

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 11453 OF 2014

In the matter of an application under Articles 226 & 227
of the Constitution of India.

AFR Madhusudan Pati Petitioner

-Versus-

Union of India & Ors. Opp. Parties

For Petitioner : Mr.D.K. Mohanty,
Advocate

For Opp. Parties : Mr. P.K. Parhi, ASGI

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 11.05.2022

DR.B.R.SARANGI,J. The petitioner, who is the disabled son and legal representative of the deceased central government employee, has filed this writ petition seeking to quash the order dated 25.04.2013 passed in O.A. No.538 of 2012, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has denied to grant arrear family pension to the petitioner from the date of

discontinuance and held that the payment of family pension to the petitioner will be effectively regulated by the notification dated 27.12.2012 and O.M. dated 16.01.2013 issued by the Department of Pension & Pensioners Welfare, Government of India.

2. The factual matrix of the case, in brief, is that the father of the petitioner was an employee of the Government of India Press in Santragachi, Howarah and was in receipt of pension after his retirement from service till the date of his death, i.e., 11.3.1991. Thereafter, mother of the petitioner received family pension till her death on 10.11.1999. The petitioner, being a physically handicapped suffering from congenital Nystagmus of 100% disability of visual and being the legal heir and entitled to receive family pension as per sub-rule (6) of Rule-54 of CCS (Pension) Rules, 1964, made representation to the authority concerned to grant family pension in his favour. His prayer was granted and he was issued with P.P.O No.42850600458 dated 12.5.2006. Accordingly, he received the arrears of family pension

from 11.11.1999 to 31.5.2006 and was in receipt of monthly family pension thereafter. While it was so continuing, opposite party no.3-Pay & Accounts Officer, Office of Pay & Accounts (Ptg), Ministry of Urban Development, Salt Lake City, Kolkata sent a letter dated 29.5.2008 to opposite party no.4-Pay & Accounts Officer, Central Pension Accounting Office, New Delhi, with a copy to the petitioner, directing to stop family pension to the petitioner, who is married physically handicapped son of deceased employee (Ex-PPI of GIP (Sant)).

2.1 As per sub-rule (6) of Rule-54 of CCS (Pension) Rules, 1964, the family pension payable to such a son or daughter shall be stopped, if he or she starts earning his/her livelihood. But since the petitioner is 100% visually handicapped and has no earning capacity to maintain him and family pension being his only support, he made representations to the authorities for resumption of the family pension. When he did not receive any response, he approached the tribunal by filing O.A. No.538 of 2012 with a prayer to resume family

pension in his favour, as he is otherwise eligible as per Rule-54(6) of CCS (Pension) Rules, 1964, on the basis of the fact that he is 100% visually handicapped and he has no other income for his livelihood. When the matter was subjudice before the tribunal, learned Senior Central Government Standing Counsel filed a memo on 7.3.2013 enclosing copies of the Office Memorandum No.1/33/2012-P&PW (E) dated 16.1.2013 of the Department of Pension & Pensioners' Welfare, Government of India, clarifying the position with regard to the rules applicable in such cases. The tribunal, after due adjudication, vide order dated 25.04.2013, declined to grant payment of any further arrears from the date of discontinuance of the family pension and observed that the payment of family pension to the petitioner will be effectively regulated by the notification dated 27.12.2012 and office memorandum dated 16.01.2013 issued by the Department of Pension & Pensioners Welfare, Government of India. Hence the petitioner has constrained to file this writ petition.

