

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/757/2013

Date of Reserve:23.07.2019

Date of Order:15.10.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Bipin Bihari Mishra, IPS(Retd.), aged about 68 years, S/o. Late B.Mishra, N/1, A/28
IRC Village, Bhubaneswar, Dist-Khurda.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-1.
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.
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, A.G.Square, Bhubaneswar, Dist-Khurda.
8. Under Secretary to the Government of India, Government of India/Bharat Sarkar, Ministry of Home Affairs,/Grih Mantranalaya, North Block, New Delhi-1.

...Respondents

By the Advocate(s)-Mr.J.Pal
Mr.S.B.Mohanty
Mr.P.K.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired I.P.S. Officer of OR-67 Batch and while working as Director General of Police, Odisha, he retired from service on attaining the age of superannuation

with effect from 30.06.2005. His grievance is directed against the order dated 25.09.2013 (A/2) passed by the Government of India, Ministry of Home Affairs, whereby and whereunder, his request for protection of his pay scale drawn by him on Central Deputation on his repatriation to the Government of Orissa, has not been acceded to. Hence, in the instant O.A., the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the A.T.Act, 1985, in which he has sought for the following reliefs:

- i) To quash the order of rejection dated 25th September, 2013 in Annexure-A/2.
- ii) To direct the Respondents to fix the pension of the Applicant at Rs.40,000/- (basic) in the light of JFReberio (IPS 53 Mah.), S.C.Tripathy, IPS MP-63 and Shri A.K.Puri and grant him all consequential financial benefits retrospectively with 12% interest.
- iii) To pass any other order/orders as deemed fit and proper for ends of justice.

2. It reveals from the record that earlier the applicant had approached this Tribunal in O.A.No.535 of 2013, which disposed of the same vide order dated 08.08.2013 in the following terms:

- "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.Reberio & 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 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 as to costs".

3. In compliance of the aforesaid direction, Respondent No.1 passed an order dated 25.09.2013 (A/2), which is impugned and called in question in the instant O.A. For the sake of clarity, the relevant portion of the order is quoted herein below:

- "3. WHEREAS, Shri Mishra was appointed as DG, CISF on deputation basis and his pay was fixed in the pay scale of Rs.26000/- (fixed) w.e.f. 1.10.2002. He was transferred and appointed as Special Secretary, Ministry of Home Affairs and he continued to draw the same pay till his repatriation. Shri Mishra assumed the charge of the DG & IG of Police, Orissa on 31.7.2004 (AN). The Government of Orissa had requested the approval of the Ministry of Home Affairs for protection of central Pay drawn by Shri Mishra, i.e., Rs.26000/- (fixed) w.e.f. 1.8.2004.
4. WHEREAS, the proposal of Government of Orissa was considered by the Ministry of Home Affairs. It was conveyed by the Ministry of Home Affairs to the State Government vide letter dated 13.4.2005 stating that the pay of Shri Mishra would be protected at Rs.26000/- (fixed) w.e.f. 1.8.2004 as a special case. Government of Orissa vide their order dated 21.4.2005 fixed the pay of Shri Mishra in the pay scale of Rs.26000/- (fixed).
5. WHEREAS, the matter was reconsidered and that in terms of Schedule-III A of the IPS (Pay) Rules, 1954, the pay of DGP, Orissa is the pay scale of Rs.24050-650-26000/-. The pay of Rs.26000/- (fixed) is applicable to those officers who are on Central deputation to certain organizations/CPOs as DGE. A corrigendum was issued by the Ministry of Home Affairs on 25.7.2005 to the Government of Orissa stating that the pay of Shri Mishra should be fixed at Rs.26000/- in the scale of Rs.24050-26000/- and not in the scale of Rs.26000/-(fixed). The State Government have accordingly issued revised orders on fixation of his pay in supersession of their earlier order.
6. WHEREAS, Shri B.B.Mishra has stated in his representation that his case is similar to the cases of Shri J.F.Reberio and Shri S.C.Tripathi. In both the cases specific orders were issued by the State Governments concerned protecting the pay drawn by them on Central Deputation on their repatriation to the parent cadre.
7. NOW, THEREFORE, the Competent Authority after due consideration of the representation made by Shri B.B.Mishra, independent and proper application of mind, facts and circumstances of the case, that the fixation of pay of Shri B.B.Mishra, as DG, Orissa at the maximum of Rs.26,000/- in the pay scale of Rs.24050-650-26,000/- (pre-revised) is found to be in order. The representation made by him is devoid of merit and is rejected".

