
(2019) 01 OHC CK 0043

In the Orissa High Court

Case No : Writ petition (C) No. 19368, 18751, 19361, 19368, 19370 Of 2018

State Of Odisha

APPELLANT

Vs

Harsha Bardhan Udgate

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Citation : (2019) 01 OHC CK 0043

Hon'ble Judges : K.S. Jhaveri, CJ;K.R. Mohapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. These writ petitions have been filed challenging a common order dated 16.11.2017 passed by the learned Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No. 762 of 2017 along with a batch of similar Original Applications. Learned Tribunal by virtue of the impugned order quashed the office order dated 29.08.2016 issued by the Forest and Environment Department, Government of Odisha and directed that the applicants (in O.A.) should continue in the grade pay of Rs. 7,500/- towards 2nd up-gradation under RACPs in P.B-3 in the scale of pay of Rs. 15,600/- to 39,100/-. Perused record, more particularly, the impugned order dated 16.11.2017, in paragraph-7 of which learned Tribunal has observed as under:
â??7) As per the Govt. of Odisha in Finance Department resolution dt.6.2.2013 vide Annexure-5, an employee on completion of 20 years of service and has got only one up-gradation either by promotion or by RACPs will be considered for 2nd up-gradation. Previously, the post of Range Officer and ACF were both class-II posts and in order to obviate the anomalous position

between the said two posts, the ACFs were conferred with Group-A (J.B.) status with a different scale of pay than the Range Officer and they were given scale of pay of Rs. 8000/- to Rs. 13500/- which were subsequently revised to P.B.-3 of Rs. 15600/- to 39100/- with G.P. Rs. 5400/- as per ORSP Rules, 2008 w.e.f. 13.10.2009 i.e. the date since when the ACFs were declared Group-A (J.B.). But the fact remains that the ACF is entry grade post. So, declaring the ACF as Group-A (J.B.) with a higher scale of pay cannot be treated as promotion. The next promotion of ACF is OFS, Group-A (S.B.) carrying scale of Rs. 15600/- to Rs. 39100/- with G.P. Rs. 6600/- and the applicants have been promoted to OFS, Group-A post before 1.01.2013. So, for all practical purpose, they have got only one promotion i.e. to the post of OFS, Group-A and therefore they are entitled for 2nd RACPs after completion of 20 years of service as they have got only one up-gradation by way of promotion. Conferring Group-A (J.B) status to ACF which was entry grade post cannot be treated as promotion. Accordingly, the authority had properly given the 2nd up-gradation to the applicant vide Annexure-7 dt.19.10.2015 granting the grade pay of Rs. 7600/- in P.B-3 in scale of Rs. 15600/- to Rs. 39100/-. The Govt. of Orissa, Finance Department office Memorandum dt.23.2.2016 on the basis of which the impugned order Annexure-8 dt.29.8.2016 has been passed is not tenable because the Finance Department Office Memorandum dt.23.2.2016 is not in consonance with the RACP scheme i.e. resolution dt.6.2.2013 and therefore, the resolution is to be followed and not the Office Memorandum dt.23.2.2016. When the benefit of grade pay of Rs. 7600/- has been granted to the applicants after completion of 20 years of service as 2nd up-gradation w.e.f. 1.2.2013 by the order passed in 2015 in terms of the resolution dt.6.2.2013, the same cannot be withdrawn merely on the basis of subsequent clarification given by the Finance Department office Memorandum dt.23.2.2016.â??

3. We are in complete agreement with the view taken by the learned Tribunal. Hence, no case is made out to interfere with the order impugned herein. Accordingly, the instant writ petitions deserve to be dismissed and we direct the same. No costs.