
(2005) 07 OHC CK 0036
In the Orissa High Court
Case No : O.J.C. No. 3091 of 2000

Shri Sarangadhar Raiguru

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Police Service (Cadre) Rules, 1954 — Rule 9
Police Service (Pay) Rules, 1954 — Rule 4(4)

Citation : (2005) 2 OLR 354

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Judgement

1. Heard Mr. Ganeswar Rath, learned counsel for the petitioner and learned Addl. Govt. Advocate.

2. This writ petition has been filed against the judgment and order dated 23.02.2000 passed by the Central Administrative Tribunal, Cuttack Bench in O.A.No. 97 of 1995 dismissing the O.A.

3. The petitioner was a member of Orissa Police Service vide Order dated 18.06.1982, he was allowed officiating promotion to the rank of IPS and posted as Additional Superintendent of Police (Rural), Cuttack, where he joined on 23.6.1982. When he was denied the D.A. and A.D.A. at the Central rate, he filed a writ petition in this Court registered as O.J.C. No. 1532 of 1986, which was later on transferred to the Central Administrative Tribunal, where the same was numbered as T.A.No. 2 of 1988. While disposing of the said application the Tribunal directed that the petitioner shall be entitled to IPS scale of pay from 23.06.1982 to 7.07.1988. The petitioner was later on sent on deputation to Orissa State Road Transport Corporation as Chief Vigilance and Enforcement Officer and he remained there with effect from 01.07.1988 to 08.03.1989. In the meantime, he was promoted on regular basis to the IPS cadre with effect from 01.02.1989, but he was not given the benefit of pay, which was drawn by him in IPS cadre lastly, i.e., before going on deputation. However, in T.A.No. 2 of 1988,

i.e. the Tribunal vide order 31.03.1989 directed the Government of India to create a temporary post of Additional Superintendent of Police in IPS cadre for the period from 23.06.1982 to 07.07.1988 and regularise the pay and allowances of the petitioner. Pursuant to the said order, the Central Government in the Ministry of Home Affairs vide order dated 10.07.1991 sanctioned a temporary post of Additional Superintendent of Police in the IPS cadre for the period from 23.06.1982 to 07.07.1988. The said letter was addressed to the Government of Orissa, the relevant portion of which is reproduced hereunder :

"3. In its judgment dated 31.03.89 in TA No. 2/88 (arising out of OJC No. 1532 of 1986) filed by Shri S.D. Raiguru v. State of Orissa and Ors., the Hon"ble Tribunal concluded that the officer had discharged the duties and responsibilities of the Cadre post of Addl. S.P. and as such he should be given not only pay but also the allowance attached to the post.

4. With a view to regularise the pay and allowances of Shri S.D. Raiguru in compliance with the above judgment, approval of Government of India is conveyed for creation of a temporary post of Addl. S.P. to the IPC Cadre of Orissa for the period from 23. 6.82 to 7.7.88."

Accordingly, the pay of the petitioner was fixed in the revised scale of pay of IPS, but he was not confirmed in the said cadre and was allowed to continue on officiating basis. He filed O.A.No. 97 of 1989 before the Central Administrative Tribunal and the Tribunal vide its order dated 19.03.1990 held that the petitioner be deemed to have been promoted to IPS cadre with effect from 01.02.1989. However, since the petitioner was not granted annual increments in the IPS cadre from 01.06.1989, he again approached the Central Administrative Tribunal by filing O.A.No. 97 of 1995. The Tribunal has, by the impugned order, rejected the claim of the petitioner. Hence he has filed the instant writ petition.

4. Learned counsel for the petitioner submitted that the petitioner does not want to press any relief except fixation of his pay. Therefore, this Court is to consider whether the petitioner is entitled to get the pay at the time of/his regular promotion not less than drawn lastly in IPS cadre when he was granted officiating promotion.