4. Hence, this Application with the aforesaid prayer.
5. Contesting the claim of the applicant, both the Union of India and State of Orissa have filed counters separately.
6. We have heard the learned counsels for the respective parties and perused the records. We have also gone through the rejoinder to the counter and the written notes of submission filed by the parties concerned.
7. In the counter filed by the State of Odisha, it has been disclosed that at the time of retirement, the applicant was in receipt of pay @ Rs.26,000/- in the scale of Rs.24,050-650-26000/-, as per the 5th CPC's recommendations for the post of DG & I.G. of Police, with effect from 01.01.1996. It has been submitted that the applicant had been given information regarding his Central Deputation with effect from 30.09.2002, repatriation to State Cadre and fixation of his pay at Rs.26,000/- with effect from 01.08.2004 in the scale of Rs.24,050-650-26000/- in respect of the post of D.G. of Police, Odisha. According to respondents, consequent upon his retirement, the applicant was authorized to draw pension @ Rs.13,000/- with effect from 01.07.2005. The scale of Rs.24,050-650-26000/- stood revised to Rs.75,000-80,000/- with effect from 01.01.2006 as per the recommendations made by the 6th CPC and consequently, the pension drawn by the applicant was revised to Rs.37,750/- with effect from 01.01.2006 as per the Office Memorandum No.F.No.38/37/08 P7PW(A) dated 01.09.2008 (Annexure-A and dated 14.10.2008 (Annexure-B). Therefore, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.
8. Undisputed facts of the matter are that consequent upon his deputation as DG, CISF, applicant's pay was fixed in the pay scale of Rs.26000/- (fixed) w.e.f. 1.10.2002. Thereafter, he was transferred and appointed as Special Secretary, Ministry of Home Affairs and continued to draw the same pay till his repatriation to the State Cadre. It reveals from the record that the applicant on his repatriation was posted DG & IG of Police, Orissa with effect from 31.7.2004. In pursuance of the request made by the Government of Orissa, the

Ministry of Home Affairs, Government of India accorded the proposal for protection of Central Pay, i.e., Rs.26000/- (fixed) to be drawn by the applicant, as a special case, with effect from 1.8.2004 as Director General & I.G. of Police, Odisha. While the matter stood thus, in terms of Schedule-III A of the IPS (Pay) Rules, 1954, the pay so fixed was reconsidered and it was concluded that the pay of DGP, Orissa being in the pay scale of Rs.24050-650-26000/-, the pay of Rs.26000/- (fixed) is applicable to those officers who are on Central Seputation to certain organizations/CPOs as DGE. Accordingly, a corrigendum was issued by the Ministry of Home Affairs on 25.7.2005 to the Government of Orissa stating that the pay of the applicant should be fixed at Rs.26000/- in the scale of Rs.24050-26000/- and not in the scale of Rs.26000/-(fixed), in pursuance of which, the State Government issued revised orders on fixation of his pay, in supersession of earlier order. Therefore, the reduction in the amount of pension is on account of re-fixation of pay in the cadre of .D.G & I.G. of Police, Orissa carrying the scale of Rs. 24050-650-26000 with effect from 01.08.2004, thus withdrawing the pay at Rs.26000/- (fixed) that had been granted to him as a special case. In the written note of submission, the applicant has brought on record an Office Order under Memo No.19687 dated 16.04.2007 (Annexure-C) issued by the Government of Odisha in the Home Department, the relevant part of which reads as follows:

