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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.242 of 1988.

Date of decision : April 6 , 1990.

Sri Nityananda Sahu, son of late Natabar Sahu,
aged 58 years, Supervisor, Office of the
Accountant General (Accounts & Entitlements),
Orissa, Bhubaneswar, Dist. Puri.

... Applicant.

Versus

1. Union of India, represented through
the Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg, Head Post Office,
New Delhi-110002.
2. Accountant General, (Accounts & Entitlements),
Orissa, Bhubaneswar.
3. Senior Deputy Accountant General, (Admn.),
Office of the Accountant General (A& E),
Orissa, Bhubaneswar.
4. Asst. Accountant General (Admn. I),
Office of the Accountant General (A& E),
Orissa, Bhubaneswar.
5. Accounts Officer, Admn. II,
Office of the Accountant General, Orissa,
Bhubaneswar.

... Respondents.

For the applicant M/s. S.K. Nayak-1,
A.K. Baral,
K. Ray, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Sr. Standing Counsel (Central)

C O R A M :

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

A N D

THE HON'BLE 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 ? *yes*.
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The case of the applicant may be stated as below.

Some of the facts alleged by the applicant which are undisputed may be stated at the outset. The applicant was appointed as an Upper Division Clerk in the Office of the Deputy Accountant General, Orissa, Puri on 1.11.1954 and was confirmed in that post, which was redesignated as Auditor, on 9.9.1960. He was promoted to the Selection Grade Auditors on 10.12.1965 and he was confirmed in that grade on 16.8.1972. Thereafter by order dated 22.8.1975 he was appointed as Emergency Divisional Accountant (EDA) (vide Annexure-1) and was posted to Eastern Gauging Division, Bhubaneswar where he joined as such EDA on 31.12.1975. When he was working as such, guidelines for fixation of pay of Emergency Divisional Accountants were laid down by the Comptroller and Auditor General, India by his order dated 21.9.1976 (Vide Annexure-2). In the year 1983 the Office of the Accountant General was bifurcated into two wings, one to be called Accountant General (Accounts and Entitlements) and the other Accountant General (Accounts). Under the Accountant General (A& E), the Auditors were redesignated as Accountants and the Section Officers were redesignated as Section Officer (Accounts). In accordance with the guidelines given in Annexure-2, the pay of the applicant as EDA was fixed at Rs.600/- in the pre-revised scale of pay of Rs.425-750/-. The applicant's case is that he was promoted to the rank of EDA from the rank of Senior Auditor and he officiated as EDA for more than 10 years, got annual increments, crossed the Efficiency Bar and after reaching the maximum of the scale, he got one stagnation

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increment with effect from 1.12.1984. It is averred that while he was working as EDA, he was promoted to the rank of Supervisor in the pre-revised scale of pay of Rs.500-900/- (the revised scale after 1.1.1986 being Rs.1640-2900/-) but his pay as Supervisor has not been fixed on the basis of the pay that he was drawing as EDA but on the notional pay as a Senior Accountant on the date of his promotion. At the time of his promotion, he was drawing the basic pay of Rs.750/- i.e. the maximum of the scale plus Rs.25/- as stagnation increment totalling to Rs.775/- and to this were added the usual dearness allowance and additional dearness allowance. The fixation of pay as Supervisor was not done immediately after his promotion as Supervisor but later his pay was fixed at Rs.725/-. Thus, he incurred a loss of Rs.50/- in the basic pay and loss of Rs.132-55 paise in total emoluments. The pay fixation was done in accordance with a letter issued by the Accountant General (A & E), Orissa on 1.9.1986 and that is Annexure-7. Against the fixation of his pay at Rs.725/- on his promotion to the rank of Supervisor he made a representation, (Copy at Annexure-6) on 23.9.1986. In his representation he cited the case of one Shri Ramanath Misra whose pay as Section Officer was fixed on the basis of the pay that he was drawing as Divisional Accountant and he continued to enjoy the benefit of pay fixation. This representation of his was rejected on 13.3.1987 (vide Annexure-8). After the coming into force of the revised scales of pay his basic pay was fixed at Rs.2240/- in the revised scale of pay of Rs.1640-2900/- (Copy of the order at Annexure-9). Against