3. Mr. D.K. Mohanty, learned counsel appearing for the petitioner contended that right accrues in favour of the petitioner for receiving family pension on the basis of Rule-54(6) of CCS (Pension) Rules, 1964. As such, the benefit was extended to him after the death of his mother on 10.11.1999 and, as such, he was paid the arrears of family pension from 11.11.1999 to 31.05.2006 and was in receipt of monthly family pension thereafter. While he was being paid family pension by the authority, because of letter dated 29.05.2008 issued by Pay & Accounts Officer, Office of Pay & Accounts (Ptg), Ministry of Urban Development, Kolkata, the family pension granted to the petitioner was stopped without following due procedure and without complying the principle of natural justice. Therefore, owing to non-payment of family pension, as due and admissible, the petitioner approached the tribunal by filing O.A. No.538 of 2012. When the said O.A. was pending adjudication, in view of issuance of subsequent memorandum dated 16.01.2013 by the Department of Pension & Pensioners' Welfare, Government of India, again the benefit of family pension

was extended to the petitioner. As a consequence thereof, the tribunal, vide order dated 25.04.2013, disallowed the arrear pensionary benefit for the period from 29.05.2008 till the memorandum issued on 16.01.2013, which he claims in this writ petition, as he is otherwise also entitled to get family pension in terms of Rule-54(6) of CCS (Pension) Rules and payment of the same was illegally stopped from 29.05.2008. To substantiate his contentions, he has relied upon the judgments of the apex Court in **Canara Bank v. Debasis Das**, (2003) 4 SCC 557; **Union of India v. Kuldeep Singh**, (2004) 2 SCC 590; **Smt. Kuntesh Gupta v. M.A.K. Mahavidyalaya (A.P)**, (1987) 4 SCC 525; **G. Vallikumari v. Andhra Education Society**, AIR 2010 SC 1105; **S. Engineering v. Union of India**, AIR 1976 SC 1785; and **Capt. Subha Singh v. Lt. Governor Delhi**, (2004) 6 SCC 440.

4. Per contra, Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing for the Union of India vehemently contended that the claim of the

petitioner cannot sustain in the eye of law, in view of the fact that opposite party no.3-Pay and Accounts Officer (Ptg.), Ministry of Urban Development, Salt Lake, Calcutta issued letter dated 29.05.2008 to opposite party no.4-Pay & Accounts Officer, Central Pension Accounting Office, New Delhi to stop payment of family pension to the petitioner-Madhusudan Pati, married physically handicapped son of Late Guna Pati, Ex-PPI of Govt. of India Press (Sant), being the holder of PPO No. 428050600458 on the basis of clarification of Govt. of India, Railway Board's letter no. F(E)-III/2003/PN-1/43 dated 10.08.2005 that lifelong family pension to physically crippled or disabled married sons or daughters is not admissible on the ground of doubtful dependency of his deceased father after his marriage solemnized. It is further contended that the said Railway Board Letter No. F(E)-III/2003/PN-1/43 dated 10.08.2005 is based on Rule-54 (6)(3)(b)(c)(d) of CCS (Pension) Rules, 1964, wherein it has been clarified that a daughter shall become ineligible for family pension under this sub-rule from the date she gets married. It

has also been clarified further that the family pension payable to such a son or daughter shall be stopped, if he/she starts earning his/her livelihood. It is further contended that the family pension to the petitioner was stopped on the ground that he was no longer a dependent on his demised father, who was a government servant. It is further contended that the Railway Board's clarification is based upon the relevant rule of the CCS (Pension) Rules, 1972 and is applicable to all central government offices. There is also no stipulation in the CCS (Pension) Rules that a notice is required to be served that the family pension is being stopped on account of the marriage. It is further contended that as per Explanation-(d) to Rule-54, it is the duty of the guardian of disabled dependent son/daughter in every month to certify that he/she has not started earning his/her livelihood or a daughter has not yet married. When the dependent disabled sons/daughters get married, it should be construed that they no longer are dependent on their deceased fathers' family pension. Thereby, the opposite parties are well justified by

stopping the family pension admissible to the petitioner. But subsequently, the benefit was extended, pursuant to office memorandum No.1/33/2012-P&PW (E) dated 16.01.2013 of the Department of Pension & Pensioners' Welfare, Government of India clarifying the present position with regard to the rules applicable in such cases.

