

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.11517 of 2016

Golak Chandra Mallick

.....

Petitioner

Mr. J. M. Pattnaik, Advocate

Vs.

Union of India and others

.....

Opposite Parties

Mr. D.K.Sahu, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

06.05.2022

Order No.

19.

This matter is taken up through hybrid mode.

2. Heard Mr.J.M. Pattnaik, learned counsel for the petitioner and Mr. D.K.Sahu, learned CGC for the opp. parties.

3. The petitioner has filed this writ petition challenging the order dated 04.02.2016 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.730 of 2013 by which the application filed by the petitioner was dismissed on the observation that the petitioner was satisfied with the order dated 16.11.2004 and the said order was not sought to be quashed in the O.A.

4. Mr. J.M.Pattnaik, learned counsel appearing for the petitioner contended that the petitioner was initially recruited as Amin in the office of the erstwhile Executive Engineer, Potteru Canal Division during February, 1976 and, subsequently was appointed as Surveyor (Junior) in the office of the erstwhile Deputy Director (Agriculture) under Dandakaranya Project of Government of India. Due to the closure of said Dandakaranya Project, he was declared surplus with effect from 01.08.1987 and, being the surplus employee, he was absorbed in the Central Ground Water Board as LDC in the pay scale of Rs.950-20-1150-25-1500/- vide order dated 8th September,1987, but he was allowed the pay scale of Rs.975-1540/- as personal to him because he was deployed

in post carrying lower scale of pay and according to the CCS (Redeployment of Surplus Staff) Rules, 1990, higher pay was required to be allowed as personal to him. While continuing as Surveyor under the Dandakaranya Development Project, he was given the pay scale of pay of Rs.260-430/- whereas the pay scale of Surveyor at that point of time was Rs.300-560/-. As per the recommendation of 4th CPC, the scales were revised to Rs.975-1540/- and Rs. 1200-2040/- but subsequently on the demand made by many surveyors both the scales were merged and a common scale of pay of Rs. 1200-2040/- was prescribed. As the petitioner at the time of re-deployment, was ignorant the above fact, he accepted the pay scale of Rs.975-1540/- as personal to him. After joining under the DNK, he came to know that the pay scale of the surveyor had been revised to Rs.1200-2040/- with effect from 01.01.1986. Therefore, the petitioner made a representation, with a prayer to allow him the said scale of pay, but as there was no response to the said representation, he filed OA No.88 of 2000 before the tribunal praying for direction to the State authorities to grant him the pay scale of Rs.1200-2040/- with effect from 01.01.1986 and Rs.4000-6000/- with effect from 01.01.1996 which was rejected vide order dated 08.05.2001. Thereafter, he filed R.A. No.11 of 2001, which was disposed of on 30.08.2004 with the observation that if the petitioner has not been given the benefit of the revised pay scale of Surveyor during his service period under the Dandadkaranya Development Project from 01.01.1986, the petitioner may submit representation to the competent authority and the same shall be considered by the authority within a period of 60 days from the date of receipt of such representation. Pursuant to which the petitioner submitted a representation on 27.09.2004 which was considered and rejected vide order dated 16.11.2004. Challenging the said order, the petitioner filed another O.A. before the tribunal on 09.11.2005. Since the said matter was not taken up, the petitioner preferred another representation on 22.10.2012 and thereafter since nothing was communicated to the

petitioner pursuant to his representation dated 22.10.2012, he approached the tribunal in O.A. No.730 of 2013. But the tribunal while entertaining the said O.A., came to a conclusion that the petitioner was satisfied with the said order dated 16.11.2004, as the same was not sought to be quashed in the O.A. and as such he is not entitled to get such relief. The tribunal without considering the merits of the case and without deciding as to whether the petitioner is entitled to get such benefit or not, rejected the case of the petitioner.

5. Mr. D.K.Sahu, learned CGC contended that since the petitioner is not entitled to get the benefit as claimed by him, the tribunal is well justified by passing a reasoned order in not extending such benefit, thereby no illegality or irregularity has been committed by the tribunal by passing the order impugned. As a consequence thereof the writ application filed by the petitioner merits no consideration.

6. Having heard learned counsel for the parties and after going through the records, it appears from the order impugned itself that the tribunal by taking into consideration that the petitioner had not given any document to show that the Fourth Pay Commission revised the pay scale of Surveyor from 975-1540/- to Rs.1200-2040/- and averment that the petitioner was allowed the pay scale of Rs.1200-2040 is a wrong statement, therefore, on the basis of wrong statement, the benefit cannot be admissible to the petitioner. This observation of the tribunal was refuted by the learned counsel for the petitioner, contending that that if the revised scale of pay is admissible to the post itself, whether the petitioner or somebody else is not the question. The question is the post is admissible to get revised scale of pay. Therefore, if the petitioner is the holder of the post, he is entitled to get such benefit. But the tribunal has not examined the case in its proper prospective and rejected the application on the ground that the petitioner was satisfied with order dated 16.11.2004 and, therefore, he had not sought quashing of the same in the O.A.

7. Needles to say that if the order of the tribunal is examined, it is evident that the tribunal has only noted down various stage for which the benefit has not been extended to the petitioner by quoting different types of orders passed by the tribunal as well as the authority from time to time, but has not come to a finding or reasons as to why the petitioner is entitled to such benefit. The reason, which appears from the order of the tribunal is absolutely a misconceived one in view of the fact that, it has been stated that the petitioner was satisfied with the said order dated 16.11.2004, as the said order was not sought to be quashed in the O.A. Thereby the tribunal has not applied its mind in proper prospective.

8. Hence, the order dated 04.02.2016 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.730 of 2013 is liable to be quashed and is hereby quashed and the matter is remitted back to the tribunal to re-adjudicate the same afresh in accordance with law, by giving opportunity of hearing to the parties concerned.

9. With the aforesaid observation and direction, the writ petition is disposed of.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Bichi