

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.104 OF 1986.

Date of decision : December 24, 1987.

Krishna Kanta Halder, aged 42 years,
son of late Sakhanath Halder,
Headmaster, M.V.34 M.E.School,
P.O.Korkunda, District- Koraput.

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Applicant.

Versus

1. Union of India through the Secretary,
Ministry of Home Affairs, Department
of Home Affairs, Rehabilitation Wing,
Jaisalmer House, Mansingh Road,
New Delhi -110011.

2. Chief Administrator,
Dandakaranya Development Authority,
At/P.O.Koraput, District-Koraput.
Orissa.

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Respondents.

For the Applicant ...

M/s.B.Pal &
D.B.Das, Advocates

For the Respondents ...

Mr.A.B.Mishra, Senior Standing
Counsel (Central).

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order dated 23.7.1985 (forming subject matter of Annexures A/3 and A/5) and the order dated 16.5.1986 contained in Annexure-A/7. It is prayed in this application to quash the orders contained in Annexures-A/3, A/5 and A/7.

2. Shortly stated, the case of the applicant is that he was appointed as Headmaster of Middle English School under Dandakaranya Development Authority with effect from 31st December, 1982 and he worked as such. The Third Pay Commission report was given effect to from 1st January, 1973. The Pay Commission prescribed the scale of pay for the Headmasters of M.E.School/ ^{under some Ministries} at the rate of Rs.550-900/-. This recommendation of the Pay Commission was accepted by the Government of India and due to such acceptance the applicant claimed pay scale of Rs.550-900/- which at one point of time was denied to him by the concerned authorities for which he had filed an application under Section 19 of the Administrative Tribunals Act, 1985 forming subject matter of Original Application No.59 of 1986. The application was allowed entitling him to a pay scale of Rs.550-900/-. In course of time the Government of India in the Ministry of Supply and Rehabilitation enacted a rule under Article 309 of the Constitution of India which is called as Dandakaranya Project, Education Organisation, Headmaster (Middle School), Recruitment Rules, 1986. The grievance of the applicant is that though he had already gained promotion to the post of Headmaster, Middle School but by virtue of the enactment of the aforesaid Rules the applicant vide Annexure-7

dated 16.5.1986 has been transferred and posted as a Trained Graduate Teacher of a particular High School which is not permissible and hence sought to be quashed.

3. In their counter, the respondents maintained that keeping in view the order passed by the Hon'ble High Court of Orissa, Government framed Rules in Notification dated 5th February, 1986 forming subject matter of Annexure-D prescribing separate recruitment rules for the post of Headmaster, M.E.School which is to be filled up either by promotion or by deputation as specified therein. In consequence thereof the posts of Headmaster, Middle English School/Trained Graduate Teachers/Sub-Inspector of Schools were segregated/bifurcated and recruitment to the post of Headmaster, M.E.School by promotion cannot but be made according to the prescribed Rules (stated above) which is a rule under Article 309 of the Constitution. It was further maintained that the applicant not having qualified himself as eligible for the promotional post of Headmaster, M.E.School and not having come within the consideration zone as per the provisions contained in the said Rule there was no other option left for the competent authority but to post him as a Trained Graduate Teacher. It is further maintained by the respondents that the case being devoid of merit is liable to be dismissed.

4. Before we discuss the contentions put forward by counsel appearing for either side on the issue as to whether the posting of the applicant as a Trained Graduate Teacher in a particular High School is justifiable under law, it would be worthwhile to state a few facts relating to the previous history of the present case. Soon after the Third Pay Commission Report was accepted by the Government of India a couple of Headmasters

of M.E.School were not given the pay scale as prescribed by the Third Pay Commission and accepted by the Government of India even though they were working as Headmasters of M.E.Schools and those Headmasters approached the Hon'ble High Court of Orissa in an application under Article 226 of the Constitution praying therein to command the respondents in the said case to grant the pay scale of Rs.550-900/- to those who worked as Headmaster, M.E.School and this formed subject matter of O.J.C.No.658 of 1979 and 402 of 1984. These two cases were heard and disposed of by two different Division Benches and in both the cases Their Lordships held that the petitioners having occupied the post of Headmaster, M.E.School and having discharged their duties as such they were entitled to a pay scale of Rs.550-900/-. In compliance with the writ issued by the Hon'ble High Court of Orissa in both the cases, Government of India issued sanction orders to the above effect. The employees similarly situated including the present applicant were not given the same benefit by the competent authority and therefore, the present applicant came up with an application under Section 19 of the Administrative Tribunals Act, 1985 forming subject matter of Original Application No.59 of 1986 and this Bench disposed of the case of the present applicant on 4.8.1986 holding that the applicant was also entitled to the pay scale of Rs.550-900/- for the period he has worked or is working as Headmaster of the M.E.School irrespective of the orders passed by the authorities for segregation/bifurcation. Similar relief was also given in the cases of other similar aggrieved persons who had invoked the jurisdiction of this Bench in separate applications forming subject matter of Transferred Application No.45 of 1986, Original Application No.49 of 1986,