5. This Court heard Mr. D.K. Mohanty, learned counsel for the petitioner and Mr. P.K. Parhi, learned Assistant Solicitor General of India by hybrid mode. Pleadings have been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. Admittedly, the petitioner is the disabled son of the deceased employee of the Government of India and after the death of his father on 11.3.1991, he was extended with family pension, in view of Rule-54(6) of the CCS (Pension) Rules, 1964, being issued with P.P.O No.42850600458 dated 12.5.2006. He received the

arrears of family pension from 11.11.1999 to 31.5.2006 and was in receipt of monthly family pension thereafter. But the same was stopped abruptly on 29.5.2008, in pursuance of letter dated 29.05.2008 issued by opposite party no.3 addressed to opposite party no.4. Aggrieved thereby, the petitioner moved the tribunal by filing O.A. No.538 of 2012, during pendency of which, the benefit of family pension was resumed to the petitioner, pursuant to office memorandum dated 16.01.2013 issued by the Department of Pension & Pensioners' Welfare, Government of India. But the tribunal, while disposing of the O.A., declined to grant arrears to the petitioner for the period from 29.05.2008 to 24.09.2013, which is the subject-matter of consideration in this writ petition.

7. For just and proper adjudication of the case, it is relevant to refer to sub-rule-(6) of Rule-54 of CCS (Pension) Rules, 1964.

"54. Family Pension, 1964

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(6) The period for which family pension is payable shall be as follows:-

(i) Subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

(ii) Subject to second proviso, in the case of an unmarried son, until he attains the age of twenty -five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;

(iii) Subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood ,whichever is earlier;

(iv) Subject to sub-rule (10-A), in the case of parents, who were wholly dependent on the Government servant immediately before the death of the Government servant, for life;

(v) Subject to sub- rule 10(B) and the fourth proviso, in the case of disabled siblings (i.e. brother and sister) who were dependent on the Government servant immediately before the death of Government servant, for life:

Provided that family pension shall continue to be payable to a childless widow on re-marriage, if her income from all other sources is less than the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon:

Provided further that if the son or daughter of a Government servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:-

(i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children (mentioned in Clause (ii) or Clause (iii) of this sub-rule) in the order set out in Clause (iii) of sub-rule(8) of this rule until the last child attains the age of twenty -five and thereafter the family pension shall be resumed in favour of the son or daughter suffering from the disorder or disability of mind, including the mentally retarded, or who is physically crippled or disabled and shall be payable to him or her, for life;

(ii) If there are more than one such children suffering from disorder or disability of mind including the mentally retarded or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family

pension only after the elder next above him or her ceases to be eligible:

Provided that where the family pension is payable to such twin children, it shall be paid in the manner set out in Clause(d) of sub-rule (7) of this rule ;

(iii) The family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son or daughter who has attained the age of majority ;

(iv) Before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child;

(v) The person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce a certificate, from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation, once, if the disability is permanent and if the disability is temporary, once in every five years to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled;

(vi) In the case of mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his lifetime, to the person nominated by the spouse of such Government servant or family pensioner, as the case may be, later on and the Guardianship Certificate issued under Section 14 of the national Trust Act, 1999

(No. 44 of 1999), by a local level Committee, shall also be accepted for nomination or appointment of guardian for grant of family pension in respect of person(s) suffering from Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities as indicated in the said in the said Act:

Provided also that the grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the following conditions, namely;-

(i) The family pension shall be initially payable to the minor children (mentioned in Clause(ii) or Clause(iii) of this sub-rule) in the order set out in Clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty-five years ; and

(ii) There is no disabled child eligible to receive family pension in accordance with the second proviso of this sub-rule:

Provided also that such disabled siblings shall be eligible for family pension for life in the same manner and following the same disability criteria, as laid down in this rule in the in the case of son or daughter of the Government employees or pensioners suffering from any disorder or disability of mind (including mentally retarded) or physically crippled or disabled, so as to render him or her unable to earn a living even after attaining the age of twenty-five years.

