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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

O.A. No.433 of 2013
Cuttack, this the 11th day of July, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....

Sri Akshay Kumar Pani, Aged about 58 years, Son of Late Pravakar Pani, At-Pani Colony, Kunjakanta, Po/Ps/Town, Dist. – Dhenkanal, Working as Additional Secretary to Govt. Water Resources Department, Odisha, Bhubaneswar.

....Applicant

(Advocate(s):-M/s.K.C.Kanungo,Chitra Padhi)

-Versus-

Union of India represented through –

1. The Secretary to Govt. of India, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, North Block, New Delhi-110 001.

State of Odisha represented through -

2. Chief Secretary to Govt., Odisha Secretariat, Bhubaneswar, Dist. Khurda, PIN-751 001.
3. Special Secretary to Govt. of Odisha, General Administration Department, Odisha Secretariat, Bhubaneswar-751 001, Dist. Khurda, Odisha.

....Respondents

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(Advocate(s)-Mr.G.C.Nayak & Mr.L.Jena)

ORDER

A.K. PATNAIK, MEMBER (J):

It is the case of the Applicant that he was inducted to Indian Administrative Service by way of IAS (Appointment by Promotion) Regulation, 1955 vide Government of India Notification No.14015/17/2009-AIS-I(B) dated 24.02.2011. In Notification No.14014/04/2004-AIS-I dated 20.04.2012, he was assigned the year of allotment of 2000 of the SCS Select List-2009. In the said Notification dated 20.04.2012, the total weightage in the years in terms of the IAS (Regulation of Seniority) Rules, 1987, has been computed wrongly as Nine (9) years, but actually it is to be computed as Ten (10) years, on the basis of the provisions of the Rules, which was in force on the date of his appointment to IAS-24.02.2011. According to him, if he is allowed ten years weightage ~~is allowed in his favour~~ he will be in the Additional Secretary (selection grade), one year ahead. If only Nine years weightage is allowed, then he can never be eligible to get promotion to the Super Timescale post of Commissioner Status with grade pay of Rs.10000/- in his career as he will retire on reaching the age of superannuation of 60 years w.e.f. 30.04.2015. It has been stated that the grievance raised in this OA is no more res integra in view of the decision of the Hon'ble Apex

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Court dated 09.01.1996 in Civil Appeal No.1492 of 1996 [Union of India Vs. S.S. Uppal and Another] in which it has categorically been held that Their Lordships that an officer is governed by the rules in force at the time of his appointment in the service & that all laws, in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. He has also placed reliance on the decision of the Hon'ble High Court of Karnatak dated 17th March, 2005 rendered in the case of Smt. M. Chandravathi And Anr. Vs Union of India with regard to prospective application of rules. It has been stated that the Amended Act is prospective in nature. The Rule clearly provides that 10(ten) years weightage is to be allowed for computing his 30 years of Service in State Civil Service. The revised seniority Rules which came into effect on 3rd February, 1989, is applied uniformly to all the officers who were appointed on or after that date in which it has been provided that the seniority of an officer appointed into the I.A.S. is determined according to the seniority rules applicable on the date of appointment to the I.A.S. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. He was inducted into the service on 15th February, 1989 and, the rules which were in force on that day for determination of seniority will clearly apply to his case.

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Further case of the Applicant is that the principles of natural justice demands that the amended provisions of service rules which prescribes to give certain service benefits or to deprive any service privilege in favour or against, any section or all the employees of a cadre, cannot and should not be applied to the employees from a retrospective date, but are required to be applied/implemented from the date of issue of the order and onwards. He has given few illustrations such as when Dearness Allowance is enhanced, the benefit is applied from the cut-off date, the 1st January or the 1st July of the year and the rates cannot be applied from a previous date. Likewise for the employees who joined in Service on or after 1st January 2004 were not allowed to be covered under the old monthly Pension Scheme, but under the new Pension Scheme and the employees who joined in service on 01.12.2003 cannot be compelled to be covered under new Pension Scheme.

