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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 260/00832 OF 2014

Cuttack, this the 21st day of November, 2014

CORAM

HON'BLE MR. R.C. MISRA, MEMBER (Admn.)

.....

Ajit Kumar Tripathy, IAS (Retd.)

aged about 65 years,

S/o. Late Sachidananda Tripathy,

Ex-Chief Secretary, Odisha, Bhubaneswar,

Residing At- Plot No. 6, R-1, Unit-6, A.G.Square,

Bhubaneswar, Dist- Khurda- 751014.

.....Applicant

Advocate(s)- Mr. D.K.Mohanty.

VERSUS

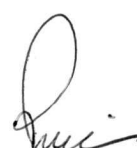
Union of India represented through

1. Secretary to Govt. of India,
Ministry of Personnel, PG & Pensions,
Department of Personnel and Training,
New Delhi-110001.
2. Secretary to Govt. of India,
Ministry of Finance,
Department of Expenditure,
New Delhi-110001.
3. Chief Secretary to Govt. of Odisha,
Secretariat, Bhubaneswar,
Dist-Khurda.
4. State Election Commissioner, Odisha,
Toshali Complex, 1st Floor,
Satyanagar, Bhubaneswar, Orissa.
5. Accountant General (A&E), Odisha,
Bhubaneswar.

..... Respondents

Advocate(s)..... Mr. S.Barik (For R-1, 2 & 5),
Mr. G.C.Nayak (For R-3 & 4).

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O R D E R (ORAL)

R.C.MISHRA, MEMBER (ADMN.) :

Heard Sri. D.K.Mohanty, Ld. Counsel for the applicant, Sri. S.Barik, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondent Nos. 1, 2 and 5, and Sri G.C.Nayak, Ld. Govt. Advocate for the State of Orissa appearing for Respondent Nos. 3 and 4 and also perused the records.

2. The applicant, in the present case, is a retired officer of the Indian Administrative Service borne in the Orissa Cadre. He has retired from Government service on 31.08.2009 while holding the position of Chief Secretary, Government of Orissa. In this O.A. he has submitted that the 5th CPC had recommended that Dearness Allowance should be converted into Dearness Pay each time the CPI increases from 50% over the base index used by the last Pay Commission. Upon acceptance of the said recommendation, the President was pleased to decide that w.e.f. 01.04.2004 DA equal to 50% of basic pay shall be merged with the Basic Pay and shall be shown distinctly as Dearness Pay. The aforesaid decision of the Government of India was communicated by the Ministry of Finance, Department of Expenditure vide their Office Memorandum dated 01.03.2004. Subsequently, by enclosing a copy of the O.M. dated 01.03.2004, the Ministry of Personnel, Public Grievances and Pensions in their letter dated 31.03.2004 asked all the Chief Secretaries of the State Governments and Union Territories for taking appropriate action in respect of the members of All India Service working in their jurisdiction. However, this benefit was not extended by the Government of Orissa to the members of All India Service working in their jurisdiction. One Mahesh Chandra Mohanty, a retired IPS Officer, sought this relief by approaching the Tribunal in O.A.No. 557 of 2005. The Tribunal after hearing the matter vide its order dated



16.10.2006 directed the Respondents to extend the benefits of the O.Ms. dated 01.03.2004 and 31.03.2004 and release the differential pay and allowances as well as the retiral benefits within a period of four months. A similarly placed retired officer Sri S.C.Hota had filed O.A. No. 173/14 and the same has been disposed of on 21.03.2014. The case made out by the Ld. Counsel for the applicant is that the applicant being a similarly placed person submitted a representation on 05.09.2014 to the Respondent No.3, however, so far the rightful dues of the applicant have not been paid to him and the applicant has not received any reply in response to his representation. It is the further case of the Ld. Counsel for the applicant that the O.As. filed by similarly placed persons have been allowed by the Tribunal and, therefore, there is no reason to deny the benefits to the present applicant since, according to the various judicial pronouncements, similarly situated persons should have right to get similar benefits. Based upon the facts of the case, the prayer of the applicant is that the Respondents may be directed to extend the benefits of merger of 50% of DA with Basis Pay w.e.f. 01.04.2004 to him and make payment of arrears.