EXPLANATION-1. An unmarried son or an unmarried or widowed or divorced ¹[daughter except a disabled son or daughter shall] become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

EXPLANATION-2. The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.

EXPLANATION-3. It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after ¹[her re-marriage or by the disabled son or daughter or by parents] to the Treasury or Bank , as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

EXPLANATION -4. For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

EXPLANATION -5. Parent shall be deemed to be dependent on the Government servant if their combined income is less than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

EXPLANATION -6. Disabled sibling shall be deemed to be dependent on the Government servant if their income is less than the minimum family pension admissible under sub-rule(2) of this rule and dearness relief thereon.

EXPLANATION -7. Family pension payable to a childless widow shall be stopped if, after re-marriage, her income from all other sources becomes equal to or exceeds the amount of minimum family pension under sub-rule(2) of this rule and the dearness relief admissible thereon.”

In view of aforesaid provisions, clause-(i) of second proviso to sub-rule (6) makes it clear that the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind including the mentally retarded, or who is physically crippled or disabled and shall be payable to him or her for life. In terms of the said provision, the benefit of family pension was extended to the petitioner after the death of his mother on 10.11.1999. In the meantime, the petitioner got married, but while he was enjoying family pension, opposite party no.3-Pay & Accounts Officer,

Office of Pay & Accounts (Ptg.), Ministry of Urban Development, Salt Lake City, Kolkata sent a letter on 29.05.2008 to opposite party no.4-Pay & Accounts Officer, Central Pension Accounting Office, New Delhi with a copy to the petitioner, to the following effect:

"As per clarification G.I. Railway Board's letter no. F (E)III/2003/PNI/43 dated the 10th August,2005, lifelong family pensions to physically crippled or disabled married sons and daughters are not admissible (copy enclosed). You are therefore requested to stop payment to the family pensioner Shri Madhusudan Pati married physically handicapped son of Late Gunapati, Ex-PPI of GPI (Sant)".

8. On receipt of such communication, the family pension to the petitioner was stopped abruptly without following due procedure. Though he made several representations, the same was not considered, which compelled him to approach the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.538 of 2012. When the same was sub-judice, learned Senior Central Government Standing Counsel filed a memo on 7.3.2013 enclosing copy of the Office Memorandum No.1/33/2012-P&PW (E) dated 16.1.2013 of the Department of Pension & Pensioners' Welfare, Government of India, clarifying the position with regard

to the rules applicable to the petitioner. A perusal of the said office memorandum would go to show that the same was issued covering two subjects, viz. (i) eligibility of disabled children for family pension after marriage; and (ii) eligibility for two family pensions.

9. The present case relates to clause-(i), i.e., eligibility of disabled children for family pension after marriage. Proviso to Rule-54(6) of CCS (Pension) Rules, 1964 envisages that if the son or daughter of a deceased central government employee is suffering from disorder or disability of mind including the mentally retarded, or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the certain conditions.

10. The Department of Pension & Pensioners' Welfare, Government of India, vide notification dated 27.12.2012, made amendment to the Central Civil Services (Pension) Rules, 1972, to the effect that in the

Explanation-1 to sub-rule(6), for the words “daughter shall”, the words “daughter, except a disabled son or daughter” shall be substituted. In Explanation-3, for the words “her re-marriage or parents”, the words “her re-marriage or by the disabled son or daughter or by parents” shall be substituted. The office memorandum dated 16.01.2013 brought out by the said department for the sake of clarity reproduced the old and new Explanations-1 & 3 highlighting the changes made therein. The old and new explanations are reproduced below:

“Old: EXPLANTATION-1- An unmarried son or an unmarried or widowed or divorced daughter shall become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

EXPLANATION -3- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that (i)he or she has not started earning his or her livelihood and (ii) he or she has not yet married or remarried. A similar certificate shall be furnished by a childless widow after her re-marriage or parents to the Treasury or Bank, as the case may be, once in year that she or they have not started earning her or his or their livelihood.

