

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 15629 OF 2022

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

AFR

Union of India and others Petitioners

-Versus-

Umesh Chandra Mohapatra Opp. Party

For Petitioners : Mr. Dipti Ranjan Bhokta,
Central Government Counsel

For Opp. Parties : M/s. Swapna Ku. Ojha,
S.K.Nyaak and J. Jena,
Advocates.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE B.P. SATAPATHY**

Date of hearing & judgment : 01.11.2022

DR. B.R. SARANGI, J. The Union of India and its
functionaries have filed this writ petition challenging the
legality and propriety of the order dated 17.12.2021 passed
in O.A. No. 260/00438 of 2020 under Annexure-1, as well
as the order dated 19.05.2022 passed in M.A. No.

260/00197 of 2022 under Annexure-2 by the Central Administrative Tribunal, Cuttack Bench, Cuttack.

2. The factual matrix of the case, in brief, is that, the father of the opposite party, who was working as a Daftari under the petitioners, retired from Government service on 31.08.1992. He was extended with the pension under PPO No. 328009200310 and he passed away on 20.05.2008. His wife had already expired on 05.02.1992. The deceased employee had not included the name of the opposite party as the disabled child in the PPO. Therefore, the opposite party was not paid the family pension. He filed an application claiming the benefit of family pension. Though there were many discrepancies in the application, the same having been complied with subsequently, he was extended with the benefit of family pension with effect from 31.01.2020. But the opposite party claimed that he is entitled to get such benefit from 21.05.2008, i.e. the next day after the death of the original pensioner, namely, Late Bansidhar Mohapatra. The same having been denied to him, he filed O.A. No. 260/00438 of 2020 before the Central Administrative Tribunal, Cuttack Bench, Cuttack, claiming

the benefit of family pension with effect from 21.05.2008, i.e., the date next to the date of death of his father. The Tribunal, vide order dated 17.12.2021, came to hold that in view of Sub-rules (10-B) as well as (19) of Rule-54 of CCS (Pension) Rules, 1972, the opposite party is entitled to get family pension from the very next day of death of his father and accordingly directed that the same shall be paid to the opposite party from that date with arrears within a period of 90 days from the date of receipt of a copy of the order, failing which the opposite party will be entitled to get 6% interest on the delayed payment, which shall be recoverable and paid to the opposite party from the officers concerned, who shall be responsible for such further delay.

2.1 The petitioners filed M.A. No. 260/00197 of 2022 seeking extension of three months time either to implement the order dated 17.12.2021 passed by the Tribunal in O.A. No. 260/00438 of 2020 or to challenge the same in higher court of law, as the petitioners need to take advice from Nodal Ministries in that regard. The said M.A. was disposed of vide order dated 19.05.2022, holding that the order dated 17.12.2021 passed by this Tribunal in the O.A. is crystal

clear and unambiguous to the extent that the opposite party is entitled to get family pension from the very next day of death of his father, which the petitioners were directed to pay him with arrears within a period of 90 days. Since the period of 90 days was likely to be expired by mid March, 2022 and the petitioners had come up with the M.A. seeking extension of time to implement the order and as about two months time had elapsed by that time since filing of the M.A., looking at the precarious condition of the opposite party, being a handicapped person, further one month time was granted to the petitioners to implement the order and, as such, the tribunal did not feel inclined to modify the order passed in the O.A. and directed that the opposite party shall be entitled to interest as stipulated in the order dated 17.12.2021 passed in O.A. No. 260/00438 of 2020.

2.2 Hence, aggrieved by the order dated 17.12.2021 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00438 of 2020, as well as the order dated 19.05.2022 passed by the said Tribunal in

M.A. No. 260/00197 of 2022, the petitioners have approached this Court by filing this writ petition.

