

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 8860 of 2020

Union of India and Others

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Petitioners

*Mr. P.K. Parhi, ASGI along with
Mr. C. Pradhan, Sr. Panel Counsel*

Vs.

Kulamani Pani and others

.....

Opposite Parties

Mr. N.R. Routray, Advocate (O.P.1)

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

19.07.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Parhi, learned Assistant Solicitor General of India along with Mr. C.K. Pradhan, learned Sr. Panel Counsel appearing for the Petitioners, and Mr. N.R. Routray, learned Counsel appearing for Opposite Party No.1.

3. The Union of India and its functionaries, have assailed the common order dated 13.05.2019 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 722 of 2015 and batch, as well as the common order dated 22.11.2019 passed by the Tribunal in R.A. No. 35 of 2019 and batch.

4. The factual matrix of the case, in brief is that Opposite Party No.1 was initially appointed as Clerk Grade-II on 6.11.1987. He was promoted to the post of Junior Accounts Assistant (in short 'JAA') with the Grade Pay of Rs. 2800/- and then to the post of

Accounts Assistant (in short 'AA') with Grade Pay of Rs.4200/-. Thereafter, he was promoted as Senior TIA with Grade Pay of Rs. 4800/- after passing requisite examinations. In the integrated seniority list of Senior TIA/ Senior SOs, Opposite Party No.1 was placed at Sl. No. 136, as compared to Sl. No. 138 of Sri S.K. Rout, who is junior to Opposite Party No.1. While Sri S.K. Rout was allowed the Grade Pay of Rs. 5400/-, Opposite Party No.1, being senior to Sri S.K. Rout, was not allowed the benefit of higher Grade Pay and continued at the Grade Pay of Rs. 4800/-.

5. Being aggrieved, Opposite Party No.1 along with other similarly situated employees, moved the authorities in a joint representation dated 03.12.2013, for extension of the benefit of the Grade Pay of Rs. 5400/- at par with their juniors, which was forwarded to the Railway Board. But, the Railway Board rejected the same and also the representations filed by all such employees in August, 2014. However, on the same issue, i.e. senior employee getting less Grade Pay than juniors in the Accounts Department, some of the employees, who were similarly placed as the Opposite Party No.1, approached Madras Bench of the Tribunal in O.A. No. 1075/2010. The Tribunal, after hearing the parties, allowed the Original Application vide order dated 05.8.2011 directing the authorities to allow the benefit of the Grade Pay of Rs. 5400/- from the date, from which juniors of the applicants in OA No. 1075/2010 had been allowed the benefit of the Grade Pay of Rs. 5400/-. The Railway authorities challenged the order dated 05.8.2011 before Madras High Court. However, the Madras High Court vide the order dated 03.04.2014 upheld the order passed by the Madras Bench of the Tribunal. Another group of employees

moved Calcutta Bench in O.A. No. 274/2012 with similar grievance and the said O.A. was also allowed vide order dated 13.09.2012. The said order was challenged before the Calcutta High Court in W.P.C.T. No. 62/2013, which was disposed of with a direction to the writ petitioners to implement the order of the Tribunal passed in OA No. 274/2012. Accordingly, the authorities passed the order dated 31.7.2015 to implement the order provisionally, subject to final outcome of the matter.

6. When the Petitioners did not take any decision on the representation of Opposite Party No.1 dated 03.12.2013, he moved the Tribunal in OA No. 314/2014, which was disposed of with a direction to the Petitioners to dispose of the representation of Opposite Party No.1 to be submitted to the Petitioners for allowing Grade Pay of Rs. 5400/-, keeping in mind the orders of the Tribunal of Madras Bench and Calcutta Bench in similar Original Applications. Accordingly, Opposite Party No.1 submitted his representation dated 15.05.2014, on the ground that his juniors were allowed the Grade Pay of Rs. 5400/- and also cited the judgments of Madras Bench and Calcutta Bench of the Tribunal in similar cases. The Petitioners rejected the representation of Opposite Party No.1 on the ground that the orders of the Tribunal of Madras and other Benches allowing the benefit of the Grade Pay of Rs. 5400/- are per-incuriam on the ground that Paragraphs 9 and 20 of the guidelines of MACPS were not considered in those orders of the Tribunal. Therefore, Opposite Party No.1 filed O.A. No. 722 of 2015 challenging the order of rejection passed by the Authority. The date of the order though is mentioned to be 10.11.2012, but the contents thereof referred to the letters issued in

the year 2015. Therefore, Opposite Party No.1 approached the Tribunal in the year 2015.

7. In response to the Notice issued, the Petitioners filed their Counter Affidavit stating inter alia that the MACP guidelines specifically provide that the financial up-gradation benefit under the Scheme is personal and no stepping up of pay is allowed by comparing with the pay of the junior after getting the MACP benefit. It was also stated in the Counter Affidavit that the OA was barred by limitation, as Opposite Party No.1 did not raise the issue after Sri S.K.Rout was allowed the benefit under MACP, raising his Grade Pay to Rs.5400/-. It was also stated in the Counter that due to different mode of initial recruitment, there was difference in promotional facility. A senior staff, after availing three or more promotions, is not entitled to MACP benefit as per the guidelines in force, whereas a junior employee availing less than three promotions will be entitled to MACP benefit, for which, parity or stepping up of pay cannot be claimed by the senior employee as per the guidelines of MACP. Opposite Party No.1, being senior to Sri S.K Rout, was not entitled to the MACP benefit, as he had already availed three promotions, i.e. from Clerk Grade-II to JAA, from JAA to AA and then from AA to Sr. TIA with the Grade Pay of Rs. 4800/-. Further it was stated in the Counter that Sri S.K. Rout was initially appointed as JAA directly and then he was promoted to AA and then to Sr. SO with the GP of Rs. 4800/ -. Having availed two promotions, he was entitled to the MACP benefit and accordingly he was allowed the MACP benefit raising his Grade Pay to Rs. 5400/- in PB-2. It was averred that as per Paragraphs 9 and 20 of the MACP guidelines of the Railway

Board, no stepping up of pay is permissible comparing with the Grade Pay of Rs. 5400/- of Sri S.K. Rout.