New: EXPLANATION:-1- An unmarried son, or unmarried or widowed or divorced daughter, except a disable son or daughter, shall become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

EXPLANATION 3- It shall be the duty of son or daughter of siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that (i) he or she has not started earning his or her livelihood and (ii) he or she has not yet married or

remarried. A similar certificate shall be furnished by a childless widow after her remarriage or by the disabled son or daughter or parents to the Treasury or Bank, as the case may be, once in year that she or he they have not started earning her or his or their livelihood'.

The said office memorandum dated 16.01.2013 further clarifies that the financial benefits in past cases will accrue with effect from 24.09.2012. Therefore, the benefit, which was extended to the petitioner and was stopped vide letter dated 29.05.2008, again was allowed to draw with effect from 24.09.2012. But, he was not paid family pension for the period from 29.05.2008 till 24.09.2012 and the same was also denied by the tribunal vide order dated 25.04.2013 in O.A. No.538 of 2012.

11. The denial of family pension pursuant to letter dated 29.05.2008 is based on the clarification of G.I. Railway Board's Letter No.F(E)III/2003/PNI/43 dated 10.08.2005 that lifelong family pensions to physically crippled or disabled married sons and daughters are not admissible. Whether the clarification issued by the Railway Board is applicable to the present case or not, is a question to be considered. But fact remains, by virtue of statutory rules, if any benefit had been extended to the

petitioner, can the same be withdrawn pursuant to Railway Board's letter dated 10.08.2005? The answer is obviously negative, in view of the fact that no circular/office memorandum can supersede the statutory provisions governing the field. Therefore, even if the Railway Board took a decision on 10.08.2005, the same cannot take away the right accrued in favour of the petitioner to get the family pension in terms of Rule-54(6) of the CCS (Pension) Rules, 1964. If it is considered from the other angle, that Rule-54(6) of the aforesaid Rules has statutory force which was to be complied with in letter and spirit, if any office memorandum or notification has been issued, that should be in adherence to the rules itself but not in derogation thereto. Thereby, if the statute prescribes to do a certain thing in a certain way, the thing must be done in that way or not at all.

12. In **Santosh Kumar Sahu v District Judge, Kalahandi-Nuapada**, 2009(Supp-1) OLR 757, this Court in paragraphs 20, 21, 22 and 24 of the judgment held as follows:-

"20. A Constitution Bench of the Supreme Court, in **B.N. Nagarajan 85 Ors. Vs. State of Mysore 81. ors.**, AIR 1966 SC 1942, has observed as under-

"It is hardly necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of its executive powers under [Article 162](#) of the Constitution ignore or act contrary to that rule or the Act. "

21. Similarly, another Constitution Bench of the Supreme Court in *Sant Ram Sharma Vs. State of Rajasthan 85 Ors.*, AIR 1967 SC 1910, has observed as under:-

"It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed."

22. The law laid down above, has consistently been followed and it is settled proposition of law that an Authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *The Commissioner of Income-tax, Gujarat Vs. M / s. A. Raman 85 Co.*, AIR 1968 SC 49; *Union of India 85 ors. Vs. Majji Jangammayya 85 ors.*, AIR 1977 SC 757; *The District Registrar, Palghat 85 ors. Vs. M.B. Koyyakutty 85 ors.*, AIR 1979 SC 1060; *Ramendra Singh 85 ors. Vs. Jagdish Prasad 85 ors.*, AIR 1984 SC 885; *P.D. Aggarwal 85 Ors. Vs. State of U.P. 85 Ors.*, AIR 1987 SC 1676; *M/s. Beopar Sahayak (P) Ltd. 85 Ors. Vs. Vishwa Nath 85 Ors.*, AIR 1987 SC 2111; *Paluru Ramkrishnaiah 85 Ors. Vs. Union of India 85 Anr.*, AIR 1990 SC 166; *Comptroller 85 Auditor General of India 85 ors. Vs. Mohan Lal Mehrotra 85 ors.*, AIR 1991 SC 2288; and *C. Rangaswamaiah 85 Ors. Vs. Karnataka Lokayukta 85 Ors.*, AIR 1998 SC 2496).