3. On verification of the documents filed by the applicant, I find that at Annexure-A/1 and A/2, the letter dated 01.03.2004 of the Ministry of Finance and letter dated 31.03.2004 of the Ministry of Personnel respectively have been filed. A copy of the order of the Tribunal dated 16.10.2006 in O.A. No. 557/2005 has also been filed. On perusal of this order, I find that the applicant in that O.A. had submitted before the Tribunal ^{that} O.Ms. dated 01.03.2004 and 31.03.2004, ^pwhich have been implemented w.e.f. 01.04.2004 in respect of members of All India Service by all the State Governments except the Government of Orissa, which is arbitrary and discriminatory. The claim was not rebutted on behalf of the Respondents, i.e. the



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State of Orissa. Therefore, the Tribunal in its order observed that there is no good reason for discrimination between members of All India Service working under one State Government and the other or under the Central Government for that matter, in the matter of pay and allowances determined by Central Government. Therefore, the Tribunal directed the Government of Orissa to extend the benefit of O.Ms. dated 01.03.2004 and 31.03.2004 to the applicant w.e.f. 01.04.2004 and, accordingly, release the differential and retiral benefits. The applicant has also filed copy of the order dated 21.03.2014 in O.A. No. 173/14 filed by Sri S.C.Hota, who is said to be a similarly placed person. The Tribunal after hearing the matter observed as follows:

“3. We have considered the rival submissions advanced by Mr. D.K.Mohanty, Ld. Counsel for the applicant, Mr. S.Barik, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondent Nos. 1, 2 and 5, and Mr. G.C.Nayak, Ld. Govt. Advocate for the State of Orissa appearing for Respondent No. 3 and perused the pleadings and documents placed on record in support thereof. On the face of the orders of the Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Ministry of Personnel, P.G. and Pensions under Annexures-A/1 and A/2 respectively and the order of this Tribunal dated 16.10.2006 in O.A.No. 557 of 2005 (Annexure-A/3) and pendency of the representations, at this stage we do not like to keep this matter pending inviting counter reply of the other side. Hence, as prayed for by the Ld. Counsel for the applicant, without expressing any opinion on the merit of this case, this O.A. is disposed of at this admission stage calling upon the Respondent No. 3 (Chief Secretary to Govt. of Odisha, Secretariat, Bhubaneswar, Dist. Khurda) to grant the benefit of 50% merger to the applicant as per Rules/law in consideration of the representations at Annexure-A/5 within a period of 45 days from the date of receipt of a copy of this order and communicate the result thereof to the applicant by way of a well reasoned order.”

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4. In the present case, however, Ld. Counsel for the applicant has submitted that the present applicant has made a representation on 05.09.2014 to the Respondent No.3, i.e. Chief Secretary, Govt. of Orissa, and has prayed that direction, similar to the order in O.A. No. 173/14, may be issued to Respondent No.3 to dispose of the representation of the present applicant. It has been further brought to the Tribunal's notice that vide an order dated 02.06.2014 of the General Administration Department, in compliance of the order of the Tribunal in O.A. No. 173/14 the State Government has already extended the benefits as contained under the Govt. of India letters dated 01.03.2004 and 31.03.2004 to the applicant in that case.

5. At this stage, Mr. G.C.Nayak, Ld. Govt. Advocate for the State of Orissa, has submitted that the representation of the applicant was filed only on 05.09.2014 and, therefore, the applicant without waiting for a period of six months as provided under Section 20(2)(B) of the Administrative Tribunals Act has rushed to the Tribunal seeking the relief. In that sense, the applicant has not allowed adequate opportunity to the State Government to examine the matter and consider the representation.


6. After hearing Ld. Counsel for both the sides, I find that ^{the} similar matters have been disposed of by the Tribunal and, therefore, even though the representation has been filed on 05.09.2014, considering the submission of the applicant in his representation that he is a similarly situated person as the applicant in O.A. No. 173/14, it is considered appropriate to direct the Respondent No.3 to consider the representation and examine the claim of the applicant and particularly his submission that he is ^a similarly situated as the applicant in O.A. No. 173/14 and pass a reasoned and speaking order within a period of three months and

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convey the decision in this regard to the applicant. It is further mentioned that the Tribunal is not expressing any opinion on merits.

7. With the above observation and direction, this O.A. is disposed of.

8. Copy of this order be sent to Respondent Nos. 1, 2 and 3, by Speed Post, at the cost of the applicant, for which Mr. Mohanty, Ld. Counsel for the applicant, will file the postal requisites by 25.11.2014.


(R.C.MISRA)
MEMBER (Admn.)

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