3. Mr. D.R. Bhokta, learned Central Government Counsel appearing for the petitioners contended that the Tribunal has committed a gross error apparent on the face of the record directing to pay family pension to the married disabled child of the deceased employee with effect from 21.05.2008, i.e., the very next day of the death of his father. It is further contended that that the married disabled child is not included under the CCS (Pension) Rules, 1972 to get the benefit of family pension, rather the said benefit is extended pursuant to the instructions issued in the Office Memorandum No. 1/33/2012-P&PW (E) dated 16.01.2013. If at all any right has been accrued in favour of the married disabled child, it should be from the date, the O.M. dated 16.01.2013 was issued and not prior to that. He further contended that pursuant to such office memorandum dated 16.01.2013, the opposite party applied for the family pension in an incomplete manner with many discrepancies. Therefore, the office of the petitioners time and again asked the opposite party to complete all the formalities involved

and finally received a communication dated 13.02.2020 from National Statistical Officer (FOD) intimating that the competent authority has sanctioned the family pension to the opposite party with effect from 31.01.2020, which has been duly communicated to him. He further contended that the family pension case is to be uploaded in the web portal “Bhavishya Support”, but while uploading and filing required forms, it automatically (by default) permits the family pension from 21.05.2008, i.e., the next date to the date of death of the pensioner. The authorities have also clarified that as per the CCS (Pension) Rules, 1972 family pension shall automatically be started from the day next to the death of the pensioner or previous family pensioner. But in the present case, the family pension could not be started from the very next date after the death of the pensioner, as the disabled child was married and till 2013 the married disabled child was not eligible for family pension. On the basis of office memorandum issued on 16.01.2013, right was accrued in favour of the opposite party, who is the married disabled son of the deceased employee, to get the family pension. Furthermore, the opposite party having

sought family pension from February, 2017 only, the case was processed and, as such, as the application was filed with many discrepancies and being incomplete one, the same having been complied, the family pension was extended in favour of the opposite party with effect from 31.01.2020. As such, no illegality or irregularity was committed by the authority concerned. But the Tribunal has committed grave error by extending the benefit from the next date of death of the pensioner, i.e. 21.05.2008 instead of allowing the opposite party to get the benefit with effect from 31.01.2020, the day the authorities have sanctioned family pension to him. Therefore, he seeks interference of this Court at this stage.

4. Mr. S.K. Ojha, learned counsel appearing for the opposite party, referring to the provisions of Rule 54 of the CCS (Pension) Rules, 1972 contended that the opposite party is entitled to get family pension from the next date of the death of the deceased employee. Therefore, the Tribunal has not committed any error apparent on the face of the record, so as to cause interference by this Court in the present proceeding.

5. This Court heard Mr. D.R. Bhokta, learned Central Government Counsel appearing for the petitioners and Mr. S.K. Ojha, learned counsel appearing for the opposite party in hybrid mode. Pleadings having 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. It is the admitted case of both the parties that the father of the petitioner, Late Bansidhar Mohapatra was working as Daftari under the petitioners and retired from service with effect from 31.08.1992. After retirement, he was allowed to receive pension. But he passed away on 20.05.2008. Prior to his death, his wife had already passed away on 05.02.1992. The opposite party is a disabled child of the deceased government employee. But his name had not been included in the PPO issued to the deceased employee. It is also not in dispute that the disabled child, the opposite party herein, had married to one Manasi Mohapatra, though in the certificate issued by Sarpanch on 11.11.2017 and the marriage certificate issued by the competent authority on 09.08.2018, there is a discrepancy

with regard to the date of marriage. The Sarpanch has indicated that the marriage was held on 2nd July, 2002, whereas in the certificate issued by the competent authority, it has been indicated that the marriage was solemnized on 05.07.2012. Even though the date of marriage has been disputed, but marriage has not been disputed at any point of time. Therefore, opposite party may be a disabled child of the deceased employee, but he is married one. Therefore, the question arises, whether a married disabled child of the deceased employee is entitled to get family pension or not. The extension of benefit of family pension to a disabled child though is incorporated in the CCS (Pension) Rules, 1972, but so far as the married mentally/physically disabled children are concerned, the same has been extended, vide Office Memorandum No. 1/33/2012-P&PW (E) dated 16.01.2013. The said Office Memorandum is extracted hereunder:-

***“No.1/33/2012-P&PW (E)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare***

*3 rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi
Dated: 16th January, 2013*

Office Memorandum

- Sub: (i) Eligibility of disabled children for family pension after marriage and
(ii) Eligibility for two family pensions- clarification regarding.

