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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.243 of 1988.

Date of decision: April 6, 1990.

Rabindranath Mohapatra ... Applicant.

Versus

Union of India and others ... 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) In this application the main prayer of the applicant is for a direction for fixation of his pay on his appointment as a Supervisor i.e. a Section Officer.

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2. At the outset the undisputed facts may be stated. The applicant joined service under the Accountant General, Orissa in

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November, 1955 as an U.D.Clerk. Thereafter, in October, 1967 he was promoted as a Selection Grade Clerk which in 1973 was redesignated as Selection Grade Auditor. He was confirmed in May, 1975 as Selection Grade Auditor. After that on 22.8.1975 he was appointed as an Emergency Divisional Accountant in the scale of pay of Rs.425-750/- but actually joined as such Emergency Divisional Accountant (hereinafter referred to as EDA) on 9.10.1975 in the Office of the Flood Investigation Division, Cuttack. After he joined as EDA, his pay was fixed at Rs.640/- in the scale of pay provided for the regular Divisional Accountant and that fixation was on the authority of Annexure-2. As an EDA he worked from 9.10.1975 to the end of March, 1986. As he reached the maximum of the scale provided for Divisional Accountants, he was allowed stagnation increment by an order dated 23.9.1983 which was slightly modified by the order dated 15.10.1983, copy at Annexure-4. In March, 1984, previous Accountant General's office was bifurcated into two units, one to be known as Audit Wing and the other as Accounts and Entitlement wing. The Divisional Accountants were kept under the Accountant General (Accounts and Entitlement). In December, 1983 the necessary notification with regard to bifurcation was made and in that notice (copy at Annexure-5), the sanction of the Government of India for two grades of Auditors, one in the scale of pay of Rs.330-560/-; the other in the scale of pay of Rs.425-800/- was made. 80% per cent of the Auditors were put in the higher scale. Similarly, for Section Officers, who were also known as Supervisors two scales of pay were provided; 20% in the scale of pay of Rs.500-900/- and the balance 80%

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in the scale of pay of Rs.650-1040/- In that notice it was further stated that the posts of Auditors were to be redesignated as Accountants or Selection Grade Accountants as the case may be and the Section Officers in the scale of Rs.500-900/- were to be known as merely Section Officer (Accounts) and those in the higher scale as Selection Grade Section Officer (Accounts), it was also provided for in that notice that 50 per cent of the future recruitments were to be made by promotion from Clerks on seniority and fitness basis and the rest 50 % through a departmental examination for Accountants. On 4.4.1986 the applicant joined as Supervisor i.e. as a Section Officer. Immediately, thereafter, his pay as supervisor could not be fixed and it was fixed on 16.9.1986 taking his substantive pay in the pre 1986 revised scale as Rs.775/- and this fixation is really impugned. It is also undisputed that the applicant's pay on promotion as Supervisor or Section Officer was fixed taking feeder cadre to be Senior Auditor or Accountant. The case of the applicant is that he was really promoted from the cadre of Senior Auditor or Accountant to the grade of Emergency Divisional Accountant and from that cadre of EDA he was promoted to the cadre of Section Officer (Accounts). Therefore, his pay ought to have been fixed under FR 22-C taking the pay that he was drawing as EDA as the basis.

3. The respondents in their counter have ^{pleaded} substantially two facts though the counter runs for 14 typed pages, namely that the EDAs were allowed the scale meant for Divisional Accountants as they were doing the same type of work as the latter and secondly, that the post of EDA being an ex-cadre post, no

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fixation of pay on promotion could be made on the basis of the pay that a person was drawing as EDA.

4. After the filing of the counter, the applicant has filed a rejoinder in which the plea of discrimination has been raised by alleging that two persons namely one Shri R.N.Misra and one Shri K.Ananta Rao's pays on promotion were fixed on the basis of what they were drawing as EDAs.

5. We have heard Mr.S.K.Nayak-1, learned counsel for the applicant and Mr.Ganeswar Rath, learned Sr.Standing Counsel (Central) for the respondents and perused the papers. The questions that really arise for consideration in this application are; (i) Whether the post of EDA is an ex-cadre post; (ii) whether promotion of the applicant as Section Officer (Accounts) was from the post of EDA or Senior Accountant and (iii) whether there has been any discrimination in the matter of fixation of pay in the Grade of Section Officers.

6; Today, we are delivering judgment in another case i.e. O.A.242 of 1988 in which the self-same questions were raised and we have given our reasons to hold that the post of EDA is really an ex-cadre post but however we may only add that the very nomenclature would suggest that the posts were meant to meet the demands of the immediate necessity and they cannot be ^{enclosed} incorporated. The EDA is a person who is really not qualified to be a Divisional Accountant. Therefore, it would be really difficult to accept the contention advanced on behalf of the applicant that EDA is a cadre post.

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7. The next question requiring an answer is whether promotion to the cadre of Section Officer is really from the cadre of Senior Accountant or from the Divisional Accountant or the EDA. To put it in other words, whether the posting of a Senior Accountant as a Divisional Accountant or Emergency Divisional Accountant would amount to a promotion. There is no dispute, and the matter is clear on reading Annexures-2 and 5, that the promotion to the grade of Section Officer would be from the cadre of Auditors subsequently redesignated as Accountant. If a person who is working as a Senior Accountant could be promoted as a Section Officer in the normal course it would be absurd to state that there would be an interim promotional post between the Senior Accountant and the Section Officer known as Divisional Accountant. In addition to the reasons mentioned by us in O.A.242 of 1988 we would hold that the promotion to the cadre of Section Officer could be made only from amongst the Senior Accountants and the mention of EDA in Annexure-5 is only a description of the post that an individual was then holding.

8. Last of the grounds in support of the applicant is the one based on allegation of discrimination. It has been stated in the rejoinder that the pay of one K.Ananta Rao was fixed on the basis of his pay that he was drawing as EDA but it is unsustainable in view of Annexure-10 wherefrom it would be found that K.Ananta Rao was one of the persons who made a representation against fixation of his pay as Supervisor i.e. Section Officer and his as well as that of the applicant, the representations were rejected. The other case to which reference has been made, by the applicant, is that of Ram Nathoo Mishra . As would be found from

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Annexure-12 this Ramanath~~xx~~ Mishra was promoted under E.O.No.1 dated 10.4.1986 of the A.G.(A & E). It has already ~~been~~ stated above, that 80 % of the auditors after December,1983 were to draw salary in the scale of pay of Rs 425-800/-. This promotion was definitely at least two years after 15.12.1983 when the notice in Annexure-5 was ~~given~~ ^{given} made. There is no material to show what would have been the notional pay of Ramanath Misra in the grade of Divisional Accountant. Therefore, the applicant has not been able to make out that the salary of Ramanath Misra was fixed on promotion as Section Officer on the basis of his pay that he was drawing as EDA.

9. In view of the discussions made above we find that the applicant is not entitled to any of the reliefs that he has prayed for. Accordingly, the application is dismissed but however without costs.

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Vice-Chairman



Mr. Engs
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Member (Judicial)