The amended rules came into force on 18.04.2012 and according to this amended rule any SCS officer with 30 years' experience will be allowed weightage of Nine years only, but as this rule came into force with effect from 18.04.2012, it cannot be applied to the case of appointments made prior to that date. As the applicant was appointed to I.A.S on 24.04.2011 and the amended rules came into force after one



year and two months after his joining in IAS Cadre posts, his case will be governed by the old rules only.

Further case of the applicant is that by making representation dated 8.6.2012 at Annexure-A/5 he has requested removal of the miscarriage of justice cause ^l in the decision making process of the matter but having received no reply he has approached this Tribunal in the instant OA in which his prayer is as under:

“to admit this application call for the records and upon hearing the parties be pleased to hold that the Indian Administrative Service (Regulation of seniority) amendment Rules, 2012 vide Annexure-A/3 does not have retrospective effect for the ends of justice;

To hold that Notification vide No.14014/04/2004-AIS-1 dated 20.4.2012 of Government of India at Annexure-A/4 is arbitrary and illegal for the ends of justice;

To quash the Notification vide No.14014/04/2004-AIS-1 dated 20.4.2012 of Govt. of India at Annexure-A/4 to the extent it has assigned the allotment year of 2000 to the Applicant for the ends of justice;

To direct the Respondents (1&2) to recalculate the weightage of seniority as 10 years by computing the 30 years of service of Applicant before promotion to Indian Administrative Service and by allowing the year of allotment assigned as 1999 against the name of Applicant in the Select List-2009, for the ends of justice;

To hold that the applicant is entitled to be allowed to get the benefit of his seniority as per provisions of the Indian Administrative Service (Regulation of Seniority) Rules, 1987 prevalent as on date 24.2.2011 only for the ends of justice;

To hold that the applicant is entitled to be allowed to get the benefit of his seniority with the year of allotment of 1999 in the Indian Administrative Service with all consequential benefits and entitlements with arrears for the ends of justice.”

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2. We have heard Mr.K.C.Kanungo, Learned Counsel for the Applicant, Mr.G.C.Nayak, Learned Government Advocate appearing for the State of Odisha and Mr.L.Jena, Learned Additional CGSC appearing for the Respondent No.1 and perused the records.

3. On being asked about the fate of the representation as at Annexure-A/5, Mr.Nayak and Mr.Jena seeks time to obtain instruction and file reply.

4. As contended by Mr.Kanungo, Learned Counsel appearing for the Applicant, we are conscious that any amendment to the existing rules is prospective in nature, unless and otherwise it has specifically been made clear that the same has retrospective effect/application. We are also conscious that it is trite law that Rules governing the field as on the date of recruitment/appointment/promotion/induction to any post shall be the governing factor and that authority is bound to act upon in terms of the extant rules. Further we are conscious that as per the Rulings of the Apex Court where a power is given to do a certain thing in a certain way, thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. Alen

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5. It is the specific case of the Applicant that the representation dated 8.6.2012 at Annexure-A/5 is still lying with Respondent No.2. Since on consideration of the representation of an employee, if the authority is convinced that injustice has really occasioned in the decision making process of the matter, the competent authority is well within his competence to remove the same. Since representation of the applicant is still pending, for the discussions made above, we find no justifiable reason, at this stage, to keep this matter pending by allowing the Respondents to file their counter if any. Hence, as agreed to by Learned Counsel for both sides, without entering into the arena of merit of the matter, this OA is disposed of at this admission stage with direction to the Respondent No.1 to consider and dispose of the representation dated 8.6.2012 at Annexure-A/5 in the light of the above observations and intimate the result therefore in a well-reasoned order to the Applicant within a period of sixty days from the date of receipt of copy of this order. If in the meantime the said representation has already been disposed of but the result has not been intimated to the Applicant, the result shall be intimated to the applicant with in a period of thirty days hence. There shall be no order as to costs.

6. As prayed for, copy of this order along with OA be sent to Respondent No.1&2 by speed post at the cost of the Applicant; for which

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Mr.Kanungo, Learned Counsel for the Applicant undertakes to furnish the required postal requisite within three days hence.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