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this order of fixation of pay he made a representation citing the case of one K. Ananta Rao, Emergency Divisional Accountant who was promoted as Supervisor in November, 1984 and of another K. Ananta Rao who was also an EDA getting stagnation increment, stating that their pays were fixed at higher amounts. Therefore, by the fixation of his pay at Rs. 600/- in the pre-revised scale and at Rs. 2240/- in the revised scales of pay, unequal treatment has been meted out to him. By the letter dated 31.7.1987 of the Office of the Accountant General (A&E), Orissa he was informed that that representation of his could not be accepted. He has also raised a point that he is entitled to protection of his pay. Making these allegations, the applicant has prayed for quashing the order of fixation of his pay as Supervisor on the basis of his notional pay in the cadre of Senior Auditor, quashing the order of fixation of pay as at Annexure-9 and for the ancillary reliefs of quashing the order dated 31.7.1987, quashing the order rejecting his representation dated 19.6.1987 and for a direction to fix his pay with retrospective effect taking into account the pay he was drawing as Emergency Divisional Accountant.

2. The respondents in their counter have taken the stand that as there was dearth of qualified persons to hold the posts of Divisional Accountants, persons working in the Office of the Accountant General were asked to signify their willingness to be appointed as Emergency Divisional Accountants on purely temporary basis and on condition that they were liable to be reverted from the ex-cadre posts of Emergency Divisional Accountants and placed at the disposal of the Accountant General, Orissa. The applicant volunteered to be

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appointed as Emergency Divisional Accountant and he was selected by the competent authority for such appointment. In terms of the order of appointment, the applicant was reverted to his parent cadre of Senior Accountant and promoted as Supervisor. On such promotion to the rank of Supervisor, his pay had to be fixed under the relevant rules i.e. F.R.22-C taking the post of Senior Auditor as the Feeder grade. They have also relied on the amendment to F.R.22 in November, 1965 to say that the benefit of service rendered in an excadre post would count for increments in cadre post but pay fixation in the cadre post cannot be based on the pay drawn in the ex-cadre post after reversion. In this connection, they have cited the Government of India, Ministry of Finance Office Memorandum No.7(75)EIII(A)-71 dated 3.4.1972. The respondents though have not disputed the appointment of the applicant as Emergency Divisional Accountant, they have disputed the fact of Emergency Divisional Accountant being a promotional post of the Senior Accountant in the normal channel. Their case further is that the very order of promotion of the applicant as Supervisor would make it abundantly clear that he was promoted from his parent rank of Senior Accountant though in describing him, the post that he was really holding has been mentioned against his name. It is the further case of the respondents that while working as Emergency Divisional Accountant the applicant was not qualified to be a Divisional Accountant. As he was doing the same work as that of Divisional Accountant he was allowed to draw the pay and allowance as admissible to a Divisional Accountant and that cannot clothe him with any further right.

With regard to the averment by the applicant that as

under the Central Civil Services (Revised Pay) Rules, 1986, the scales of pay for the post of Senior Accountant and Divisional Accountant were the same the two scales should be deemed to have merged, the case of the respondents is that it cannot be so deemed, because the two posts though may be carrying the same scale of pay, are distinct and separate and as such Note I below Rule 7 of Central Civil Services (Revised Pay) Rules, 1986 could have no application. To sum up, the real plea of the respondents is that the applicant's pay could not be fixed basing on the pay that he was drawing as an Emergency Divisional Accountant and that the post of Emergency Divisional Accountant is an ex-cadre post.

3. After the filing of the counter by the respondents, the applicant filed a rejoinder wherein he has stated that the post of Emergency Divisional Accountant is not an ex-cadre post nor is it a fact that he volunteered to be appointed as an Emergency Divisional Accountant. In this rejoinder the applicant has referred to a recommendation said to have been made by the Comptroller and Auditor General of India to the 4th Central Pay Commission wherein it is alleged that it was mentioned that there were large number of vacancies in Utter Pradesh, Bihar, Rajasthan, Madhya Pradesh against which unqualified adhoc promotees (Emergency Divisional Accountants) were officiating for years, with very little prospects of their being replaced by regular qualified Divisional Accountants and it has been stated on the strength of this recommendation that there can be no doubt that the post of an Emergency Divisional Accountant is a promotional post.