The undersigned is directed to state that the Government has decided to allow continuance of family pension to mentally/physically disabled children who drew, are drawing or may draw family pension even after their marriage. Further, the Government has also decided to allow two family pensions where the pensioner drew, is drawing or may draw two pensions for military and/or civil employments.

2. *In order to implement these decisions, Explanations 1 and 3 after sub-rule 6 of Rule 54 of the Central Civil Services (Pension) Rules, 1972 have been suitably amended and sub-rules 13-A and 13-B have been omitted. A copy of Gazette notification, G.S.R. No. 938 (E), dated 21h December, 2012, giving effect to these amendments is enclosed.*

3. *For the sake of clarity, the old and new explanations 1 and 3 are reproduced as under highlighting the changes made therein:*

Old: *EXPLANATION 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 a year that she or he or they have not started earning her or his or their livelihood.

New: *EXPLANATION 1 - An unmarried son or an unmarried or widowed or divorced 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 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 by the disabled son or daughter or 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.

4. *Sub rule 13-A regulates the grant of family pension to a military pensioner after his re-employment in a civil service or a civil post. Grant of two family pensions had been prohibited under this sub rule. Similarly,*

sub rule 13-B prohibits grant of two family ., pensions to a person who is already in receipt of Family Pension or is eligible therefor under any other rules of the Central Government or a State Government and/or Public Sector Undertaking/Autonomous Body/Local Fund under the Central or a State Government. The sub-rules 13-A and 13-B have since been omitted vide the above mentioned Gazette notification.

5. *It is clarified that financial benefits in past cases will accrue with effect from 24th September, 2012.*

6. *As regards pensioners/family pensioners belonging to the Indian Audit and Accounts Departments, these Orders issue after consultation with the Comptroller and Auditor General of India.*

(Sujasha Choudhury)
Deputy Secretary to the Govt. of India
Tel. No. 24635979

All Ministries/Departments of the Government of India
O/o The Comptroller & Auditor General of India
O/o The Controller General of Accounts, Lok Nayak Bhavan, New Delhi”

7. In view of the aforementioned Office Memorandum dated 16.01.2013, the petitioners, as a matter of principle, decided to allow continuance of family pension to mentally/physically disabled children, who drew, are drawing or may draw family pension even after their marriage. It has also been clarified that the financial benefits in past cases will accrue with effect from 24.09.2012. Be that as it may, the Office Memorandum dated 16.01.2013 gives a right to the married mentally/physically disabled children to claim family pension.

8. It is of relevance to note that Rule-54 of CCS (Pension) Rules, 1972 deals with family pension. Rule-54 (6) states about the period for which the family pension is payable. A handbook on Family Pension under CCS (Pension) Rules, 1972 issued by the Government of India, Department of Pension and Pensioners' Welfare in January, 2020, Clause-4 of which deals with eligibility of disabled child. The said clause reads as follows:-

“4. Eligibility of Disabled Child.

(i) *If the son or daughter of a Government servant is suffering from any disorder or disability of mind (including 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.*

(sub-rule 6 of Rule 54)

(ii) *The family pension is payable to the disabled children for life after the youngest child attains the 25 years of age years. Thereafter family pension shall be resumed in favour of the child suffering from disability.*

(sub-rule 9 of Rule 54)

(iii) *The name of disabled child /permanently disabled, sibling will be added to the PPO issued to the retiring Government servant if there is no other eligible prior claimant for family pension.*

(OM 1/27/2011-P&PW dated 1st July, 2013)

(iv) *Non-intimation of physical/mental handicap does not make a child ineligible for family pension. A disability certificate issued after the death of the employee /pensioner or his/her spouse for a disability which existed before their death may be accepted by the Appointing Authority.*

(DoP&PW OM 1/18/2001-P&PW dated 25th/26th January 2016)

