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Date of decision: October 24, 1990.

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Applicant.

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M/s. P. V. Ramdas,

Mr. Tahali Dalai,

Addl. Standing Counsel (Central)

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

N. SENGUPTA, MEMBER (J) The applicant has prayed for a direction to the respondents to pay him salary and emoluments in the scale of pay of Rs.950-1500/- and accordingly modify Annexure-6.

2. The applicant's case is that he entered into service on 23.8.1956 as an unskilled Carpenter. Thereafter he was promoted to the grade of Carpenters on 9.3.1962 and was confirmed as such with effect from 1.4.1966. There was a revision of pay scales in 1973

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of the Central Government servants according to the report of the Third Pay Commission for Civil Services. The recommendations of the said Pay Commission were examined with regard to the applicability to industrial workers of Proof & Experimental Establishment at Balasore. After the recommendations of the Third Pay Commission were accepted by the Proof & Experimental Establishment, options were called from the employees regarding coming over to the revised scales of pay and he (the applicant) opted to come over to the revised scale with effect from 16.10.1981, vide Annexure-2. By the order dated 12th July, 1982, vide Annexure-3 his pay was fixed in the scale of Rs.260-400/- as a Skilled Carpenter. For his regularisation of service as a skilled Carpenter he appeared at a trade test in December, 1982 and passed that test. Though under Annexure-3 his pay was fixed in the scale of pay of Rs.260-400/- by the order dated 12th July, 1982, by Annexure-4 it was made effective with effect from 15.10.1984. The trade test was for Carpenter Grade II and the scale of pay prescribed for that post was Rs.330-480/- but his pay was not fixed in that scale though his juniors were allowed to draw pay of the higher scale. His case further is that those who were getting pay in the scale of Rs.260-400/- before the revision in 1986, after revision were allowed to draw pay in the revised scale of Rs.950-1500/- but he has been made to draw his pay in the scale of Rs.825-1200/-. Thus, he has been discriminated against and he is entitled to draw the pay in the revised scale of Rs.950-1500/-. As no relief

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was made available to him on his representation to the departmental authorities, he filed the present application.

2. The respondents in their counter have stated that there were three categories of Carpenters in the Proof & Experimental Establishment and the scales of pay prescribed were Rs.210-290/-, Rs.225-308/- and Rs.260-350/-. the applicant was a Carpenter in the scale of Rs.225-308/-. In the beginning of 1981, there were 5 posts of Carpenters in Gr.IV who were drawing pay in the scale of Rs.225-308/-. Subsequently the strength was increased to 7, the posts were in Gr.III. To avoid retrenchment an order was passed on 25.11.1981, copy of which has been made Annexure-R/2 to the counter. By an order dated 16.10.1981 the existing scales of pay of Rs.210-290/- and Rs.225-308/- were revised to Rs.210-290/- and the existing scale of Rs.260-350/- was revised to Rs.260-400/-. This change was made in accordance with the Ministry of Finance letter No.F1(2)/80/D(ECC/IC) dt.16.10.81, copy of this letter has been made Annexure-R/3 to the counter. In Annexure-R/3 the then existing scales of pay of Rs.210-290/- and Rs.225-308/- were merged into one grade i.e. Rs.210-290/- but it was provided therein that where the scales were downgraded the incumbents thereof were to be allowed to draw pay in the existing scales of pay till they were wasted out or promoted to the next higher post. By a clerical mistake the pay of the applicant was fixed in the scale of Rs.260-400/- and on discovery of the mistake rectification was done. After the Third Pay Commission's report further instructions were issued and

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there was a further revision in the pay scales of the Industrial workers in the Proof and Experimental Establishment vide Annexure-R/8 dated 16.10.1984. The applicant after passing a trade test for being promoted to the higher grade of Carpenters carrying the pay scale of Rs.260-400/- and having been cleared by the Departmental Promotion Committee which met on 14.12.1982 was asked by the letter dated 2.2.1983 vide Annexure-R/6 to submit a charge assumption certificate together with an option for fixation of pay. The applicant did not comply with this letter in time. So reminder was issued to him on 10.2.1983 asking the applicant and three others to send their documents by 15th February, 1983 but that reminder was of no avail. The applicant instead of sending the documents, made a request for fitting him straightway in the scale of pay of Rs.260-400/- with effect from 16.10.1981. As the applicant did not comply with the letters dated 2.2.1983 and 10.2.1983, three of his juniors were promoted. The respondents have taken the stand that the revision of scales of pay made in Annexure-R/8 was from Rs.210-290/- to Rs.260-400/- and the scale of pay of Rs.225-308/- remained untouched. Therefore, the applicant was not entitled to fitment in the scale of pay of Rs.260-400/-. As the applicant was drawing pay in the scale of pay of Rs.225-308/-, after the report of the Fourth Pay Commission, his pay was fixed in the revised scale of Rs.825-1200/- and the applicant cannot make a grievance for such fixation.