- "3. Further, the Govt. Of India, Ministry of Home Affairs, have clarified in their letter No.16011/1/2005-IPS-II dt. 25.7.2005 that through Sri Bipin Bihari Mishra, IPS (since Retd.) was drawing the salary of Rs.26,000/- per month at the Centre in the fixed pay of Rs.26,000/- he is to be placed at the stage of Rs.26,000/- in the DGP's Scale of Rs.24,050-650-26,000/- from dt. 1.8.2004.
4. As such, the pay of Sri B.B.Mishra, IPS(Reted) is revised at Rs.26,000/- per month with effect from dt. 1.8.2004 in the above super time scale of Rs.24,050-650-26,000/- as a Special case.
5. This supersedes the Home Department Office Order No.6577/IPS, dt., 8.2.2007".

9. This order, the applicant accepted without any demur. Therefore, based on the last pay drawn and/or the average amount worked out on previous ten months' salary, whichever is more beneficial to the retiree, an amount of Rs.13,000/- was authorized to the applicant towards pension with effect from 01.07.2005 having regard to maximum pay drawn at Rs.26000/- in the scale of Rs.24,050-650-26000/- for the post of D.G & I.G. of Police, Odisha. Resultantly, after coming into force the recommendations made by the 6th CPC, the scale of Rs. 24,050-650-26000/- having been revised to Rs. Rs.75,000-80,000/- with effect from 01.01.2006, consequently, the applicant's pay was revised with reference to the scale of Rs.75,000-80,000/- and the applicant has been granted the revised pension to the tune of Rs.37,750/- with effect from 01.01.2006. In the backdrop of the above facts and circumstances, it is not a case where the respondents have unilaterally reduced the pension amount of the applicant to which he was otherwise entitled. Since, determination of pension is dependent upon the last pay drawn and/or the average pay drawn for the last ten months, whichever is beneficial to the retiree, and apparently, there being no such allegation to that effect, in our considered opinion, the pension in respect of the applicant has rightly been fixed with effect from 01.07.2005 and 01.01.2006, respectively. His contention that pay at Rs.26,000/- (fixed) which had been granted to him during central deputation having been protected, the same should have been revised to Rs.80,000/- on the basis of 6th CPC with effect from 1.1.2006 is no longer open to be assailed or called in question, in view of the fact that the Ministry of Home Affairs in their clarification/corrigendum dated 25.07.2005 indicated to the State Government of Odisha that the applicant being DG & IG of Police was entitled to the scale of Rs.24,050-650-26000/-, being his pay fixed at Rs.26000/- and not Rs.26000/- (fixed) since the applicant has all along accepted the same. Since the impugned pay fixation order, as mentioned above, has not been challenged by the applicant, the same holds good, so also, the consequent fixation of pension.

10. At this juncture, it is to be noted that we have gone through the decisions cited by the applicant in support of his case. Those being distinguishable from the facts and

circumstances of the case in hand, cannot be of any assistance. As regards the claim of the applicant that he is similarly situated persons as that of Mr.J.F.Reberia, Mr.S.C.Tripathy and Mr.A.K.Puri, we would like to note that for the reasons discussed above, we do not find any similarity of facts of the present case with those retired IPS officers and hence, no reliance can be placed to hold that in fact the applicant has been discriminated against. Apart from the above, the applicant has not produced any such authority or ruling to establish that consequent upon his repatriation to the State Government and posting as D.G. & I.G. of Police, Orissa with effect from 01.08.2004, he was entitled to receive the same pay, i.e., Rs.26,000/- (fixed) as was being drawn by him while on deputation to the Government of India as D.G., CISF followed by a further posting as Special Secretary in the Ministry of Home Affairs, Government of India.

11. For the reasons discussed in the preceding paragraphs, the O.A. is held to be without any merit and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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