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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 94 OF 1988.

Decided on 13th July, 1989.

Sudhir Kumar Raptan,
Son of Late Kalipada Raptan,
Formerly Trained Primary School
Teacher, M.V.50 Primary School,
At/P.O. MALKANGIRI, District-Koraput. Applicant

Versus

1. Union of India, through
the Secretary, Ministry of Home Affairs,
Department of Home Affairs,
Rehabilitation Wing, Jaisalmer House,
Mansingh Road, New Delhi-110 011.
2. Chief Administrator,
Dandakaranya Development Authority,
At/P.O. Koraput, District-Koraput,
Orissa. ... Respondents

For Applicant - M/s. B. Pal, S.C. Parija and
O.N. Ghosh

For Respondents - Mr. A.B. Misra, Senior
Standing Counsel (Central)

C O R A M:

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

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporters or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

JUDGMENT.

B.R. PATEL, VICE-CHAIRMAN: In this application filed under section 19 of the Administrative Tribunals Act, 1985, since the applicant who has superannuated as a trained Matric teacher on 28.2.1987 has made two claims, namely, (1) a pay scale of Rs.290-560 with effect from 1.1.1973 till 31.12.1985 instead of Rs.260-430 and (2) a pay scale of Rs.1400-2600 with effect from 1.1.1986 till his retirement on superannuation on 28.2.1987.

2. The respondents have maintained in their counter affidavit that the Government of India is the absolute authority to revise/prescribe any pay scales and the pay scale of Rs.290-560 can be given to the applicant only after the Government of India have taken a decision to this effect. They have further stated that " the matter regarding allowing the scale to the similarly placed officials in the grade including the applicant has already been taken up with the Government." In regard to the second claim, they have stated that the applicant could be given only a pay scale of Rs.1200-2040/- as per the Central Civil Services (Revised Pay) Rules, 1986 which came into force with effect from 1.1.1986 and not Rs.1400-2600/-.

3. I have heard Mr. B.Pal, learned counsel for the applicant and Mr. A.B.Misra, learned Senior Standing Counsel for the Central Government. Mr. Pal has drawn my attention to the judgment of this Bench

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in O.A.No.34 of 1986 which was delivered on 29.1.1988 and has contended that the claim of the applicant for the scale of pay of Rs.290-560/- is covered by this judgment and as such this claim should be allowed. In regard to the applicant's claim for the payscale of Rs.1400-2600/- with effect from 1.1.1986 Mr. Pal has submitted that the Department has given him the pay scale of Rs.1200-2040/- and as that scale has been given to other employees similarly circumstanced, he would be satisfied with it and would not claim for the higher pay scale. In this connection, he has drawn my attention to para-3 of the counter affidavit filed by the respondents. This paragraph reads as follows :

" 3. That the facts stated in Para-6(a) to (d) of the applicant's application are not fully correct. The pay scale of Rs.290-560/- has been allowed based on the judgment of the Hon'ble Tribunal and after receipt of Government sanction on 22.6.86 (Annexure-R/1) notionally from 1.1.73 has also been allowed the revised corresponding pay scale of Rs.1200-2040/- w.e.f. 1.1.1986 as per the recommendations of the Fourth Pay Commission."

In regard to his claim for the scale of Rs.290-560/- Mr. Pal has referred to paragraph-2(b) of the counter affidavit; the relevant portion of which reads as follows :

" 2(b). The Govt. of India, Ministry of Home Affairs Department of Internal Security Rehabilitation Division, New Delhi in their letter No.10 (18)/87-Admn.III dt.22.6.88 filed herewith as Annexure-R.1 conveyed the sanction of the President to the revision of the scale of pay of Trained Matric Teachers to Rs.290-560/- from Rs.260-430/- w.e.f. 1.1.1973 or from the date the petitioner in respect of the said case were actually appointed to the post,

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whichever is later. The Government sanction is silent about the similarly placed other officials in the grade though it is felt that they are eligible for such higher scale on the spirit of the aforesaid judgment of the Hon'ble Tribunal. "

(underlining is for emphasis)

4. Mr. A.B.Misra, learned Senior Standing Counsel (Central) has submitted that the pay of the applicant should be fixed in the scale of Rs.290-560/- notionally. He has further contended that the Tribunal has no jurisdiction to fix a new pay scale beyond the **Revised Pay Rules of 1973** which prescribed a pay scale of Rs.260-430/-. He has further said that since the applicant has not made any representation previously, the application is barred by limitation under section 21 of the Administrative Tribunals Act,1985 and that the Tribunal cannot allow a claim prior to three years before the date of filing the application. Mr. Pal has however pointed out that the point raised by Mr. Misra in regard to the limitation has been adequately answered at page-6 of the judgment in O.A.No.34 of 1986.

