

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 283 OF 1989

Date of decision: 8th. may, 1991

Nrusingha Prasad Mishra : Applicant

Versus

Union of India and others : Respondents

For the Applicant M/s. B.Pal, O.N.Ghosh,
S.C.Parija, Advocates.
For the Respondents Mr. T. Dalair Addl., Standing
Counsel (Central).

C O R A M:

THE HONOURABLE MR. B.R. PATEL, VICE- CHAIRMAN
A N D
THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be permitted 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.
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J U D G M E N T

B.R.PATEL, VICE CHAIRMAN: This is a matter of pay fixation. The applicant was Headmaster of a High School under the Dandakaranya Development Authority (DDA) before he was redeployed through the Surplus Staff Cell of the Ministry of Personnel & Training, Administrative Reforms, Public Grievances and Pensions in transferred application No.45 of 1986 which was decided on 4.8.1986. This Bench held that the petitioner was entitled to the Pay scales prescribed by the Third Pay Commission and accepted by the Government of India and also acted upon by the Government of India entitling the petitioner to the said amount for the period he worked as Headmaster of a High School and/or was/is working as the Headmaster of a Middle School. The pay scale that was acted upon by the Government of India referred to in the aforesaid judgment was Rs. 650-1200/- for Headmaster of a High School and Rs. 550-900/- for the Headmaster of a Middle School. The D.D.A. by their order dated 30th October, 1986 (Annexure-4) fixed the pay of the applicant at Rs. 625/- under FR-22(C) in the scale of pay of Rs.550-900/- with effect from 24-11-1975(FN). In paragraph-5 of the aforesaid Office order he was allowed to carry the scale of pay of Rs. 550-900/- as personal to him with effect from 13-8-1981(FN) consequent upon his promotion to the post of Headmaster, High School.

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By an another Office Order dated 27-11-1986 (Annexure-A/5) the applicant was granted revised scale of Rs. 650-1200/- with retrospective effect from 13-8-1981 and his pay was fixed at Rs. 810 per month with effect from this date in partial modification of paras-5 and 6 of the Office order dated 30-10-1986. Later by office order No. 28/435/MZ/Estt./Edn/14604-10 dated 20-7-1988 (vide Annexure-A/7), the DDA revised the pay of the applicant at Rs. 740/- with effect from 13-8-1981 and the scale of Rs. 650-1200/- giving rise to the present grievance of the applicant.

2. In the Counter affidavit the Respondents have taken the stand that the applicant was a substantive member of the cadre of Trained Graduate Teacher in the scale of Rs. 380-640/- with effect from 1-1-1973 and as there was no support cadre for Headmaster, Middle School, the Trained Graduate Teachers and the Headmasters, Middle Schools being interchangeable posts the scale of Rs. 550-900/- cannot be taken into account for the purpose of fixing the pay of the applicant in the scale of Rs. 650-1200/-. They have further maintained that he has not been formally promoted to the post of Headmaster, Middle School. Elsewhere in the same counter they have however, stated that "the Post of Trained Graduate Teacher is in the feeder line for promotion to the post of Headmaster, Middle School". He has however, been denied the scale

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of Rs. 550-900/- for the purpose of fixation of his pay in the scale of Rs. 650-1200/- for Headmasters of High Schools on the ground that the applicant did not exercise his option in favour of the post of Headmaster Middle School. They have further mentioned in their counter that the applicant did not join the post of Headmaster (Middle School) and filed a case before the Central Administrative Tribunal, Cuttack Bench vide Original Application No. 92 of 1986 for quashing the order of his promotion to the post of Headmaster (middle School) since he was ^{then} holding the post of headmaster High School which is higher than the post of Headmaster, Middle School and his case for revision of pay scale for the post of Headmaster, of a High School was pending ^{before} the Central Administrative Tribunal, Cuttack Bench. The same was allowed by the Tribunal vide their judgment dated 21.10.1987. We have gone through our judgment in Original Application 92 of 1986 which was delivered on 21st October, 1987. In paragraph-3 of the judgment (para 2(i) of the counter of the Respondents) has been quoted as follows:

"XX XX XX XX XX On the recommendation of the Departmental Promotion Committee the applicant was given the option of joining as Head Master, Middle School. Once option has been asked for, it is open for the applicant to exercise the same in either way. If the fact of contesting the order vide Annexure-6 in relation to the applicant by way of filing the case in this court is taken as an act of not

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exercising the option by the applicant to go to the post of Headmaster, Middle English School, the respondents have no objection that the order vide Annexure-6 in relation to applicant may stand vacated and accordingly the case may also be disposed of".

There-after it has been mentioned in this paragraph i.e. paragraph-3 of the judgment that Mr. Pal learned Counsel for the applicant submitted before us that the applicant does not want to exercise option to go as Headmaster, Middle School. This plea of the applicant in that case and the averments of the Respondents in their Counter as quoted above, were taken into account and the Bench quashed Annexure-6 calling for the applicant's option for the post of Headmaster Middle School. In para-2 of our judgment in that case we have mentioned that the applicant was continuing as Headmaster of a High School when he approached the Tribunal in the aforesaid case. As he was then working as Headmaster of a High School, there was no point in his exercising any option for a lower post i.e. the post of Headmaster Middle School. Nobody holding a higher post would opt for a lower post and no exception should be taken by the DDA to the applicant preferring a higher post to a lower one carrying less pay. Mr. Pal has urged that the stand of the Respondents to fix the applicant's pay with reference to the pay in his substantive post of

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Trained Graduate Teacher (Rs. 440-750/-) goes against the order of the Tribunal in T.A. No. 45 of 1986 and as such amounts to contempt of the Tribunal. We will not go to that extent that any contempt of the Tribunal has been committed by the Respondents but would affirm that as the applicant was given the scale of Rs. 550-900/- as Headmaster of a Middle School on the strength of the order of this Tribunal, that order has to be implemented. In fact the applicant has been given the pay scale of Rs. 550-900/- when he worked as Headmaster Middle School and his promotion from the cadre of Trained Graduate Teacher to that of Headmaster Middle School has been recommended by the Departmental Promotion Committee on 22nd February, 1986 as is clear from the facts mentioned in Original Application No. 92 of 1986 and further that the applicant has been promoted to the rank of Headmaster High School when he was Headmaster of a M.E. School as is clear from the Office order No. 55/81 dated 25.7.1981 (Annexure-A/2). There is, therefore, no escape from taking the amount the applicant was or would be drawing in the scale of Rs. 550-900/- into account while fixing the pay of the applicant in the scale of Rs. 650-1200/- as Headmaster of a High School. Mr. Pal has further urged that as the impugned order substantially reduces the emolument of the applicant the applicant should have been given an opportunity to represent his case before the competent Authority. As that has not been done, according

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to Mr. Pal, the impugned order has violated the principle of natural justice. We agree with Mr. Pal that the applicant should have been given an opportunity to have his say before refusing his pay.

3. For the reasons mentioned above we quash the office order dated 20.7.1988 i.e. Annexure-A/7 and restore his pay fixed on 13.8.1981 under FR-22(c) in the post of Headmaster, High School at Rs. 810/- ^{P.M.} as per the statement of fixation of pay attached to Annexure-A/5.

4. This case is accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (JUDICIAL)

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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench: K. Mohanty.