5. In the above regard, it is necessary to peruse the provisions of the Indian Police Service (Pay) Rules, 1954 (for short "the Rules"), Sub-rule (4) of Rule 4 of which provides that the pay of a promoted officer who had already held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section II of Schedule II. Section II of Schedule II provides that in such circumstances his pay shall be fixed at a stage not lower than the pay he drew in the senior time-scale of the Indian Police Service while last officiating in a cadre post. Rule 4(4) of the Rules as well as Section II (1) of Schedule II are reproduced hereunder :

"4. Fixation of initial pay in the time-scale -

xx xx xx (4) The initial pay of a promoted officer who on the date of his appointment to the Indian Police Service had held or is holding continuously a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section II of Schedule II."

Section II - Fixation of initial pay of Promoted Officers falling under Rule 4(4).

(1) In the case of a promoted officer who has already officiated in a cadre post and such an officiation has been held by the Central Government and wherever necessary in consultation with the Union Public Service Commission to be in accordance with Rule 9 of the Indian Police Service (Cadre) Rules, 1954, prior to his appointment to the service, his pay shall be fixed at a stage not lower than the pay he drew in the senior time-scale of the Indian Police Service while last officiating in a cadre post."

6. Since Rule 9 of the Indian Police Service (Cadre) Rules, 1954 has been referred to above, it is also necessary to reproduce the said Rule.

"9. Temporary appointment of non-Cadre officers to Cadre posts - (1) A cadre post in State shall not be filled by a person who is not a cadre officer except; in the following cases, namely :

(a) If there is no suitable cadre officer available for filling the vacancy :

Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be replaced by the cadre officer :

Provided further that if it is proposed to continue the person who is not a Cadre officer beyond a period of three months, the State Government shall obtain the prior approval of the Central Government for such continuance;

(b) if the vacancy is not likely to last for more than three months :

Provided that if the vacancy is likely to exceed a period of three months, the State Government shall obtain the prior approval of the Central Government for continuing the person who is not a cadre officer beyond the period of three months.

(4) A cadre post shall not be filled by a person who is not a cadre officer except in accordance with the following principles, namely :

(a) if there is a Select List in force, the appointment or appointments shall be made in the order of the names of the officers in the Select List;

(b) if it is proposed to depart from the order of names appearing in the Select List, the State Government shall forthwith make a proposal to that effect to the Central Government together with reasons therefore and the appointment shall be made only with the prior approval of the Central Government ;

(c) if a Select List is not in force and it is proposed to appoint a non-Select List Officer, the State Government shall forthwith make a proposal to that effect to

the Central Government together with reasons therefore and the appointment shall be made only with the prior approval of the Central Government.

(3) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period of exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned."

7. Since the Central Government had created a post of Additional Superintendent of Police in the IPS cadre of Orissa from 23.06.1982 to 07.07.1988, in which the petitioner was allowed officiation and there was no necessity to obtain the approval of the Union Public Service Commission for that period at the time fixation of pay of the petitioner on regular promotion to the IPS cadre, the above quoted provisions were to be applied. The same has not been done. Therefore, this Court is of the opinion that the pay of the petitioner should be re-fixed in accordance with the provisions of Rule 4 (4) and Section II (1) of Schedule II of the Rules.

8. In view of the above-mentioned facts and circumstances, the writ petition is allowed in part. The impugned judgment and order passed by the Central Administrative Tribunal is quashed and the orders contained in Annexures 16 and 17 in so far as they relate to fixation of pay of the petitioner with effect from 01.02.1989 are also quashed. The opposite parties are directed to re-fix the pay of the petitioner following the provisions of Rule 4 (4) and Section II (1) of Schedule II of the Rules with effect from 01.02.1989. His pay shall be re-fixed at the rate of the pay last drawn by him in IPS cadre, i.e., during his posting as Additional Superintendent of Police, which was on 07.07.1988. He will be entitled to get arrears of salary accordingly. This order shall be complied with within a period of 90 days from the date of receipt of its certified copy.

Urgent certified copy of this order be granted as per rules.