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4. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. The first question that arises for consideration is whether the case of the respondents that there was no revision of the pay scale of Rs.225-308/- is correct. Mr.Tahali Dalai has referred to Annexure-R/9, a letter of the Accounts Officer dated 6.5.1986 and has contended that there was really no revision of the pay scale of Rs.225-308/-.

Mr.Dalai has also sought to rely on Annexure-R/10, a copy of the option exercised by the applicant. From Annexure-R/8 it would be found that the scale of pay of Carpenter Grade II, to which grade the applicant admittedly belonged, was ^{revised} from Rs.210-290/- to Rs.260-400/-. No doubt, there is no mention of the pay scale of Rs.225-308/- in Annexure-R/8 and possibly there could not have been any mention of that scale. Because by Annexure-R/3 the pay scale of Carpenter Grade II which previously was Rs.225-308/- was downgraded to Rs.210-290/-. Therefore, there was no scale of pay of Rs.225-308/- really existing when Annexure-R/8 was issued on 16.11.1984. In view of these facts there is no difficulty in saying that the case of the respondents that the applicant was not entitled to draw pay in the scale of Rs.260-400/- from the time of issue of Annexure-R/8 is untenable. Annexure-R/10 is dated 20.11.1986, as has been shown just above, since 16.10.1981 the scale of pay of Rs.225-308/- practically did not exist except for such of the persons as were

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drawing pay in that scale. On a combined reading of Annexures-R/3 and R/8 it is to be stated that the applicant came over to the scale of pay of Rs.260-400/- with effect from 16.11.1984. Therefore, to that extent Annexure-R/10 was incorrect and unsupportable.

5. A stand has been taken by the respondents that the applicant declined to join the promotional post, this stand does not appear to be sound. It is the admitted case the applicant appeared at the test required for the promotion, he was given clearance to be promoted to Carpenter Grade I. A person who appears at a test for promotion cannot be said to have declined to be promoted. It is not the case of the respondents that infact the applicant ever gave anything in writing or verbally informed that he was not interested in being promoted as Carpenter Grade I. From Annexure-R/6 it would be found that what the respondents wanted of the applicant, was a charge assumption certificate for being promoted to the grade of Carpenters carrying the pay scale of Rs.260-400/- with effect from 15.1.1983 and the applicant had made a representation that infact he had been in that grade since prior to the date of issue of Annexure-R/6. Therefore, he had stated in clear terms that he accepted the post in the scale of pay of Rs.260-400/-. From Annexure-R/3 it would be found that a Carpenter, not Carpenter Grade II, who was categorised as semi-skilled was to draw pay in the scale of Rs.210-290/- and the next grade was skilled carpenter, the scale of pay for which post was Rs.260-400/-. From the averments and the annexures to the

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application and the counter it would be found that the persons belonging to the skilled artisan grade were to draw pay in the scale of pay of Rs.260-400/- and to this category Carpenter Grade II belongs. Therefore, the stand of the respondents that the applicant was not entitled to draw pay in the scale of pay of Rs.260-400/- cannot be accepted. It is not disputed that the scale of Rs.260-400/- was after the Fourth Central Pay Commission Report was revised to Rs.950-1500/-. Admittedly some juniors of the applicant have been promoted but this was under a wrong impression, and the applicant cannot be made to suffer for the mistake of the respondents. Hence, the applicant should be given that scale of pay from the date his immediate junior was promoted to that grade.

6. This application is accordingly disposed of. Parties to bear their respective costs.

[Signature] 24.10.90

 Vice-Chairman



[Signature] 24.10.90

 Member (Judicial)

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 October 24, 1990/Sarangi.