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4. We have heard Mr.S.K.Nayak-1, learned counsel for the applicant, and Mr.Ganeswar Rath, learned Sr.Standing Counsel(Central) at length. As has been stated above, the real dispute concerns only four points namely(i) Whether the post of Emergency Divisional Accountant is a promotional post from the rank of Senior Accountant; (ii) Whether the EDA post is a cadre post; (iii) If the post of EDA is not a cadre post, can the applicant claim for fixation of his pay on the basis of the pay that he was drawing as an EDA ?; and finally, whether there has been any differential treatment in the matter of fixation of pay of the applicant and some others named in his representation at Annexure-10.

5. For deciding the question whether the post of an EDA is a promotional post qua Senior Accountant, reference may be made to the order of appointment of the applicant as Emergency Divisional Accountant. The copy of the order of appointment of the applicant is Annexure-1. The first paragraph of Annexure-1 reads as follows:

" The following S.G.Auditors of the Office of the Accountant General, Orissa, Bhubaneswar, at present working in the office of the Resident Audit Office, Delta Irrigation Scheme, Bhubaneswar, are appointed as Emergency Divisional Accountants in short term vacancy as a purely temporary arrangement. "

On reading this it would be manifest that the word 'promotion' is conspicuously absent. Ofcourse from the averments in the application it may be said that as the maximum of the scale prescribed for Emergency Divisional Accountant was more than the maximum for the Selection Grade Clerk later redesignated as Auditor, the post of an Emergency Divisional Accountant may be said to be a promotional post but not much turns on it

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for what is going to be stated below.

6. The next question that needs consideration is whether the post of EDA is an ex-cadre post. Once again reference may be made to Annexure-1. It has already been stated above that in the first paragraph of Annexure-1, it was specifically mentioned that the appointment of the applicant was in a short term vacancy on a purely temporary arrangement and after mention of the names of the persons appointed as EDA, it was stated in that order of appointment that the persons named therein were liable to be reverted from the appointment of EDA and placed at the disposal of the Accountant General, Orissa, Bhubaneswar (Office to which they belonged and where their lien ^{was} at any time without prior notice. It has been contended on behalf of the applicant that the appointment of the applicant as EDA cannot be said to be against a short term vacancy or as a purely temporary arrangement because he had been working as EDA for more than a decade and that by no means was a short period. Doubtless, there is some substance in this contention of Mr. Nayak-1, that the applicant was really not appointed against any short term vacancy nor did he hold the post in a fortuitous manner. But that would not be sufficient to hold that the post that the applicant held as EDA was a cadre post. The Divisional Accountants are not required to work in the Office of the Accountants General and the field of their work is outside the Office of the Accountant General. Therefore, those posts cannot be said to be posts belonging to a cadre of the Office of the Accountant General though their initial appointment might have been to a post in a cadre in the Accountant General's Office. In Annexure-1, as indicated above, the

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the word "reverted" was used and reversion could only be from an ex-cadre post to a cadre post or from a higher post to a lower post. In the instant case, the question is not concerning reversion from a higher post to a lower post, of necessity this word is indicative of the fact that the post of EDA is not a cadre post. This would also be clear from the paragraph in the brackets i.e. "the Office to which they belong and where their lien" in Annexure-1. Though, Annexure-3 is dated 26.12.1983 yet it would give some assistance for deciding the question under consideration. On reading this Annexure, it would be found that nowhere is there any mention of the Divisional Accountants or Emergency Divisional Accountants and that is an indication of those posts not being in any cadre of the Office of the Accountant General. From the recruitment Rules for the post of Divisional Accountant also it would be found that the post of ^{Emergency} Divisional Accountant is not a cadre post of the Office of the Accountant General. The method of recruitment to the post of Divisional Accountant is direct recruitment and when a vacancy for more than one year occurs, that may be filled by transfer on deputation from Accountants and Senior Accountants belonging to the Accounts and Entitlement office in whose jurisdiction the vacancies have arisen. This leaves absolutely no room to doubt the ex-cadre nature of the post of EDA. For the reasons above stated we would hold that the post of Emergency Divisional Accountant is not a cadre post.