(v) *The family pension shall be paid to such son or daughter through the Guardian if he or she is a minor.*

(DoP&PW OM 1/47/87-P &PW date 30th March 1989)

(vi) *The Government has decided to allow continuance of family pension to mentally/physically disabled children even after their marriage.*

(DoP&PW's OM 1/33/2012-P&PW (E) dated 16/01/2013)

(vii) *Guardianship Certificate issued by the Local Level Committee constituted under the provisions of the National Trust Act, 1999, for the purpose of grant of family pension in respect of child suffering from the disabilities of mind (including mentally retarded), will be accepted.*

(DoP&PW OM 1/4/06-P&PW date 31st July 2006)

(viii) *It shall be the duty of the Guardian or son or daughter to furnish a certificate to the Treasury / Bank, as the case may be, every year to the effect that (1) he / she has not started earning, his / her livelihood; and (2) not yet married. However in case of disability, child or the guardian is required to produce the certificate in every five years to the effect that he/she continues to suffer from the disability or disorder of mind or continues to be physically crippled or disabled."*

(Sub rule 6 of Rule 54 of the CCS (Pension) Rules, 1972)"

9. On perusal of the aforementioned Clause-4(i), it is made clear that if the son or daughter of a Government servant is suffering from any disorder or disability of mind (including 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. Under Sub-clause (vi) of Clause-4, it has been indicated that by virtue of the Office Memorandum dated 16.01.2013, the Government has decided to allow continuance of family

pension to mentally/physically disabled children of the deceased pensioner even after their marriage.

10. Undoubtedly, Rule-54(6) entitles the disabled child suffering from any disorder or disability of mind (including mentally retarded) to get the family pension even after attaining the age of 25 years. The distinction between Clause-4(i) and Clause-4(vi) is that disabled son and daughter of the deceased Government servant is entitled to get the family pension, even after attaining the age of twenty five years, however, under Sub-clause (vi), the Government has decided to allow continuance of family pension to mentally/physically disabled children even after their marriage, with effect from 24.09.2012, by issuing Office Memorandum dated 16.01.2013. The reason behind such fact is obvious, because none is there to look after the disabled children after the death of the pensioner. Therefore, the benefit of family pension is admissible to the children of the deceased pensioner, if they are unable to earn their living, even after attaining the age of twenty five years, for life as per Clause-4(i). Whereas if there is a married physically disabled child, although he/she can be

looked after by the spouse, but taking into consideration the difficulties faced by such families, the Government became compassionate and took a decision to allow continuance of family pension to mentally/physically disabled children, even after their marriage, pursuant to the Office Memorandum dated 16.01.2013.

11. There is no dispute before this Court that the deceased employee had not included the name of his disabled child, the opposite party herein, in the PPO. Had it be done so, as the family pension case is uploaded in the web portal “Bhavishya Support”, the opposite party could have been automatically permitted to get family pension with effect from 21.05.2008, i.e. the date next to the date of death of his pensioner-father. But due to non-inclusion of his name in the PPO, his name was not uploaded in the web portal “Bhavishya Support” so as to get the benefit of family pension with effect from 21.05.2008, i.e. the next date to the date of death of the pensioner. As a matter of fact, the married disabled child was not eligible to get family pension as per the instructions issued by the Department. But, by virtue of the Office Memorandum dated 16.01.2013, since

the married disabled child has been included to get family pension, giving effect from 24.09.2012, then a right has been accrued in favour of the opposite party to claim such benefit. Admittedly, the opposite party had submitted an incomplete application with many discrepancies in February, 2017 for grant of family pension, which he was required to comply. When he complied with such discrepancies, thereafter, he was extended with the benefit of family pension with effect from 31.01.2020, which was communicated to him by 14.05.2020 through e-mail.

12. In view of the aforesaid facts and circumstances, now it is to be considered whether the opposite party, as the disabled child, is entitled to get family pension from the next date to the date of death of his father-pensioner, i.e., with effect from 21.05.2008, or as a married disabled child of his deceased father-pensioner with effect from 24.09.2012, pursuant to the Office Memorandum dated 16.01.2013, or the date, when he complied all the requirements and from which the family pension has been granted by the petitioners, i.e. 31.01.2020.