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24. Thus, it is settled law that executive instructions cannot amend or supersede the statutory rules or add something therein. The orders cannot be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law as held by the Constitution Bench of the Supreme Court in *State of U.P. 85 ors. Vs. Babu Ram Upadhya*, AIR 1961 SC 751; and *State of Tamil Nadu Vs. M/s. Hind Stone etc. etc.*, AIR 1981 SC 711."

13. In **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253, law is well settled “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” The said principles have been followed subsequently in **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Dhananjay Reddy v. State of Karnataka**, AIR 2001 SC 1512, **Chandra Kishore Jha v. Mahabir Prasad**, AIR 1999 SC 3558, **Gujrat Urja Vikas Nigam Ltd. v. Essar Power Ltd.**, AIR 2008 SC 1921, **Ram Deen Maurya v. State of U.P.**, (2009) 6 SCC 735.

14. In **Subash Chandra Nayak v. Union of India**, 2016 (I) OLR 922, similar question had come up for consideration before this Court and this Court in paragraph-8 observed as follows:

“.....the statute prescribed a thing to be done in a particular manner, the same has to adhered to in the same manner or not at all. The origin of the Rule is traceable to the decision in **Taylor v. Taylor**, (1875) LR I Ch D 426, which was subsequently followed by Lord Roche in **Nazir Ahmad v. King Emperor**, AIR 1936 PC 253(2). But the said principle has been well recognized and holds the field till today in **Babu Verghese v. Bar Council of Kerala** (1999) 3 SCC 422, and **Zuari Cement Limited v. Regional Director, Employees’ State insurance Corporation, Hyderabad and others**, (2015) 7 SCC 690 and the said principles has been referred to by this Court in **Manguli Behera v. State**

of Odisha and others (W.P.(C) No. 21999 of 2014 disposed of on 10.03.2016)".

Similar view has also been taken by this Court in **Rudra Prasad Sarangi v. State of Orissa and others**, 2021 (I) OLR 844 and **Bamadev Sahoo v. State of Orissa**, 132 (2021) CLT 927.

15. By virtue of provisions contained in Rule-54(6), family pension having been paid to the petitioner, a right has been accrued in his favour and the said right cannot be taken away without following due procedure.

16. In **Chairman Railway Board v. C.R. Rangadhamaiiah**, AIR 1997 SC 3828, the apex Court held as follows:

"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are of in consonance with the decisions in Roshan Lal Tandon (AIR 1967 SC 1889) (Supra), B.S. Yadav (AIR 1981 SC 561) (Supra) and Raman Lal Keshav Lal Soni (AIR 1984 SC 161) (Supra)"

17. Taking into consideration the ratios decided in the aforementioned judgments, a Division Bench of this Court in the case of **Anand Dash v. State of Orissa**, 2014 (Supp.I) OLR 754, held that amendments brought to the General Provident Fund (Orissa) Rules 1938 and the Orissa Civil Service (Pension) Rules, 1992 will not apply to the petitioners and rather they will be governed by the said Rules as it existed on the date of their joining in service prior to the amendments brought into those Rules.

18. The apex Court in several judgments has already dealt with the word 'pension' to the following effect:

In **D.S. Nakara & Others v. Union of India**, AIR 1983 SC 130, at paragraph-31, the apex Court observed that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right.

In **Deokinandan Prasad v. State of Bihar and Ors**, AIR 1971 SC 1409, the apex Court at paragraph-29 observed as follows:

“that the grant of pension does not depend upon any order. It is only for the purpose of quantifying the amount having regard to the service and other allied matters that it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of any such order but by virtue of the rules.”