7. The next question that calls for answer is whether

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the applicant is entitled to have his pay fixed as Supervisor on the basis of the pay that he was drawing as Emergency Divisional Accountant. The promotion of the applicant to the cadre of Supervisors was made with effect from 19.3.1986, that is after the issue of Annexure-3 dt.26.12.1983. From paragraph 3(iii) of Annexure-3 it would be found that 20 per cent of the vacancies in the cadre of Section Officers (Accounts) will be filled in by promotion from Selection Grade Accountants with exceptional performance to their credit and they will be designated as Supervisors and will be eligible for the selection grade like Section Officers. The applicant has really not sought to challenge Annexure-3. Annexure-4 is the order of promotion of the applicant to the grade of Supervisors. The subject that is mentioned in Annexure-4 is appointment of Senior Accountants as Supervisors. These two words have been underlined to bring into sharp focus as to who were being promoted as Supervisors. No doubt against the name of the applicant in the brackets EDA has been mentioned but that was merely a description or an indication of the post that the applicant was holding on the date of issue of Annexure-4 and it cannot be said that the applicant was promoted from the post of EDA to the grade of Supervisors. Therefore, in our considered opinion, and more so in view of paragraph 3(iii) of Annexure-3, there can be no escape from the conclusion that promotion to the grade of Supervisor could be made only from the cadre of Senior Accountants. This would also be manifest from the Rules framed by the President of India under Article 309 read with Article 148 of the Constitution of India circulated

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under Comptroller and Auditor General's circular letter No. NGE 67/86 and letter No. 928-932/N-2/96-84 dated 29.9.1986. It has been shown above that the EDAs do not belong to a cadre of the Office of the Accountant General but are ex-cadre posts. The Rules for fixation of pay on reversion from an ex-cadre post are to be found in Government of India, Ministry of Finance Office Memorandum No. 7(75)-E.III(A)/71 dated 3.4.1972. That Office memorandum has been reproduced at pages 71 and 72 in Swamy's compilation of F.R. & S.R. part I of Eighth Edition. It has been stated that with the amendment to proviso to F.R. 22 by notification dated 30.11.1965, the benefit of service rendered in ex-cadre post, counting for increments in a cadre post on an identical scale is no longer admissible except to the extent, conditions laid down therein are fulfilled. A question was raised whether the benefit of fixation of pay in a cadre post with reference to pay drawn in an ex-cadre post under F.R. 22-C will continue to be available after that amendment, *it* was clarified that after the amendment, the previous orders had become obsolete and it was not permissible to fix pay in a cadre post on the basis of pay in an ex-cadre post. That Office memorandum also directed that all those persons whose promotions took place on or after 30.11.1965 would have their pay fixed strictly with reference to their pay in the lower cadre post in the parent cadre. This being the position, it is not permissible to fix the pay of a Supervisor on the basis of the pay that he was drawing as a Divisional Accountant or an Emergency Divisional Accountants.

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8. The last of the grounds taken in support of the reliefs sought for is that even though the pays of two others were fixed on the basis of the pay that they were drawing as EDAs, in his (applicant's) case, a deviation was made, therefore the clause of equality was violated. The applicant in the rejoinder filed by him has cited the example of one K. Ananta Rao to say that pay as Supervisor of a person who was E.D.A. is to be fixed on the basis of what he was drawing as E.D.A. He has stated that the said K.A. Rao's pay was fixed at Rs.800/- as Supervisor as he as E.D.A. was drawing Rs.775/-, including a Stagnation increment. From Annexure-10 it would be found that the said K. Ananta Rao was promoted to the grade of Supervisor i.e. Section Officer in November, 1984. By then Annexure-3 had been issued and 80% of the Auditors were to be in the scale of Rs.425-800/-. These Auditors later came to be known as Senior Accountants. There is no knowing whether the notional pay of Sri Rao in the grade of Auditor would have been such that by applying F.R.22-C his pay as Supervisor was to be fixed at Rs.800/-. Since the materials on record are not sufficient to make out a case of discrimination, we are not able to accept this contention.

9. In the result, we do not find any merit in this application and accordingly it stands dismissed. Since, the applicant in the meantime must have retired, we pass no order as to costs.

B.R.PATEL, VICE-CHAIRMAN,

I agree.
Central Admn. Tribunal,
Cuttack Bench/Cuttack.



[Signature] 6.4.90
.....
Member (Judicial)

[Signature] 6.4.90
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Vice-Chairman