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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
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ORIGINAL APPLICATION No.124 OF 1986.

Date of decision ... February 17, 1988.

Ramachandran Pillai, son of late A.V.Pillai,
Senior Surveyor, Dandakaranya Project, Zonal Office,
Malkangiri, P.O. Malkangiri Colony, Dist- Koraput.

.... Applicant

Versus

1. Union of India, represented by the Secretary,
Department of Internal Security, Ministry of
Home Affairs, Rehabilitation Division,
Jaisalmer House, Mansingh Road, New Delhi-11.
2. Chief Administrator, Dandakaranya Project,
At/P.O/P.S/Dist- Koraput.

.....Respondents.

Mr. Ashok Kumar Mohapatra, Advocate ... For Applicant.

Mr.A.B.Misra, Sr. Standing Counsel
(Central), and

Mr. Tahali Dalai, Addl.Standing
Counsel (Central) ... For Respondents.

C O R A M :

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

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1. Whether reporters from local papers have been
permitted to see the judgment ? Yes .
 2. To be referred to the Reporters or not ? NO
 3. Whether His Lordship wishes to see the fair
copy of the judgment ? Yes .
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J U D G M E N T

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VICE CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought orders for quashing Annexure-24 and to fix his pay at Rs.515.00 in the scale of Rs.380-560/- with effect from 26.8.1987.

The impugned order is rejection of the representation of the applicant by the Executive Officer, Malkangiri and is dated 19.3.1986.

2. The applicant's case, in brief, is that he was appointed as a Ranger on 8.5.1959 by Annexure-1. He was promoted to the post of Junior Surveyor on 1.6.1960 (Annexure-2). Both these appointments were on work-charged establishment. While in Work-charged establishment he was promoted on 16.4.1963 as Surveyor, Grade I (Annexure-3) and continued as such till 19.8.1977 when his service from the Work-charged establishment was terminated. At the time of termination of service on 19.8.1977, the applicant was getting a pay of Rs.515.00 in a scale of Rs.380- to Rs.560/-. The same day i.e, 19.8.1977, an order was issued by the Dandakaranya Development Authority, vide its Memo No. 20/1/74/A II / 18353 dated 19.8.1977 appointing him to temporary post of Surveyor (Junior) at the minimum of the scale of Rs.260/- to Rs.430/- purely on temporary and ad hoc basis until further orders (Annexure-5). This was an appointment in regular establishment. He was given seniority in the equivalent grade of Surveyor (Junior) from 17.9.1960 afternoon i.e, the date of his appointment as

VI ✓

Junior Surveyor on the Work-charged establishment
(Annexure-7).

3. The respondents have contended in their counter that the applicant was appointed as Grade I Surveyor in the scale of Rs.360/- to Rs.560/- purely on temporary basis under Work-charged establishment when his service was liable to be terminated on completion of such work and he having been retrenched from Work-charged establishment with effect from 19.8.1977, he is not entitled to carry his pay over to the regular establishment under which he was appointed as Junior Surveyor in a pay scale of Rs.260/- to Rs.430/-. Considering the pay he was getting under Work-charged establishment, however, he was allowed pay at the maximum of the scales i.e., at Rs.430/-. Since he was not brought on to the regular establishment on transfer from the Work-charged establishment he is not entitled to the benefits of the orders of Government of India, Ministry of Supply and Rehabilitation (Department of Rehabilitation) bearing No. 1(75)/75-KNK dated 22nd May, 1975, vide Annexure-4. By condoning break in service the Government have allowed him to count his service in Work-charged establishment towards pension which has no bearing on his seniority or protection of pay (Annexure-R/1).

4. I have heard Mr. A.K.Mohapatra, learned counsel for the applicant, Mr. A.B.Misra, learned Senior Standing Counsel (Central) and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents and perused the papers. Mr. Mohapatra has drawn my attention

to Annexure-4 which is the Ministry's letter dated 22.5.1975. This order applies to absorption of work-charged staff of Dandakaranya Project on the regular establishment of the project. Para (i) of the letter says that the service rendered by an employee in an establishment prior to his transfer to regular establishment will count for seniority but as a result thereof, the employee will not be entitled to confirmation or promotion with retrospective effect. Para (ii) of the letter reads as follows :-

" The pay on transfer to the regular establishment should be fixed at the stage which the employee would have drawn but for his transfer, provided that the service rendered is a different establishment prior to transfer was on an identical or higher scale and that no arrears on account of re-fixation of pay will be admissible for any period prior to the date of issue of these orders ".

