
(2002) 06 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 9727 of 2001

Randhir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 94 CLT 317 : (2002) OLR 197 Supp

Hon'ble Judges : R.K. Patra, J;Pradip Mohanty, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; M. Agarwal, Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

Pradip Mohanty, J.—This is an application under Articles 226 and 227 of the Constitution of India in which challenge is made to the legality and propriety of the order passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 512 of 2000 dismissing the Original application filed by the petitioner for being fitted in the higher scale of Pay of Rs. 5500/- -- 9000/-.

2. The case of the petitioner in nut shell is that, he was working as Radio Technician in the Department of Light Houses and Light Ships under the Ministry of Surface and Transport. The Director General (Opp. party No. 2) had issued an office order dated 15.1.1998 under Annexure - 1 according approval for grant of higher scale of pay of Rs. 5500-175-9000/- to the Technicians (General/Electrical/Electronics/Diesel/Incharge) with effect from 1.1.1996. Since the petitioner was left out, he felt aggrieved and made a representation to opposite party No. 2 to upgrade his scale of pay on the basis of recommendation of the 5th Pay Commission, the extract of which is filed herewith as Annexure- 2. Since no order was passed on the said representation, the petitioner approached the Central Administrative Tribunal in O.A. No. 512 of 1998 praying for a direction to upgrade his scale of pay as per the recommendation of the 5th Pay Commission.

The Tribunal, however, dismissed the original application filed by the petitioner, by its order dated 28.9.2000 (Annexure- 4), This order of the Central Administrative Tribunal is assailed by the petitioner in this writ petition.

A counter-affidavit has been filed by the opposite parties justifying their action. It has been contended in the counter-affidavit that the Central Pay Commission recommended higher scale of pay of Rs. 1640-2900/- (pre-revised) in respect of the posts of Technicians in the disciplines of Electrical/Electronics/General with 30% of promotional avenue to be placed in the replacement scale for those Technicians on the ground that promotional avenues for the category is inadequate for which there was stagnation. But so far as Radio Technicians are concerned, they are eligible to get two promotions, such as Senior Radio Technician and Assistant Engineer (Electronics) for which it was considered not to grant the higher scale of pay to the Radio Technicians.

3. We have heard the petitioner, who appeared in person and Mrs. M. Agarwal, learned Senior Standing Counsel (Central) for the opposite parties.

The petitioner with reference to the recommendation of the 5th Pay Commission submits that, 30% from all the categories of Technicians in the establishment of the Director General, Light House's and Light Ships are entitled to be placed in the replacement scale of pay corresponding to Rs. 1640-2900/- (pre-revised). Therefore, according to the petitioner, he, being of the category of Technician, is eligible to be upgraded, but opposite party No. 2, while issuing the order under Annexure- 1 had not considered the case of the Radio Technicians for upgradation which is discriminatory. It is his further contention that, the post of Radio Technician is interchangeable with that of the Electronics Technician. But in case of Electronics Technician, 30% upgradation having been extended to the said faculty, there is no justification to deny the same benefit to the Radio Technicians.

The learned Standing Counsel (Central), on the other hand, submits that promotional avenues being made available to the Radio Technicians, their case was not considered for upgradation.

Upon hearing the petitioner in person and the learned counsel for the opposite parties, we find force in the argument advanced by the petitioner. The extract of the recommendation made by the 5th Pay Commission is quoted below for ready reference :

"87.44. There are posts of Junior Technician in the scale of pay of Rs .1200-1800 and Technician in the scale of Rs. 1400-2300 in different engineering disciplines. Incumbents of these posts are responsible for fabrication of navigational aids in the departmental workshops and their maintenance and repairs. It has been represented that though the scale of pay of the Technicians was earlier the same as that applicable to the post of Head Light Keeper, the Fourth CPC placed the latter in the higher scale of pay of Rs, 1640-2900. The higher scale of pay has, therefore, been demanded for the posts of Technician. After careful

consideration, and having regard to the fact that (a) the recommendation of the Fourth CPC that a selection grade may be provided for a few posts of Technician has not been implemented so far, and (b) the promotion avenues for this category are inadequate as a result of which there is acute stagnation in the cadre, we recommend that 30 per cent of the posts of Technician in each discipline may, be placed in the replacement scale of pay corresponding to Rs. 1640-2900, the remaining 70 per cent of the posts being retained in the replacement scale of pay corresponding to Rs. 1400-2300. Besides, based on our recommendations on rationalisation of scales of pay, the posts of Junior Technician may be placed in the replacement scale of pay corresponding to Rs. 1320-2040. "

Undisputedly the 5th Pay Commission has clearly recommended that 30% of the posts of Technicians in each discipline may be placed in the replacement scale of higher pay of Rs. 1640-2900-(pre-revised). On the basis of such recommendation, opposite party No. 2 issued the office order under Annexure- 1 according approval for grant of the scale of Rs.5500-9000/- with effect from 1.1.1996 to the Technicians (Diesel /Electrical/Electronics/General/ Incharge) constitution 30% of the said posts. Since the 5th Pay Commission has recommended for upgradation of Technicians of all disciplines, there is absolutely no justification for the Director General (Opp. party No. 2) not to incorporate the posts of Radio Technician in the office order under Annexure-1. A bare reading of such recommendation appears inclusion of all the Technicians and no category has been specifically mentioned. Non-inclusion of the Radio Technician in Annexure-1 is illegal. In other words, the recommendation of the 5th Pay Commission includes within its sweep all the categories" including Radio Technicians. Moreover that, the posts of Radio Technician are interchangeable with Technicians (Electronics) has, in fact, not been controverted by the opposite parties. Since the posts of Radio Technician are inter-changeable with the posts of Electronics Technician; and the recommendation of the 5th Pay Commission is made applicable to the Electronic Technicians, there is no justification not to apply the said recommendation to the Radio Technicians.

4. For the above reasons, the impugned order of the Central Administrative Tribunal under Annexure-4 cannot be sustained and has to be set aside. The same is hereby quashed. The opposite ? parties are directed to pass appropriate orders upgrading petitioner"s pay scale to Rs. 5500-9000/- with effect from 1.1.1996 with consequential benefits within three months of receipt of the writ from this Court.

The writ application is accordingly allowed. No Cost. R.K.

Patra, J.

5. I agree.