of service from 01.04.1995 to 15.11.2000 as regular/qualifying service for all purposes including future pension and retiral benefits for the ends of justice.

AND

- lito direct the respondents to modify the order at A/14 and/or issue separate order treating the period of service from dt.01.04.1995 to dt.15.11.2000 as regular service for all purposes including computation of the period for the purpose of all benefits including pension and retiral benefits in future for the ends of justice.

AND

- lii ...to direct the respondents to modify those orders at Annexure-A/8, Annexure-A/11 and such other orders where the period from dt.01.04.1995 to dt.15.11.2000 was treated as non-duty and not taken as regular service for the ends of justice.

iv. ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

7. This Tribunal vide order dated 27.10.2015 disposed of the said O.A. with the following directions.


- i) Respondents shall treat the period from 1.4.1995 to 15.11.2000 as notional service.
- ii) Applicants' pay shall accordingly be fixed and they shall only be granted notional benefits for the period from 1.4.1995 to 15.11.2000 in the matter of fixation of pay.
- iii) The effective date of granting benefits under the MACP Scheme to the applicants shall remain unaltered.
- iv) Applicants shall be entitled to receive their higher pay emoluments, if any, flowing from the notional pay fixation from 1.4.1995 to 15.11.2000 only with effect from the date of

56

filing this O.A. before the Tribunal, i.e., 23rd April, 2012.

- v) The period from 1.4.1995 to 15.11.2000 shall be treated as duty for computation of qualifying period for fixation of pension and retirement benefits.

8. This order of the Tribunal has admittedly been implemented by the Respondents. It is also an admitted position that the respondents have issued the impugned Memorandum dated 4.11.2011(A/10) much earlier to the disposal of O.A. No.344 of 2012 by this Tribunal. From the pleadings of the parties nothing is forthcoming as to what benefits the applicants have been granted in the matter of arrear salary, bonus, HRA, CCA and IR for the period from 01.04.95 to 14.11.2000. In O.A. No.344 of 2012, as quoted above, this Tribunal had directed the respondents to treat the period from 01.04.1995 to 15.11.2000 as notional service and also treat it as duty only for the purpose of computation of pension and retirement dues. In view of this, we remit the matter back to the respondents, particularly, res.no.2 to consider this aspect of the matter in the light of compliance of the orders of this Tribunal in O.A.No.344 of 2012 and pass appropriate orders regarding the entitlement of the applicants for arrear salary, bonus, HRA, CCA and IR for the period from 01.04.1995 to 14.11.2000. The first prayer of the applicants is thus disposed of.



57

9. In the second prayer, applicants have prayed for payment of 30% of the wages prior to 01.02.1995. In this connection it is to be noted that this Tribunal while disposing of O.A.No.81 of 1995 came to a conclusion that ***"order dated 9.3.1995 of the Central Provident Fund Commissioner has not been challenged by the applicants with regard to notional application of this order from October, 1991 and in view of this, it is held that the applicants are not entitled to get 30% of the wages prior to 2.2.1995."***

10. Since the second prayer of the applicants has already been decided by this Tribunal in the earlier round of litigation in O.A.No.81 of 1995 holding that the applicants are not entitled to get 30% of wages prior to 2.2.1995, further consideration of this part of the prayer is hit by the principles of constructive *res judi cata* and hence, the same is declined.

11. As regards the third prayer of the applicants for payment of 30% arrear pay and allowance, HRA, CCA, IR and bonus from 02.02.1995 to 15.11.2000 and the pay and allowances from August, 1997 to 15.11.2000, in our considered view, respondent no.2 should consider the same in the light of compliance of decision of this Tribunal in O.A.No.344 of 2012 and pass appropriate orders as per rules and instructions on the subject. Ordered accordingly.

12. As regards the 5th relief as sought by the applicants to pay 30% arrear pay and allowance, HRA, CCA, I.R. and bonus w.e.f.

58

October, 1991 to 02.02.1995 since other canteen employees working in different offices under Respondent No.1 have been paid, it is to be noted that this Tribunal while disposing of O.A.No.81 of 1995, had ^{observed &} that under respondent nos. 1 and 2 there are a large number of such non-statutory departmental canteens and if in case of employees of such departmental canteens 30% of the wages and bonus from 1991-92 have been allowed from October, 1991, then the same should be allowed in respect of these applicants as well. As regards House Rent Allowance, City Compensatory Allowance and Interim Relief, it was directed that these claims of the applicants for the above period should be disposed of within a period of 90 days from the date of receipt of copy of this order following the same approach which respondent nos. 1 and 2 have adopted with regard to the canteen employees of EPF Organization in other cases. The above directions of the Tribunal had been issued on 11.08.2000. It is the case of the applicants that since the respondents did not comply with the aforesaid directions, they moved this Tribunal in O.A.No.197 of 2011 and the respondents having turned down their requests, this O.A. has been filed. Be that as it may, burden lies on the applicant [&] to prove that they are indeed entitled to the aforesaid relief by operation of rules or instructions. It is not for the Tribunal to make a roving inquiry in order to grant relief to the applicants. Since the applicants have not been able to substantiate their claim, we

59

hold that they are not entitled to relief in so far as direction to respondents for payment of HRA, CCA, I.R. and bonus w.e.f. October, 1991 to 02.02.1995 is concerned and accordingly, the same is not acceded to.

13. With the observation and directions as made in Paragraph-11 above, the O.A. is thus disposed of. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)