Para (iii) of the letter is to the effect that the entire service will be treated as continuous and qualifying for pension/gratuity. According to Mr. Mohapatra, the applicant has got the benefits of para (i) and para (iii) of this letter. His grievance is that para (ii) of the letter has not been complied with in his favour. Mr. Mohapatra has also placed before me Annexure- 19 which is a Government of India's letter bearing No. 7(20)/81-Admn. III dated 11/15th December, 1981. He has drawn my attention particularly to para (iv) which is to the effect that the existing pay and pay scale of the incumbent will be protected on transfer to the

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regular establishment so long as they continue to hold the same posts. and contends that the benefits under this paragraph, should be extended to the applicant. Mr. Mohapatra has also referred to page 8 of the application particularly to the following lines :

" Moreover when the applicant's colleagues M/s M.I.George and P.A. Kuriakose, Surveyors who were also appointed from workcharged establishment to regular post Surveyor (Junior) approached the Hon'ble High Court of Orissa for granting them the pay and pay scale of their workcharged post (In O.J.C.No.160 of 1980 dated 23.4.85) the Hon'ble High Court held that the petitioner be given the pay and pay scale of Rs.380-12-500-EB -15-560/- on their transfer to regular establishment ".

He has also produced the certified copy of the judgment dated 23.4.1985 of the Hon'ble High Court of Orissa . In the O.J.C. before the Hon'ble High Court of Orissa, the two petitioners were appointed as Junior Surveyors in the work-charged establishment of the Dandakaranya Project on different dates. They were also promoted as Surveyor, Grade I and subsequently absorbed in the regular establishment as Junior Surveyors in the scale of pay of Rs.260-430/-. At the time of such absorption, petitioner No.1 was drawing Rs.500/- per month and Petitioner No.2 Rs.515/- per month as the applicant of this case . On appointment to the regular establishment their pay was fixed at Rs.430/- which was maximum in the scale of Rs.260-430/-. The facts of the petitioners

before the Hon'ble High Court were thus similar to the facts of the applicant of this case. In paragraph 6 of the judgment of Their Lordships of the Hon'ble High Court have ordered that " so in this view of the matter the petitioners are entitled to protection of their pay on transfer to regular establishment. This has been done in other cases vide Annexure-3. Therefore, the petitioner No.1 is entitled to get at the rate of Rs.500/- from the date he was absorbed as regular Junior Surveyor from 15.10.1976 and petitioner No.2 is entitled to get at the rate of Rs.515/- from 23.10.1976. The prayer for giving them at the scale of Rs.380-640/- cannot be accepted." Mr. Mohapatra does not press for the pay scale of Rs.380-640/-. All that he has asked for is Rs.515/- per month what he was getting while in work-charged establishment.

5. Mr. Misra and Mr. Dalai have both countered the claim of Mr. Mohapatra on the following grounds, namely, the applicant's case is not one of transfer from the work-charged establishment to the regular establishment and that the aforesaid judgment of the Hon'ble High Court of Orissa is not applicable to the applicant's case inasmuch as the petitioners before the Hon'ble High Court of Orissa were absorbed in regular establishment on transfer from the work-charged establishment, whereas the petitioner's service in the work-charged establishment was terminated on 19.8.1977 and he was re-appointed to the regular establishment on 26.8.1977. The break in service ^{only} ~~only~~ has been condoned for the purpose of pensionary benefits. Mr. Misra further drew my attention to paragraph-6 of his

counter in which it has been stated that the decision of the Hon'ble High Court is now sub-judice on appeal in the Hon'ble Supreme Court of India and the facts of that case were not similar and the decision was distinguishable. In short, Mr. Misra has urged that since the applicant's case was a fresh appointment in the regular establishment after his retrenchment from work-charged establishment, he cannot be given the benefits of transfer from the work-charged establishment to the regular establishment.