Original Application No.142 of 1986, Original Application No.152 of 1986 etc. After the applicant was ~~xxxx~~ aggrieved by the order contained in Annexure-7 dated 16.5.1986 posting him as a Trained Graduate Teacher in a particular High School, the applicant has come up with the present application with the above mentioned prayer. In view of the aforesaid facts and circumstances this Bench is now required to determine whether the applicant has a right under law to continue in the post of Headmaster, M.E. School and hence Annexure-7 is liable to be quashed or the application being devoid of merit is liable to be dismissed.

5. Mr.Pal, learned counsel for the applicant urged before us that without taking recourse to Article 311(2) of the Constitution the competent authority was not justified under law to demote the applicant to the post of a Trained Graduate Teacher carrying a lesser scale of pay. There cannot be any dispute that if the applicant has been given a regular promotion to a substantive post, then he cannot be demoted without taking recourse to the provisions contained under Article 311(2) of the Constitution. But if the ~~skkxxx~~ promotion is only by way of administrative arrangement then it cannot but be said that the applicant had not gained the promotional post on substantive capacity and it was merely an administrative arrangement and therefore no right accrues to the applicant to take shelter under Article 311(2) of the Constitution. It is worthwhile to state here that undisputably Headmasters of M.E.Schools, Trained Graduate Teachers and Sub-Inspector of Schools formed a common cadre and a Trained Graduate Teacher was being posted to discharge the duties and functions of a Headmaster, M.E.School by an

administrative arrangement. Since these incumbents had discharged the work of Headmaster of M.E.School, they were made entitled to the pay scale of Rs.550-900/- for the period they worked on the sole principle "Equal pay for equal work". In all cases which we have dealt in the past we have found from lot of correspondence that the incumbents are being addressed as Trained Graduate Teacher/Headmaster, M.E.School. Undisputed position is that they formed a common cadre. The incumbents are interchangeable in respect of both the posts. There can also be no dispute that the Government has a right to bifurcate different posts and has a right to integrate such posts within different categories and for the said purpose the Government can enact Rules. In the present case, the Government was well within its right to enact the Rules called as Dandakaranya Project, Education Organisation, Headmaster (Middle School), Recruitment Rules, 1986 and these Rules were enacted solely for Headmaster of M.E.Schools prescribing the age, qualification, experience etc. for promotion as they were made entitled to higher scale of pay by the judgments of the High Court and this Bench. The Rules having come into force on the date on which it was published in the official gazette bifurcation has to be given effect to and according to the Rules recruitment must be conducted especially in view of the fact that the post of Headmaster, M.E.School carries a higher scale of pay than the pay scale prescribed for a Trained Graduate Teacher. We have already stated that the applicant was not occupying the post of Headmaster, M.E.School on regular basis and at the risk of repetition we may say that the Trained Graduate Teachers were within the same category as that of Headmasters of M.E.Schools and incumbents holding either of these two posts

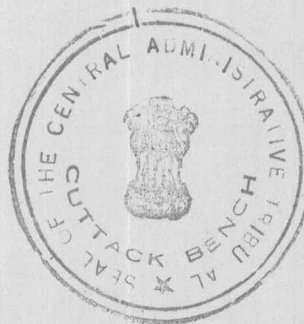
were interchangeable. In such circumstances, the applicant cannot be said to have any claim or right under law to the post of Headmaster, M.E. School. Therefore, taking recourse to Article 311 (2) of the Constitution does not arise.

6. The contention of learned Senior Standing Counsel (Central) that the case is barred by the provisions of res judicata and relied upon by him on a judgment of the Hon'ble Supreme Court reported in AIR 1968 SC 1370 (Union of India v. Nanak Singh) need not be discussed as we have found no merit in this case on questions of fact.

7. In view of the aforesaid discussions we find no merit in the prayer of the applicant which stands dismissed leaving the parties to bear their own costs.

B.R. PATEL, VICE-CHAIRMAN,

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Member (Judicial)

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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 24, 1987/S. Sarangi.