8. Mr. N.R. Routray, learned Counsel appearing for Opposite Party No.1 contended that in a number of cases before different coordinate Benches of the Tribunal, similarly placed employees, like the present Opposite Party No.1, had been allowed the benefit of the GP of Rs. 5400/- at par with their juniors. These orders/judgments had been challenged before High Courts and apex Court and the same have attained finality. The Petitioners have also implemented those orders/judgments by allowing the GP of Rs.5400/- in compliance of the judgments. He further submitted that the orders of the Tribunal, on which he was relying upon, were placed before the Tribunal. Opposite Party No.1 had relied on the following decisions before the Tribunal.

- (i) *Indrapal Yadav v. Union of India*, 1985 (2) SCC 648.
- (ii) *K.C. Sharma v. Union of India and Others*, 1997 (6) SCC 721.
- (iii) *State of Karnataka v. C. Lalita*, 2006 (2) SCC 747.
- (iv) *Krishna Bhatt v. State of J & K*.
- (v) *State of UP & Others v. Arvind Kumar Srivastava & others*, 2015 (1) SCC (L&S) 191.
- (vi) *Mahinder Singh Gil & Another v. The Chief Election Commissioner, New Delhi*, AIR 1978 SCC 851.
- (vi) *Sub Inspector Rooplal v. Lt. Governor* (2000) 1 SCC 644

9. The Tribunal has taken into consideration the order dated 05.08.2011 passed by the Madras Bench of the Tribunal in O.A. No. 1075 of 2010, which was extensively quoted in Paragraph-15 of the order and the said order of the Tribunal was upheld vide order dated 03.04.2014 by the Madras High Court, which has also

been extensively discussed at Paragraph-16 of the order. Similarly, the Tribunal has taken note of the order passed by the Bangalore Bench of the Tribunal, which was upheld by the Karnataka High Court and is quoted in paragraph-19 of the order.

10. At Paragraph-21 of the impugned order passed in the Original Application, the Tribunal held as follows:-

“In view of the discussions above, we are unable to agree with the respondents’ averments that the orders and judgments cited by the applicant should be treated as per-incuriam and the issue No. (i) of paragraph 14 of this order is decided accordingly.”

11. In view of such position, if the similar benefits have already been extended to the juniors by granting Grade Pay of Rs.5400/-, Opposite Party No.1 could and should not have been discriminated, rather, he should have been extended with the same benefit as per the direction given by the Tribunal.

12. However, Review Applications were filed before the Tribunal for review of the judgments passed by the Tribunal on the very same Original Applications, mentioned under Annexure-1. After due adjudication, the Tribunal referring to the various judgments of the apex Court in the case of ***Akshaya Kumar Parida (dead) and after him Manoj Kumar Parida & others v. Union of India & others*** in W.P.(C) No. 5738 of 2008, ***A.R. Antulay v. R.S. Nayak and another***, AIR 1988 SC 1531, came to a definite conclusion and observed that on perusal of the impugned order dated 13.05.2019, it is seen that the question as to whether the judgments relied on by Opposite Party No.1 can be treated as per-

incuriam, has been discussed in detail in Paragraphs 20 and 21 of the impugned order dated 13.05.2019. It was further held that the anomaly due to disparity in the Pay/Grade Pay of Opposite Party No.1 vis-à-vis some of his juniors was due to faulty cadre structure and it was not due to the MACP Scheme, as per the opinion of the DOPT mentioned in the judgment dated 03.04.2014 of the Madras High Court. It was noticed that no action was taken by the Petitioners as per the observations of the DOPT to restructure the Accounts Cadre under the Petitioners as observed in the impugned order dated 13.05.2019. There was also a recommendation of the Seventh Pay Commission in this regard, on which no action had been taken by the Petitioners as observed in Paragraphs 32 and 33 of the impugned order dated 13.05.2019.

13. Therefore, this Court is of the firm view that the findings on the question as to whether the judgments relied upon by Opposite Party No.1 can be treated per-incuriam or not, as recorded by the Tribunal in the impugned order dated 13.05.2019 relying on the judgment dated 03.04.2014 of the Madras High Court in Writ Petitions No. 1078, 10046 to 10049 of 2012 and judgment dated 20.08.2018 of the Karnataka High Court in the case of ***T. Danappa (supra)*** is clear, unambiguous and does not call for interference by this Court.

14. In view of such position, since sheer disparity is there with regard to grant of Grade Pay, the Tribunal is well justified in passing the order to extend the benefit to Opposite Party No.1, who was suffering for not getting the actual dues, which are admissible to him, by fixing the Grade Pay at Rs.5400/-, which he is otherwise

entitled to. Thus, this Court does not find any error apparent on the face of the record, to interfere with the impugned order dated 13.05.2019 passed by the Tribunal in the Original Application, so also the order dated 22.11.2019 passed in the Review Application. Thus, this Court is not inclined to interfere with both orders.

15. In view of the above, the Writ Petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE

