

(2025) 07 OHC CK 1242
In the Orissa High Court
Case No : Writ Petition (C) No. 21713 Of 2024

Union Of India And Another

APPELLANT

Vs

Rudra Narayan Mishra Vs

RESPONDENT

Date of Decision : 02-07-2025

Acts Referred:

Citation : (2025) 07 OHC CK 1242

Hon'ble Judges : S.K. Sahoo, J;S.S.Mishra, J

Bench : Division Bench

Advocate : Deepak Gochhayat, Nirmal Ranjan Routray

Final Decision : Dismissed

Judgement

S.S. Mishra, J

1. The present Writ Petition is filed assailing the order dated 16.11.2023 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.230 of 2011, whereby the learned Tribunal directed the petitioners to re-fix the pay of the opposite party (Rudra Narayan Mishra) by adding 30% pay element, and to pay the differential amount after such re-fixation, within 180 days.

2. Heard Mr. Deepak Gochhayat, learned Central Government Counsel appearing for the Union of India-petitioners and Mr. Nirmal Ranjan Routray, learned counsel appearing for the opposite party.

3. A terse and brief narration of facts is provided for clear understanding and appreciation:-

(a) The opposite party, Rudra Narayan Mishra, was initially appointed as a Goods Guard in the pay scale of Rs. 4500-7000/- (pre-revised) with effect from 06.10.2003 under the Divisional Railway Manager, Sambalpur and posted at Titilagarh.

(b) While serving as Goods Guard, the opposite party appeared for and was empanelled through the General Departmental Competitive Examination (GDCE) for the post of Traffic Apprentice. Pursuant to the Chief Personnel Officer's letter, he was sent for initial training for the post of Traffic Apprentice, and after completing the prescribed training and examinations, he was posted as Deputy Station Superintendent in the pre-revised scale of Rs.5500-9000/- on a regular basis under Station Manager, Dunguripali Station, East Coast Railway, Sambalpur Division, by Office Order dated 22.05.2008.

(c) Upon joining as Deputy Station Superintendent (DSC) through GDCE, his pay was fixed in the pre-revised scale of Rs.5500-9000/- with effect from 01.08.2005 on a pro-forma/notional basis, with actual monetary benefit from 22.05.2008, the date of his joining for the purpose of drawing increment.

(d) After more than a year, the opposite party submitted representations and sought information under RTI, claiming that his pay should be fixed by adding a 30% pay element, as he had been selected from the running cadre of Goods Guard. However, the authorities, through a letter dated 07.08.2009, informed him that since the GDCE scheme is voluntary in nature, the benefit of reckoning the pay element for fixation of pay of running staff on their appointment to posts under the GDCE scheme is not admissible as per Railway Board Establishment (RBE No. 132 of 2006). Consequently, his pay was fixed without including the 30% pay element.

4. Aggrieved by this decision, the opposite party filed O.A. No.230/2011 before the learned Central Administrative Tribunal, Cuttack Bench, Cuttack which initially dismissed the application on 15.10.2014.

5. The opposite party then filed Writ Petition No.21198 of 2014 before this Court and the Division Bench of this Court vide order dated 26.10.2022 quashed the order passed by the learned Tribunal on procedural grounds and remitted the matter back to the Tribunal for fresh adjudication. For ready reference, relevant part of the said order is reproduced hereunder:-

"5. Mr. D. Gochhayat, learned Central Government Counsel appearing for the opposite parties relying upon the counter affidavit stated that the Tribunal is well justified in passing the order impugned, which does not warrant any interference of this Court at this stage. It is further contended that the scale of pay of the petitioner has been fixed on his appointment to working post Dy. S.S. considering notional pay at Rs.5500/- w.e.f. 01.08.2005 under RS (RP) Rules, 1997, getting pay fixation notionally w.e.f. 01.01.2006 as per RS (RP) Rules, 2008 and allowing onwards notional increments as per extant rules applicable for direct recruits. Therefore, it is contended that this Court should not interfere with the order passed by the tribunal.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner claims for fixation of his scale of pay and, as such, it is contended that the reliance placed on RBE No.132/2006 issued

by the East Coast Railway Establishment has no application to the present case and, therefore, the contention raised by learned counsel for the opposite parties cannot sustain in the eye of law. But at the same time it is seen that though the tribunal heard the matter on 17.03.2014, but delivered the judgment on 15.10.2014 after long lapse of time. Therefore, in view of Sub-rule (a) of Rule-105 of Chapter-XVII of the Central Administrative Tribunal Rules of Practice, 1993, the order so passed by the tribunal cannot sustain in the eye of law, in view of the ratio decided by this Court in Nityananda Barik (supra). Thereby, the order dated 15.10.2014 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.230 of 2011 under Annexure-1 is liable to be quashed and the same is hereby quashed. The matter is remitted back to the tribunal for fresh adjudication by giving opportunity of hearing to all the parties."

6. On remand, the learned Central Administrative Tribunal, Cuttack Bench, Cuttack vide order dated 16.11.2023, directed the authorities to fix the opposite party's pay in the scale of Rs.5500-9000/- in terms of the Rules prevailing prior to RBE No. 132/2006 and to pay the differential amount after re-fixation by adding the 30% pay element, to be completed within 180 days from the date of receipt of the order.

7. Mr. Gochhayat, learned Central Government Counsel appearing for the petitioners has contended that the GDCE Scheme, introduced by Railway Board's Letter dated 20.08.1993, is a specialized examination conducted to fill up 25% of Direct Recruitment quota vacancies in certain Group 'C' categories, and is not a channel of promotion but a method of Direct Recruitment from among existing employees. The standard of the examination is similar to that conducted by the Railway Recruitment Board for open market candidates. The opposite party's appointment as Traffic Apprentice was thus against the Direct Recruitment quota and not by way of promotion.