5. In O.A.No.34 of 1986 to which reference has been made there were four applicants who were trained Matric teachers under the Dandakaranya Development Authority claimed a pay scale of Rs.330-560/- on the ground that they have acquired the prescribed qualification having passed the Higher Secondary Examination. This Bench allowed those applicants a pay scale of Rs.290-560/- on the ground that this pay scale has been given to the trained Matric teachers working under the Ministries of

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Railways and Defence because their nature of duties was one and the same. The Tribunal has taken a similar view as has been taken in the case of *Subash Chandra Panda v. Union of India*, reported in 58(1984) CLT 485. In the last but one paragraph this Bench held as follows :

"5. Taking into consideration the aforesaid facts and circumstances and in view of the discussions made above, we hold that the petitioners are entitled to pay scale of Rs.290 to Rs.560/- with effect from 1.1.1973 or the date from which they actually discharged their duties as such (whichever is later) and the arrear emoluments due to the petitioners be paid to the petitioners within four months from the date of receipt of a copy of this judgment."

The point of limitation raised by Mr. Misra has been answered in the same judgment as follows :

" Learned Senior Standing Counsel (Central) also urged before us that the case is barred by limitation under Article 7 of the Limitation Act and Section 21 of the Administrative Tribunals Act, 1985 and in order to substantiate his contention, learned Senior Standing Counsel (Central) has relied upon the judgment of the Supreme Court, reported in AIR 1962 SC 8 (*Madhab Laxman Vaikuntha v. State of Mysore*). We do not feel inclined to deal with this point in detail because we have already dealt this matter in detail in our judgment passed in O.A. Nos. 82, 83 and 101 of 1986 holding that the principles laid down by Their Lordships in the judgment reported in AIR 1962 SC 8 have no application to the facts of the present case because the amount due to the petitioners on their claim has not yet been settled and therefore the restrictions imposed under Article 7 of the Limitation Act would have no application to this case. It is attractive only when the dues have been settled. In that context, we have agreed with the view of the Hon'ble Judges of the Gauhati High Court and in their judgment, observations of Their Lordships of the Supreme Court referred to above have been taken into consideration. Judgment of Gauhati High Court is reported in AIR 1974 Gauhati 101 (*State of Assam v. Gopal Krishna Mehera*). Having agreed with the views

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of Hon'ble High Court of Gauhati, we find that the principles relating to Article 7 of the Limitation Act enunciated in the case of Madhab Laxman (Vaikuntha (supra) are clearly distinguishable from the facts of the present case; hence not applicable. In such circumstances, we find no merit in the aforesaid contention of the learned Senior Standing Counsel (Central)."

I have nothing further to add to what has been stated in the aforesaid judgment and I hold that this point of limitation raised by Mr. Misra has been adequately dealt with by this Bench in that judgment. In view of this, I have no hesitation in holding that the applicant is entitled to the pay scale of Rs.290-560/- from 1.1.1973 till 31.12.1985.

6. Fixation of pay of the applicant in the scale of Rs.290-560/- is not a matter before me. It has not been mentioned in the application nor has it been urged by Mr. Pal during hearing. Mr. Misra, however, has urged that the pay of the applicant should be fixed notionally in the scale of Rs.290-560/-. There is, however, no mention to this effect in the sanction order issued by the Government vide Annexure-R/1. This annexure is a copy of the letter No. 10 (18)/87-Admn. III dated 22.6.1988 issued by the Under Secretary to Government of India in the Ministry of Home Affairs, Department of Internal Security (Rehabilitation Division). If conveys sanction of the President to the revision of the scale of pay for the post of trained Matric teachers (Assistant Teachers) in the Dandakaranya Project from Rs.260-430/- to Rs.290-560/- (pre-revised) from 1.1.1973 or from the date the petitioners were actually appointed to the post whichever was later. Paragraph-2 of this letter says as follows :

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" They will also be eligible to draw arrears of pay and allowances in the scale of Rs.290-560/-."

There is no mention of fixation of pay notionally. However, I would say that the pay of the applicant should be fixed in the scale of Rs.290-560/- with effect from the date of his appointment to the post in the same way it has been fixed in the case of the applicants in O.A.No.34 of 1986.

7. As regards the applicant's claim for the pay scale of Rs.1400-2600/- it has been mentioned both by Mr. Pal and Mr. Misra that the scale of Rs.1200- 2040/- has been given to the trained Matric teachers of Dandakaranya Project on the basis of the recommendation of the Fourth Central Pay Commission. This pay scale is acceptable to the applicant. There is, therefore, no case for giving him a higher scale of Rs.1400-2600/-. As such this claim of the applicant for the higher scale of Rs.1400 - 2600/- is rejected.

8. In the result, the application is allowed in part, leaving the parties to bear their own costs.



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13.7.89
VICE- CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
The 13th July, 1989/Jena/SPA.