13. As per Rule-54(6) a disabled child is entitled to get family pension from the next date of death of the pensioner and there is no dispute with regard to such proposition. There is also no dispute that the opposite party is the disabled child of the deceased pensioner. But fact remains, this fact was not brought to the notice of the authority by mentioning his name in the PPO by the deceased pensioner. Therefore, on the death of the pensioner, i.e., on 20.05.2008, automatically the pension was to be ceased w.e.f. 21.05.2008, since his wife had already died on 05.02.1992 and there was no occasion of her getting the family pension after the death of the pensioner automatically. It was the responsibility of the pensioner to bring to the notice of the authority that he had been survived by a disabled child by mentioning his name in the PPO. As the name of the opposite party was not found placed in the PPO, the family pension admissible to the disabled child could not be disbursed to him w.e.f. 21.05.2008. Even though the opposite party, being a married disabled child, under the rules, was not entitled to get family pension on the death of his father-pensioner, but

in view of the Office Memorandum dated 16.01.2013 issued by the Government, he is entitled to get such benefit with effect from 24.09.2012, since marriage of the opposite party is not in dispute, be there a dispute with regard to its date of solemnization, i.e., 02.07.2002, pursuant to the certificate issued by the Sarpanch, Balarampur G.P., or 05.07.2012, pursuant to the registration made before the Registrar of Marriage, Jagatsinghpur registration certificate issued under Section 8 of the Hindu Marriage Act, 1955 & Orissa Hindu Marriage Registration Rules, 1960.

14. It is a fact that the opposite party had submitted his application for grant of family pension in February, 2017. Although the said application was incomplete one having many discrepancies, but the petitioners processed the same and allowed the benefit of family pension to the opposite party with effect from 31.01.2020. But, while extending such benefits, the petitioners lost sight of the fact that a married disabled child is entitled to get the benefit of family pension with effect from 24.09.2012, as per Office Memorandum dated 16.01.2013 issued by the Government of India. It is the case of the petitioners that on the basis of

the application filed by the opposite party in February, 2017, his case for grant of family pension was processed, but delay was caused on account of non-furnishing of the requisite documents by him relating to the percentage of disability qualifying as “unable to sustain his livelihood” as well as annual income. When the said requirements were complied with by the opposite party, the petitioners allowed the pensionary benefits with effect from 31.01.2020. But fact remains, by that time, a right had already been accrued in favour of the opposite party, pursuant to the Office Memorandum dated 16.01.2013 giving financial benefit in past cases with effect from 24.09.2012. There is no dispute that the case of the opposite party is a past case, as because his name having not been included in the PPO, he was not extended with the benefit of family pension from the next date to the date of death of the pensioner. But due to inclusion of married disabled child, pursuant to the Office Memorandum dated 16.01.2013 giving effect from 24.09.2012, a right was accrued in favour of the petitioner to get such benefit.

15. In the Constitution Bench, decision in the case of **Chairman, Railway Board and others v. C. R. Rangadhamaiah and others**, A.I.R. 1997 SC 3828, the Hon'ble Supreme Court was considering the amendment brought into Rule - 2544 of the Indian Railway Establishment Court, Vol. II (Fifth Reprint) which was given retrospective effect. The said Rule was amended by Notification No. G.S.R. 1143 (E) with effect from 1st January, 1973 and by Notification No. G.S.R. 1144 (E), the amendment was made with effect from 1st April, 1979. The Hon'ble Supreme Court, in paragraph - 20 of the said judgment held as follows:-

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively".

Again in paragraph 24 of the said judgment in the case of Chairman, Railway Board and others (supra), it was held thus :-

"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 not 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)".

