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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 290 of 1987.

Date of decision : December 2, 1988.

Bhimasen Sawn, aged about 43 years,
son of Madan Mohan Sawn, at present
working as Ferro Printer, Land Section,
Drawing & Planning Section, Project
Headquarters, D.N.K., At/P.O. Koraput,
District- Koraput. ...

Applicant.

Versus

1. Union of India, represented by
Secretary, Ministry of Home Affairs,
Department of Internal Security,
Rehabilitation Division, Jaisalamar
House, Mansingh Road, New Delhi-110011.
2. Chief Administrator,
D.N.K. Project, Project Headquarters,
At/P.O./District- Koraput.

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Respondents.

For the applicant ... Mr.C.A.Rao, Advocate.

For the respondents ... Mr.Tahali Dalai, Addl. 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)

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.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order fixing his pay scale at Rs.825-1,200/- and further prays that a declaration be given entitling the applicant to a pay scale of Rs.950-1400/-.

2. Shortly stated, the case of the applicant is that initially he was appointed as a Patwari in the Dandakaranya Development Project and he worked as such for a particular period namely till July, 1982. The post of a Ferro Printer fell vacant and the applicant was one of the applicants. After consideration of the application of the applicant, he was appointed to the post of a Ferro Printer vide Annexure-R-2 dated 29.6.1982 on a pay scale of Rs.225-5-260-6-290-EB-6-308/- plus usual allowances as admissible under the Rules. While the matter stood thus, the Patwaris moved the Hon'ble High Court of Orissa by filing a writ application praying therein to fix the pay scale of the Patwaris at Rs.260-350/-. This formed subject matter of O.J.C. No.1498 of 1979 which was disposed of in the year 1985. While disposing of the writ application the Hon'ble High Court of Orissa allowed the claim of the Patwaris and commanded the opposite parties in that case to give the pay scale of Rs.260-350/- to the Patwaris. Even though the pay scale of Patwaris was enhanced there was no interference in the pay scale of Ferro Printers. According to the 4th Pay Commission Report the pay scale of the Patwaris was revised to Rs.950-1400/- whereas the pay

scale of Ferro Printers was revised to Rs.825-1200/- vide Annexure-R-3. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality has been committed in the matter of fixation of the pay scale of the Ferro Printers and eventually no injustice has been caused to the applicant who till the date of deployment to the Surplus Cell was occupying the post of Ferro Printer and accordingly his official status and emoluments would be fixed by the Surplus Cell and it is further maintained by the respondents that in no circumstance the pay scale of Ferro Printers including that of the applicant could be enhanced because the Patwaris have got the higher scale of pay according to the judgment of the Hon'ble High Court of Orissa.

4. We have heard Mr.C.A.Rao, learned counsel for the applicant and learned Additional Standing Counsel (Central), Mr.Tahali Dalai at some length. Before we discuss the contentions raised by Mr.Rao, it is worthwhile to note the admitted position which is as follows . After the pay scale of Patwaris was enhanced by virtue of the judgment of the Hon'ble High Court of Orissa passed in O.J.C.No.1498 of 1979 the applicant had filed a representation before the competent authority to enhance his scale of pay vide Annexure-1 dated 22.2.1985. In reply thereto, vide Annexure-2 dated 25.3.1985, the Executive Officer (A), Dandakaranya Development Authority, regretted that the request of the applicant for revision

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of the pay scale of Ferro Printers cannot be acceded to and the applicant was further advised then that in case the applicant finds the scale of pay of Patwari in which post he has been confirmed, is going to be more alluring on revision, he may seek reversion to the substantive post. From this it is clearly indicative ~~of the fact~~ that choice was given to the applicant to either retain himself in the post of Ferro Printer or revert back to his substantive post as Patwari. From the records we find and we are of opinion that the applicant was placed in between the horns of a dilemma as to what decision he should take and ultimately from the records we find that he has never chosen to revert back to the post of Patwari even though choice was left with him by the competent authority. Till the date of deployment to the Surplus Cell the applicant was continuing in the post of Ferro Printer which was not disputed at the Bar. The only point urged by Mr.Rao is that vide Annexure-3 dated 3.8.1987 the pay scale of the applicant as Patwari having been fixed at Rs.260-350/- it should be deemed that the applicant was eligible or entitled to a pay scale of Rs.260-350/- in the Post of a Patwari, and therefore, while deploying the applicant to the Surplus cell he should carry this pay scale with him. This submission of Mr.Rao was stiffly opposed by Mr.Tahali Dalai on the ground that the applicant at the time of deployment to the Surplus Cell was admittedly working as a Ferro Printer and was drawing the pay of a Ferro Printer and therefore, in no circumstance,

the applicant should be deemed to have been working as a Patwari drawing the pay scale of Rs.260-350/- . After perusing the relevant records and after hearing learned counsel for both sides, we are of opinion that there is considerable force in the contention of Mr.Tahali Dalai. Since the applicant was deployed to the Surplus cell as a Ferro Printer, he cannot be allowed to turn back having been directly recruited/appointed to the post of Ferro Printer and claim a convenient position so far as his financial benefits are concerned.

5. Lastly, Mr.Rao urged that even as a Ferro Printer his pay scale could be fixed at a higher rate as Patwaris. We are sorry to hold that we cannot accede to this request of Mr.Rao especially in view of our judgment pronounced in T.A.26 of 1987 (O.J.C.No.2341 of 1985) disposed of on 25.9.1987 forming subject matter of Annexure-R-6. In this case, the petitioner was a Headmaster in a particular school under the Dandakaranya Development Authority and was drawing the higher scale of pay than the scale of pay prescribed for Zonal Inspector to which post the petitioner was subsequently promoted and therefore, the petitioner in T.A.26 of 1987 claimed the higher scale of pay. In the said case we held that we have no powers to prescribe a higher pay scale when particularly a pay scale has been prescribed by Pay Commission. The distinction between the judgment in the said case and the case of the present applicant is that the petitioner as Headmaster was promoted to the post of Zonal

Inspector and still then we could not allow the prayer of the petitioner in the said case and so far as the present case is concerned, this is a direct recruitment/appointment and hence the question of promotion does not arise in this case. In case, the applicant is entitled to ^{stepping up} ~~in the existing~~ pay scale according to Rules, the same may be considered and necessary orders be passed according to law.

6. Keeping in view the aforesaid facts and circumstances, we find no merit in this case which stands dismissed leaving the parties to bear their own costs.

K. G. S. M.P.S.
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2/12/88
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

Anil
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2/12/88
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack.
December 2, 1988/S.Sarangi.