

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3757 of 2011

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Kamadev Samal

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.D.R. Pattanayak,
N.S.Panda & N.Biswal.

For Opp. Parties : Addl. Government Advocate
Mr. Mishra.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संस्थानिक न्यायो

Date of Hearing: 27.06.2022 and Date of Order: 14.07.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Biswal, learned counsel for the Petitioner and Mr. Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. This Writ Petition has been filed by the Petitioner challenging the communication dated 08.06.2010 issued by the Office of Collector, Kendrapada with a direction to resubmit the pension paper of the Petitioner by reducing the Grade

Pay from Rs.4,200/- to Rs.2,400/-.

4. Mr. Biswal, learned counsel for the Petitioner submitted that the Petitioner while continuing as a Work Sarkar under the Water Resources Department, Orissa, he was posted as a Junior Accountant-cum-Asst. Store Keeper in the newly created I.C.D.S, Project by way of redeployment vide communication dated 03.01.2006 issued under Annexure-2.

5. It is submitted that as per the said communication issued under Annexure-2, it was clearly indicated that protection of pay shall be permitted as per rules since the appointment is on redeployment.

6. It is further submitted that pursuant to the said notification, the Petitioner was deployed and posted to Kendrapara District vide order dated 17.06.2006 of the Collector, Kendrapara under Annexure-3 and the Petitioner was posted to I.C.D.S, Project Office at Aul. In the said order dated 17.06.2006, it was also indicated that the drawal of individual pay shall be regulated by the terms mentioned in letter dated 03.01.2006 under Annexure-2.

7. Mr. Biswal further submitted that pursuant to the order of the redeployment and his joining in the establishment of I.C.D.S., Project Office at Aul, the Petitioner was sanctioned with the pay in pay band of Rs.9,300/- to 34,800/- with Grade Pay of Rs.4,200/-. The said fact is also reflected in the document annexed vide Annexure-4 Series.

8. Mr. Biswal further submitted that not only the

Petitioner was allowed with Grade Pay of Rs.4,200/- but also he retired from service on attaining the age of superannuation on 30.06.2009 while in receipt of such Grade Pay. It is submitted that after his retirement, when the Petitioner submitted his pension paper for sanction of pension, the impugned communication under Annexure-7 was issued to the Office of Opposite Party No.4 by the Office of Opposite Party No.3 with a request to resubmit the pension paper by taking the Grade Pay of the Petitioner at Rs.2,400/- instead of 4,200/-.

9. Mr. Biswal learned counsel for the Petitioner submitted that the Petitioner on his redeployment as per Annexure-2, his pay was fixed in the pay band Rs.9,300/- to Rs.34,800 with Grade Pay of Rs.4,200/- and the Petitioner was allowed to draw the said Grade Pay till his retirement on 30.06.2009. It is also submitted that persons similarly redeployed along with the Petitioner were also allowed with the said Grade Pay of Rs.4,200/- and after their retirement they were sanctioned with the pension.

10. Mr. Biswal in support of the same brought to this notice the RTI information provided by the Office of Opposite Party No.4 under Annexure-11. As revealed from the said information, person similarly situated as like the Petitioner was allowed to draw Grade Pay of Rs.4,200/- and after his retirement his pension was also sanctioned taking into account such Grade Pay in question.

11. Mr. Biswal accordingly submitted that since similarly situated employee was allowed the Grade Pay of Rs.4,200/- and after his retirement he was allowed to draw the pension

by keeping the Grade Pay intact, the action of the Opposite Party No.3 in directing the Opposite Party No.4 to reduce the Grade Pay from Rs.4,200/- to Rs.2,400/- is illegal. It is also submitted that prior to issuance of such direction under Annexure-7, the Petitioner was never given an opportunity of hearing nor any show cause was issued to that effect.

12. Mr. Biswal further submitted that due to issuance of Annexure-7, Petitioner was deprived from getting regular pension and other retirement benefits as due and admissible.

13. Mr. Mishra, learned Addl. Government Advocate on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that since the Petitioner was in receipt of scale of pay of Rs.4,200/- to Rs.6,000/- instead of Rs.5,000/- to Rs.8,000/-, he is eligible to get the scale in the Pay Band of Rs.5,200/- to Rs.20,200/- with Grade Pay of Rs.2,400/-. But in the counter affidavit, it has been clearly indicated that the Petitioner prior to his redeployment was in receipt of his pay in the pay scale of Rs.5,000/- to Rs.8,000/-.

14. In view of such rival stand taken in the counter affidavit, this Court is unable to accept the submission made by Mr. Mishra.

15. Be that as it may, since the impugned communication under Annexure-7 has been issued without affording reasonable opportunity of hearing to the Petitioner and without issuing any show cause, the direction contained in the said impugned communication cannot sustain legal scrutiny.

16. Accordingly, while quashing the same, this Court directs the Opposite Party No.3 to re-decide the matter by giving a personal hearing to the Petitioner.

It is also observed that while taking such a decision, the Opposite Party No.3 shall take into consideration the stand taken by the Petitioner that persons similarly situated were not only allowed Grade Pay of Rs.4,200/- but also their pension were sanctioned taking into account the said Grade Pay.

It is also observed that since after retirement of the Petitioner on 30.06.2009 and because of the issuance of the impugned communication under Annexure-7, the Petitioner has been deprived to get his pension and other pensionary benefits, save and except the provisional pension, this Court directs the Opposite Party No.3 to take a fresh decision as indicated hereinabove within a period of three months from the date of receipt of the order. The Opposite Parties are also further directed to take effective steps for sanction and disbursement of all the retirement benefits of the Petitioner as due and admissible within a further period of three months.

16. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 14th of July, 2022/Subrat