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CENTRAL-ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.136 of 1989

Date of decision : September 19, 1989.

Dr. Abhaya Charan Mishra, son of Madhusudan Mishra,  
Medical Officer incharge, Chest Hospital Dandakaranya  
Project. At/P.O.Mathili, Dist-Koraput, Pin-764044.

... Applicant.

Versus

1. Chief Administrator, Dandakaranya Development Authority, At/P.O./Dist-Koraput.
2. Union of India represented by its Secretary, to the Government Home Affairs, Department of Internal Security, Rehabilitation Division, Jaisalmer House, Mansingh Road, New Delhi.

... Respondents.

For the applicant ... Mr. S. N. Kar, Advocate.

For the respondents ... Mr. Tahali Dalai,  
Additional Standing Counsel (Central)

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C O R A M :

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 ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

N. SENGUPTA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the relief that he is entitled to draw pay in the pre-revised scale of pay of Rs.700-1300/- with effect from the date of his joining in Dandakaranya Project and in the revised scale of pay of Rs.2200-4000/- with effect from 1.1.1986 and the differential amount accrued to him during these periods.

2. The facts material for this application, briefly stated, are as below. The Dandakaranya Project required the services of some Medical Officers and in accordance therewith a notification was issued calling for applications and recommendation from different Departments for working as Doctors in the Project. Thereafter, by office memorandum of Dandakaranya Development Authority No.13/4/75/A.IV/24552 dated 23/24th August, 1982 conditions for ad hoc appointments were laid down and by that order the applicant was appointed (copy is Annexure-1). By office order No.152/83/A.IV dated 30.9.1983 the applicant's ad hoc appointment was extended and there were also subsequent extensions of the appointment. The applicant made some representation for regularisation of his services and as they did not bear any fruit, he filed original application No.7 of 1988 in this Tribunal, for regularisation of his services and for being declared to be entitled to the pay scale of Rs.700-1300/-. That application of his along with some other applications were disposed of by this Tribunal on 22.6.1988. By that judgment, this Tribunal directed the respondents of that case, who are also respondents in this case, to take up regularisation of the services of the applicant and other persons who had filed applications for the

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same relief. Inspite of that order passed by this Tribunal, it is alleged by the applicant that he has not been allowed to draw pay in the scale of pay of Rs.700-1300/-, revised to Rs.2200-4000/- with effect from 1.1.1986. Making these allegations the relief above said has been prayed for.

3. The counter of the respondents is that in accordance with the judgment of this Tribunal in O.A.7 of 1988, the services of the applicant have been regularised in the non-Central Health Services cadre. Their further stand is that as in the previous application, the present applicant had prayed for the relief of being declared entitled to draw pay in the scale of pay of Rs.700-1300/- and for the differential amount <sup>between</sup> ~~actually~~ received by him and the amount deemed to have been due had he been allowed to draw the pay in the scale of pay of Rs.700-1300/-, not having been allowed, the present prayer of the applicant is barred by the principles of constructive res judicata.

4. At the hearing none for the applicant appeared even though adequate opportunities have been given by adjourning the case at least twice. Mr. Tahali Dalai, learned Additional Standing Counsel (Central) has very vehemently contended that as the applicant had in his previous application giving rise to O.A.7 of 1988 asked for the self-same relief and as this Tribunal did not grant those reliefs, the present prayer is not entertainable being barred by res judicata. In order to appreciate this contention of Mr. Dalai it would be necessary to refer to the judgment delivered in the previous batch of applications including O.A.7 of 1988. A copy of the judgment delivered in that batch of cases has been made Annexure-3 to the petition.

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In paragraph 2 of the judgment delivered in that case what reliefs were prayed for were stated and from that paragraph it would be found that this Tribunal did not really address itself to the question whether the applicant was entitled to draw pay equal to those belonging to the Central Health Service cadre. It further appears that learned Members were more concerned, rather only concerned, about the regularisation of the ad hoc appointments and not the question whether the applicant was entitled to draw pay in any particular scale. No doubt if relief is asked for and not granted, in ordinary circumstance, it may be deemed to have been refused. But where no reference to the relief prayed for is made in the judgment or order, no such inference can legitimately be drawn. Doubtless, Explanation V to Section 11 of the Code of Civil Procedure states that any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused but if no statement about the relief is to be found in the judgment or order, Explanation V to Section 11 cannot possibly be attracted. I am, therefore, unable to accept the contention of Mr. Dalai that the present application is barred by the principles of res judicata.

5. Now, coming to the merits of the case, it may be stated that Mr. Dalai has not been able to show anything to make a distinction between the work done by persons belonging to the Central Health Service and those who were initially appointed on ad hoc basis in the Dandakaranya Project. Both the categories of Doctors are to be persons qualified and are to

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treat patients and ailments. There is an additional factor in favour of the applicant class i.e. they are doctors who were asked and are being asked to work in the areas where their patients are mostly unsophisticated and underdeveloped tribals. Thus, their work is very onerous and ~~exerting~~ than the persons working in a developed area. The principles enshrined under Article 39 (b) of the Constitution of India has now come to be interpreted in a series of decisions including ~~which is~~ <sup>those</sup> rendered by the Supreme Court and all the decisions have uniformly held that if some work is done by two sets of persons, there cannot be a distinction in the emoluments. That being the position, and Mr. Dalai not being able to show as to how the applicant as a class are inferior to those who have been inducted in the Central Health Service or if at all the burden on the applicant is less than on a person belonging to Central Health Service, it would be defeating the very spirit and letter of Article 39(b) of the Constitution of India to ask the applicant to draw a pay less than the one which a person in the Central Health Service is drawing. It is also pertinent to mention here that in similar case i.e. O.A.389 of 1988 (Dr. P.C. Samal v. Union of India) this question came up for consideration before this Tribunal and there this Tribunal directed that the applicant therein should be given the pay in the scale of pay of Rs.700-1300/- with effect from the date on which he joined as Medi-cal Officer on ad hoc basis and further that his pay should also be ~~fixed~~ in the corresponding pay scale as recommended by the 4th Central Pay Commission and accepted by

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the Government of India, with effect from 1.1.1986. To come to this conclusion elaborate reasons have been given and the principles enunciated in the ruling reported in AIR 1982 SC 879 and the observations of the Supreme Court in the case of Surinder Singh v. Engineer-in-Chief reported in AIR 1986 SC 584 were referred to and quoted. Since there has already been a decision of this Tribunal on the point it is unnecessary on my part to traverse the same ground again, <sup>by saying that</sup> I must conclude ^ not only that the decision in that case has almost a binding effect but I respectfully agree with the reasons mentioned in the judgment of O.A.389 of 1988 for coming to the conclusion that that ad hoc Doctors are entitled to draw their pay in the prrevised scale of pay of Rs.700-1300/- and subsequently in the corresponding revised scale of pay of Rs2200 -4000/- with effect from 1.1.1986.

6. The applicant succeeds and the respondents are directed to pay the differential amount calculated in view of the finding recorded above within four months hence. Since there has been no appearance at the hearing on behalf of the applicant, he is not entitled to any costs.

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
September 19, 1989/Sarangi.



*M. Sarangi*  
19.9.89  
.....  
Member (Judicial)