6. Mr. Misra has not produced any order of the Hon'ble Supreme Court staying the operation of the judgment of the Hon'ble High Court of Orissa. I, therefore, presume that the High Court's judgment has not been stayed and has been implemented in the case of the petitioners before the High Court. These petitioners are admittedly M.I. George and P.A. Kuriakose. These two persons are junior to the applicant as it is clear from the letter of the Dandakaranya Development Authority bearing No.120/18/86-IWSU-908 dated 21.1.1987. This letter was addressed to the Deputy Secretary to the Government of India, Ministry of Personnel & Training, Administrative Reforms, Public Grievances & Pensions, Nirvachan Sadan, New Delhi and declares six posts of Senior Surveyors surplus with effect from 15th February 1987 forenoon. In the list of six employees who were thus declared surplus, the name of the applicant is mentioned at Serial No.4 and that of M.I. George at Serial No.5 below the applicant. They have both been shown as permanent senior surveyors. The date

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XI 13

of seniority of the applicant is shown as 2.2.1985 and that of M.I.George as 27.2.1985. There is, therefore, no doubt that the present applicant is senior to M.I.George who was one of the two petitioners before the Hon'ble High Court of Orissa in O.J.C.No. 160 of 1980. This letter was produced by Mr. Mohapatra at my instance vide order dated 21.8.1987. Learned Sr. Standing Counsel was also asked by this order to produce the order transferring Mr. M.I.George and P.A.Kuriakose from the work-charged establishment to the regular establishment. No such order has been produced and I cannot but presume that there is no such order. Moreover, as the facts relating to services of Mr. M.I.George and P.A.Kuriakose mentioned above would indicate these persons as well as the applicant were borne on the work-charged establishment as junior surveyor and later as surveyor , Grade I.If Mr. M.I.George who was junior to the applicant could be brought on transfer from the work-charged establishment to the regular establishment there is no reason why the applicant's service in the work-charged establishment should be terminated and he should be given fresh appointment in the regular establishment.If there was any reason it has not been indicated in the counter or during the course of hearing of the case. As Mr. M.I.George and the applicant were both Surveyors in the work-charged establishment, any differential treatment in service conditions would be discriminatory, and as such, violative of Articles 14 and 16 of the Constitution. I would therefore hold that there is no justification for terminating the services of the applicant from the work-

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charged establishment and appointing him afresh in the regular establishment. His absorption in the regular establishment should be treated like that of Mr. M.I. George as on transfer from the work-charged establishment to the regular establishment and the benefits allowed in para-2 of the Government of India's letter dated 22.5.75, vide Annexure-4 and para (iv) of Government of India's letter dated 11/15.12.1981, vide Annexure-19, should be extended to the applicant and his pay should be protected in the regular establishment. Mr. Misra has vehemently urged that the applicant has been appointed as Junior Surveyor in the scale of Rs.260-430/- and there is no scope for allowing the applicant to Rs.515/- in the scale. Since, however, injustice has been done to the applicant in not protecting his pay, it is up to the departmental authorities to find a way as to how the applicant's pay can be protected. There are two possible ways as I could see to protect the pay of the applicant;-(i) protecting his pay scale of Rs.380-560/- which he was getting as Surveyor Grade I in the work-charged establishment in terms of the Government of India's letter dated 11/15.12.1981, Annexure- 19 para 4 of which says that the existing pay and the pay scale of the incumbent will be protected on transfer to the regular establishment so long as they continue to hold the same posts, (ii) by allowing him Rs.430/- which is the maximum of pay scale of Rs.260-430/- and treating the balance as personal to the officer till he is promoted to the next higher grade carrying a higher scale of pay. It is, however, left to the

B. N. Misra

discretion of the competent authorities to find the best way to protect the pay of the applicant. It is , therefore, directed that the applicant should be given Rs.515.00 on his absorption to the regular establishment with effect from 26.8.1977. This should be implemented within four months from the date of receipt of a copy of this judgment.

7. Thus, the application is allowed leaving the parties to bear their own costs .



Prakash
..... 17.2.88
Vice Chairman

Central Administrative Tribunal,
Cuttack Bench.
February 17, 1988/Roy, SPA.