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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 535 of 2013

Cuttack, this the 8th day of August, 2013

CORAM:

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

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

.....

Shri Bipin Bihari Mishra, IPS (Retd.) Aged about 67 years, Son
of Late B. Mishra, N/1, A/28 IRC, Village, Bhubaneswar, Dist.
Khurda.

....Applicant

(By Advocate(s) -M/s.S.Rath,B.K.Nayak-3,D.K.Mohanty)

-Versus-

Union of India represented through -

1. The Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi.
2. The Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi-110 001.
3. The Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Lok Nayak Bhawan, Khan Market, New Delhi.
4. The Chief Secretary to Government of Odisha, Secretariat, Bhubaneswar, Dist. Khurda.

Shri B. B. Mishra

5. The Principal Secretary to Government of Odisha, Home Department, Secretariat, Bhubaneswar, Dist. Khurda.
6. The Director General & Inspector General of Police, Odisha, Buxibazar, Cuttack.
7. The Accountant General, Odisha, AG Square, Bhubaneswar, Dist. Khurda.

.....Respondents

(By Advocate(s)- Mr.U.B.Mohapatra & Mr.G.C.Nayak)

O R D E R

(oral)

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

The case of the Applicant, in nut shell, is that he is an OR-67 batch IPS Officer of the State of Odisha. While continuing in the State of Odisha, he was deputed to Government of India, New Delhi on Central Deputation with effect from 30.09.2002 (AN) where he was posted as Director General, CISF and subsequently, as Special Secretary, MHA, in both these posts he was getting pay of Rs.26, 000/- (fixed). The Government of Odisha wrote to Government of India for his repatriation to the State of Odisha though he had not completed two years of Central deputation. On being repatriated, he joined as Director General of Police, Odisha and represented for protection of his pay. The Government of

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Odisha in consultation with Government of India (MHA) fixed his pay at Rs.26, 000/- w.e.f. 1.8.2004 vide order No.18819/IPS dated 21.4.2005. Finally he retired from service w.e.f. 30.6.2005. As per Rule 18 of the All India Services (DCRB) Rules, 1958, the pension of a retired All India Service Officer is fixed on the basis of the average of pay drawn by him/her during last 10 months or the last pay drawn whichever is more beneficial to the retiree. Accordingly, as he was in pay of Rs. 26, 000/- in the time scale of pay of Rs.24, 045-650-26,000/- his pension was fixed at Rs.13, 000/- p.m. On acceptance of the recommendation of the 6th CPC by the Government of India, the of Rs.24, 000/- was replaced to Rs.80, 000/- and pension of Rs.13,000/- was replaced to Rs.40, 000/-. Accordingly, the pension of the Applicant should have been fixed at Rs.40, 000/- w.e.f. 1.1.2006. But to his utter surprise the pension of the applicant was fixed at Rs. 37,750/- instead of Rs.40,000/- per month.

It has been stated that one **Shri A.K.Puri** (IPS-1967 RR) belonging to HP cadre retired as DG of Police on 30.1.2005. Accordingly, his pension was fixed at Rs.13,000/- (basic) taking into consideration the pay scale of Rs.26,000/- and as per the order of the Government, his pensions reviewed and fixed at Rs.40, 000/-. Similarly,

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one **Shri J.F.Rebeiro** was on Central deputation as Special Secretary, MHA, GOI. On repatriation he was posted as DGP, Punjab. By the order of the Government of India No. 1-11014/6/86-IPS II dated 29.4.1986 he was allowed to retain the equal status to that of Special Secretary to Government of India as long as he was as DGP Punjab. One Shri SC Tripathy, IPS MP-63 was also allowed to retain scale of Rs.26,000/- and accordingly ^o his pension was fixed at Rs.40,000/-.

It has been stated that a pay scale will have no meaning if it is not linked to a post. No one is ever appointed to a pay scale. A person is appointed only to a post which carries a pay scale. Similarly a person retires from a post and not from a pay scale. The pay scale is attached to the post. Therefore in determining the quantum of pension both the post and pay scale from which a person has retired have to be taken into account. In other words, the pension having been linked to the post from which a person retired it has to change every time the pay scale of the post is revised. Thus the applicant is entitled to Rs.40,000/- which is admissible to the current DGP(HoPF). To buttress his claim, it has been stated that there are a number of IPS officers junior to him & retired after 1.1.2006 in the rank of DG are getting basic pension of Rs.40,000/- per

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month while the applicant has been sanctioned pension at 50% of the bottom of the HAG plus scale