8. Mr. Gochhayat, learned counsel further argued that the benefit of reckoning the 30% pay element for running staff appointed to posts under the GDCE Scheme was not admissible even prior to RBE No.132 of 2006, as there were no specific orders to that effect from the Board. RBE No. 132 of 2006, issued on 15.09.2006, clarified that in the absence of such specific orders, the benefit is not admissible, and pay fixation should be done without taking into account the 30% pay element. The respondent joined the post of Deputy Station Superintendent on 22.05.2008, after the issuance of RBE No. 132 of 2006, and thus his pay was correctly fixed as per the extant rules.

9. The learned Tribunal, however, relied on the fact that the opposite party was allowed to pay in the promotional post with effect from 01.08.2005 for the purpose of increments, and held that RBE No. 132 of 2006, having come after 2005, had no retrospective effect and emphasized that past cases should not be reopened. Accordingly, the learned Tribunal quashed the rejection order dated 04.01.2011 and directed the authorities to fix the opposite party's pay in terms of the Rules in vogue prior to RBE No.132 of 2006, granting the benefit of the

30% pay element. The aforementioned aspects of the matter have been carefully dealt by the learned Tribunal, leading to the conclusion which is reflected in paragraph-8 of the impugned order. For the convenience of ready reference, paragraph-8 of the order dated 16.11.2023 is reproduced hereunder: -

"8. In view of the aforesaid observation of the Hon'ble High Court of Orissa and the fact that the applicant was allowed the pay in the promotional post w.e.f. 01.08.2005 for the purpose of increments, which can only be worked out after fixing the pay. The RBE No. 132/2006 which has come much after 2005, having not retrospective implication, rather with emphasis that past cases should not be reopened, the impugned order of rejection dated 04.01.2011 (A/6) is hereby quashed. The respondents are directed to fix the pay of the applicant in the pay scale of Rs. 5500-9000/- in terms of the RBE in vogue prior to RBE 132/2006 and pay the applicant the differential amount after refixation of his pay by adding 30% pay element. The entire exercise shall be completed within a period of 180 days from the date of receipt of a copy of this order."

10. The petitioners have challenged this reasoning, arguing that the relevant date for determining the applicable rules for pay fixation is the date of appointment to the working post, not the date of initiation of the selection or training. Since the opposite party joined the working post after the issuance of RBE No.132 of 2006, his pay fixation must be governed by the prevailing rules at that time.

11. Mr. Gochhayat, learned counsel for the petitioners, has also pointed out that the GDCE Scheme is voluntary and candidates are aware of the mode of pay fixation and that the respondent's appointment was not a promotion but a direct recruitment against the quota earmarked for GDCE.

12. Mr. Routray, learned counsel for the opposite party, has vehemently opposed the Writ Petition of the Union of India. He contended that the facts of the present case are admitted by the petitioners herein. On the basis of the admitted facts, the only issue to be determined is whether RBE No.132 of 2006 dated 15.09.2006 has retrospective effect or not. The learned Tribunal with succinct reasoning has held that RBE No.132 of 2006 has no retrospective application. Hence, the case of the petitioners rests there.

13. The petitioners-Union of India by way of the present petition, are exploring the prayer in the Writ Petition for the second time. In the earlier Writ Petition being W.P.(C) No.21198 of 2014 filed by the opposite party, this Court has unequivocally held that RBE No.132 of 2006 has no retrospective application, however, on procedural grounds remitted the matter back to the Tribunal. The learned Tribunal by a reasoned order has again reiterated the same. Hence, the prayer of the Union of India made in the present Writ Petition has been judicially scrutinized by the learned Tribunal twice and this Court once in the earlier round.

14. The issue of applicability of RBE No.132 of 2006 retrospectively came in question before the Allahabad High Court in Civil Misc. Writ Petition No.33309 of

2011 in the case of Union of India & Ors. -vrs.- Shubhasis Halder & Anr. The Allahabad High Court in the concluding paragraph has held as under:-

"In the present case as observed above, the petitioner was appointed on 30.9.2000 and his pay was fixed including running allowance on 2.4.2002. The order for refixation of pay after deducting running allowance was passed on 26.2.2004. The Circular dated 15.9.2006 specifically provides that it will not have retrospective effect. It could not be pressed into service for deducting running allowances as element of pay for fixing the pay, and to direct recovery of the excess payment."

15. The attempt of the Union of India to give retrospective effect to RBE No.132 of 2006 has been negated by the Allahabad High Court. The same reasoning has been given by the learned Tribunal while allowing the Original Application of the opposite party which is impugned in the present petition.

In the case of Commissioner of Income Tax -Vrs.-Vatika Township Private Limited reported in (2015) 1 Supreme Court Cases 1, it is held as follows:-

"28.....One established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* : (1870) LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates -Vrs.- Yamashita-Shinnihon Steamship Co. Ltd.* : (1994) 1 AC 486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation....

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public

generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In *Government of India and Ors. -Vrs.- Indian Tobacco Association* : (2005) 7 SCC 396, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of *Vijay -Vrs.- State of Maharashtra and Ors* : (2006) 6 SCC 289. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature.”

Therefore, this Court is not inclined to revisit the settled issue and upset the impugned order dated 16.11.2023 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.230 of 2011.

16. Accordingly, the Writ Petition being devoid of merits, stands dismissed.

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