In **State of Jharkhand & Ors v. Jitendra Kumar Srivastava & Anr**, (2013) 12 SSC 210, the apex Court at paragraph-8 observed as follows:-

“It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.”

19. Therefore, in view of the settled position of law, as discussed above, the right to receive pension or family pension does not depend on any order and it flows by virtue of the pension rules. The family pension accrued to the petitioner under the statutory provisions, i.e., CCS (Pension) Rules, 1964 is in the nature of property, which cannot be taken away by the opposite parties without following due process of law. As a consequence thereof, family pension, which has been accrued to the petitioner

under the aforesaid pension rules, cannot be denied to him without adopting due process of law. Since there was no adherence of any rule, for denying the benefit admissible to the petitioner under the pension rules, the opposite parties are obliged under law to pay family pension to the petitioner. Since there was abrupt stoppage of family pension of the petitioner, pursuant to letter dated 29.05.2008, the same cannot sustain in the eye of law.

20. In **Canara Bank** (supra), which was relied upon by learned counsel for the petitioner, the apex Court held as follows:

“The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi judicial body embarks determining the disputes between the parties or any administrative action involving civil consequences is in issue. These principles are well settled. The 1st and foremost principle is what commonly known as audi-alterm pattern rule. It says that no one should be condemned unheard. Notice is the 1st limb of this principle. It must be précised and unambiguous, it should apprise the para-4 determining of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation in the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of most important principles of natural justice.”

21. In **Kuldeep Singh** (supra), on which reliance was placed by learned counsel for the petitioner, the apex Court held that a quasi judicial authority or even administrative authority, a financial administrative side when an acts discharge of its entrusted duties, no doubt the exercises has discretionary power vested to the authorities, yet it has to be exercised in a judicious manner not in his whims or mercy.

22. Reliance was also placed by learned counsel for the petitioner on the case of **Smt. Kuntesh Gupta** (supra), in which the apex Court held that “Quasi Judicial authority or an Administrative authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which derives its jurisdiction.”

23. Abrupt stoppage of family pension, pursuant to letter dated 29.05.2008 issued by opposite party no.3, being not a reasoned or speaking order, and merely because relying upon the Railway Board’s circular,

direction was issued to stop the family pension, the same cannot sustain in the eye of law.

24. In **G. Vallikumari** (supra), which was relied upon by the petitioner, the apex Court held that “exercise of quasi judicial power of the authority needs reasons, stressed where order of authority concerned adversely affects the party.”

25. In **S. Engineering** (supra), on which reliance was placed by the petitioner, the apex Court held that “a speaking order means an order speaking for itself. In other words, it means that an order must be certain reasons in support of it. The party affected must know why and on what grounds.”

26. In **Capt. Subha Singh** (supra), which was cited on behalf of the petitioner, the apex Court held that the administrative authority or any authority should be obeyed what statute says nothing to be done in otherwise.

27. Applying the above settled position of law to the present context, the order impugned dated 29.05.2008 abruptly directing to stop the family pension to the petitioner, relying upon the Railway Board's circular, cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. More so, since the petitioner has been extended with the family pension with effect from 24.09.2012, he is entitled to get family pension for the intermediate period from 29.05.2008 till 24.09.2012. The observation made by the tribunal, vide order dated 25.04.2013 in O.A. No.538 of 2012, denying family pension for the said period, cannot sustain in the eye of law and the order to that extent is hereby quashed. Since the petitioner is receiving family pension, the opposite parties are directed to pay the arrear family pension for the period from 29.05.2008 to 24.09.2012 to the petitioner as expeditiously as possible, preferably within a period of three months from the date of communication/production of certified copy of this judgment.

28. The writ petition is thus allowed. There shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

SAVITRI RATHO,J. I agree.

(SAVITRI RATHO)
JUDGE

Orissa High Court, Cuttack
The 11th May, 2022, Alok