Further case of the Applicant is that by making representation dated 20.11.2012 8.2.2013 and 4.3.2013 citing the cases of **Shri J.F.Rebeiro & Shri A.K.Puri & Shri SC Tripathy**, he has prayed for removal of the injustice/discrimination caused to him in the matter of fixation of pay and pension. **The representations of the applicant were also duly forwarded by the Home Department of the Government of Odisha to the Ministry of Home Affairs, New Delhi vide letter dated 11.4.2013 to the Government of India. But he has neither received any reply on the said representations nor has his pension been revised to Rs.40, 000 /- till date. It has been claimed that due to such inaction, he has been continuing in mental stress and strain both for the discrimination caused to him and recurring financial loss in every month. Hence by filing the instant OA, the Applicant has prayed to direct the Respondents to fix the pay at the apex scale and accordingly revise his to Rs.40,00/- (basic) in the light of revision made in the cases of JFRebeiro (IPS 53-Mah) & SC Tripathy, IPS MP-63 and grant him all his consequential financial benefits retrospectively with 12% interest.**

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2. We have heard Mr.D.K.Mohanty, Learned Counsel for the Applicant, Mr.U.B.Mohapatra, Learned Senior Counsel (on whom copy of this OA has been served) appearing for the Respondent Nos. 1,2 and 3 and Mr.G.C.Nayak, Learned Government Advocate for the State of Odisha (on whom copy of this OA has been served) appearing for the Respondent Nos.4,5 and 6 and perused the materials placed on record.

3. Mr.Mohanty by drawing our attention to the averments made in the OA and materials placed on record submitted that through the case of the Applicant is covered by the cases of **Shri J.F.Rebeiro, Shri A.K.Puri & Shri SC Tripathy** and rulings of various Courts are that state action indisputably must be fair and reasonable, non-arbitrariness on its part is a significant facet in the field of good governance and that the discretion conferred upon the state yet cannot be exercised whimsically or discriminatorily, the Respondents have neither fixed the pension at Rs.40,000/- till date nor any communication on his repeated representations which were forwarded by the Government of Odisha has been made to the Applicant.

4. On the other hand Mr.U.B.Mohapatra, Learned Senior CGSC appearing for the Respondent Nos.1,2 and 3 submitted that when

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applicant submitted representations citing the cases of similarly situated persons and the said representations are pending the Applicant should not have filed the instant case without waiting ^{for} the result of the representations submitted by him and the applicant should have the faith that the Government while deciding his representations would take into consideration the cases cited by him and if he would be entitled to the benefit, the same would be granted to him. Hence he has prayed that this OA being premature is liable to be dismissed. Mr.Nayak also reiterated the arguments advanced by Mr.Mohapatra.

5. We find that the first representation of the applicant is dated 20.11.2012 followed by reminders dated 8.2.2013 and 4.3.2013 and the representation was also duly forwarded to the Ministry of Home Affairs for consideration. In view of the above prima facie it shows that there has been delay in giving consideration to the representations of the applicant.

6. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of

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governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious action. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fairplay and if the decision is not based on justice, equity and fair play the same is not sustainable. It is well settled law that there should be no discrimination in between the persons similarly situated ^{being} ~~is~~ anti-thesis to rule of law being violative of the provisions enshrined in Articles 14 and 16 of the Constitution of India.

7. It is the cardinal principles that the Government is to ensure the rule of law and to see that the authorities "act^R fairly and give^R a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution of India. The authorities should always ^{bear} ~~borne~~ in mind that legitimate aspirations of the employees are not guillotined and the situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with the life of the citizen/employees. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be

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betrayed and they shall be treated with dignified fairness without any reservation/discrimination then only the concept of good governance can be concretized. Further, the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the citizen/employees. It is also basic canons of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause.

8. Although the above being the position of facts and law, when the representations are still pending with the Respondent No.1 who is the competent authority to decide, without expressing any opinion on the merit of the matter, we dispose of this OA with direction to the Respondent No.1 to consider and dispose of the representations (if it is still pending) keeping in mind the cases of **Shri J.F.Rebeiro & Shri A.K.Puri & Shri SC Tripathy** and communicate the decision to the Applicant within a period of 45 days from the date of receipt of copy of this order. If the representations have already been disposed of meanwhile the result thereof shall be communicated to the applicant

(Signature)

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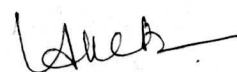
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within a period of 15 days. It is also made clear that on consideration if it is held that the applicant is entitled to any benefits as claimed by him in his representation then the same shall be paid to him within a period of another 45 days from the date of the order of the Respondent No.1. There shall be no order s to costs.

9. As prayed for, copy of this order along with OA be sent to Respondent Nos.1 and 2 by speed post at the cost of the Applicant for which Mr.Mohanty, Learned Counsel for the Applicant undertakes to furnish the required postal requisites by 13.8.2013.


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


(A.K.PATNAIK)
Member (Judl.)