16. Ultimately, it was held by the apex Court that the impugned amendments in so far as they have been given retrospective operation are violative of the rights guaranteed under Articles 14 & 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments have the effect of reducing the amount of pension that has become payable to the employees, who had already retired from service on the date of issuance of the notifications as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

17. The aforesaid Constitution Bench decision, therefore, has emphasized with regard to the right of an employee, which has accrued in his favour on the date he retired and such right cannot be taken away by amending the Rules retrospectively prior to his retirement.

18. In the case of **State of Madhya Pradesh and others v. Yogendra Shrivastava**, (2010) 12 SCC 538, the Hon'ble Supreme Court was considering the amendment brought to Madhya Pradesh Employees' State Insurance Service (Gazetted) Recruitment Rules, 1981 by Notification dated 20.05.2003 giving it a retrospective effect from 14.10.1982. By the said amendment, the earlier provision in the Rule prescribing payment of None Practising Allowance @ 25% of pay was amended to the effect that "NPA at such rates as may be fixed by the State Government from time to time by the orders issued in this behalf" in place of words "NPA @ 25% of the pay" wherever they occurred in the Rules.

19. On considering the said question, the Hon'ble Supreme Court, in paragraph - 15 of the said judgment in

the case of State of Madhya Pradesh (supra) held as follows:-

15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C. Singhal v. Armed Forces Medical Services ; K.C. Arora v. State of Haryana and T.R. Kapur v. State of Haryana). Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to the non-practising allowance @ 25% of their pay up to 20-5-2003."

20. In a large number of cases, the Hon'ble apex Court has categorically laid down that the right of an employee, which accrued in his favour on the date of appointment, cannot be taken away by the amending provisions of the Rules concerning the service with retrospective effect. An employee, while entering into service, is subjected to the condition of service as on the date, when he joins. Any right given to such employee under the provision of any Act or Rules governing the employment, if taken away by amending such Rules with

retrospective effect, the same would amount to violating the Rules under Articles 14 & 16 of the Constitution.

21. Applying the above analogy to the present case, the right, which had been accrued in favour of the opposite party in pursuance of the Office Memorandum dated 16.01.2013 extending the benefit of family pension to a married disabled child with effect from 24.09.2012, cannot be taken away by the authority on the plea that the application submitted by the opposite party was incomplete or there were discrepancies in the application of the opposite party filed in February, 2017. In other words, the right, which had been accrued in favour of the opposite party, pursuant to the Office Memorandum dated 16.01.2013, should not have been taken away by the petitioners by extending the benefit of family pension to him with effect from 31.01.2020, instead of 24.09.2012, on the ground of some procedural lapses.

22. In the light of the foregoing discussions, this Court is of the considered view that the opposite party, being a married disabled child of the deceased pensioner,

pursuant to the Office Memorandum issued on 16.01.2013, is entitled to get the family pension with effect from 24.09.2012, instead of 21.05.2008, i.e. the next date of the death of the pensioner, as his name was not included as a disabled child in the PPO. Consequentially, the order dated 17.12.2021 passed in O.A. No. 438 of 2020 and the order dated 19.05.2022 passed in M.A. No. 197 of 2022 by the Central Administrative Tribunal, Cuttack Bench, Cuttack are modified to the extent that the opposite party is entitled to get the family pension with effect from 24.09.2012, but not with effect from 21.05.2008, i.e. the next date of the death of the pensioner. The entire benefits of family pension with effect from 24.09.2012 and the arrears thereof shall be extended to the opposite party within a period of three months from the date of communication of this judgment, failing which the same shall carry interest @ 6% on the delayed payment, which shall be recovered and paid to the opposite party from the officer concerned, who shall be responsible for such further delay.

23. With the above modification of the order dated 17.12.2021 passed in O.A. No. 260/00438 of 2020 and

order dated 19.05.2022 passed in M.A. No. 260/00197 of 2022 by the Central Administrative Tribunal, Cuttack Bench, Cuttack, the writ petition stands disposed of. There shall be no order as to costs.

.....
DR. B.R. SARANGI,
JUDGE

B.P. SATAPATHY, J. I agree.

.....
B.P. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 1st November, 2022, Arun/GDS

