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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.181 OF 1992
Cuttack, this the 17th day of December, 1998

Dr.H.B.Pradhan Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO .

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 17/12/98

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Dr.H.B.Pradhan,
son of late R.C.Pradhan,
Assistant Collector,
Central Excise & Customs,
Sambalpur, District-Sambalpur Applicant

Advocates for applicant - M/s J.Patnaik
H.M.Dhal
S.K.Patnaik
A.A.Das

Vrs.

1. Union of India,
represented through Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Collector,
Central Excise & Customs, Orissa,
Bhubaneswar, District-Puri.
3. Additional Collector
(P&V) Collectorate of Central Excise &
Customs, Orissa,
Bhubaneswar, Dist.Puri. Respondents

Advocate for Respondents - Mr.Ashok Mohanty
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 10.4.1992 refixing
his pay and ordering recovery. There is also a prayer for

LS a direction to the respondents to count the Military Service rendered by the applicant for the purpose of seniority and consequential benefits.

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2. The facts of this case, according to the petitioner, are that he is a Doctor and joined the Army Medical Corps on 17.2.1977. He was discharged from Military Service on 27.7.1982. His Army Service Certificate is at Annexure-1. At the time of release from the Military Service the applicant was drawing Rs.1400/- per month in the scale of Rs.1150-1500/-. The applicant joined Indian Revenue Service with effect from 26.12.1984 in the scale of Rs.700-1300/-. After joining Indian Revenue Service he made several representations to give him seniority, to count his past Military Service, and to protect his last basic pay drawn at the rate of Rs.1400/- per month. After protracted correspondence, Government of India in their letter dated 22.2.1990 at Annexure-2 laid down the criteria for fixing his scale of pay and directed for regularisation of past Military Service. It is submitted by him that regularisation of his past Military Service for the purpose of seniority is still pending consideration. This letter dated 22.2.1990 regarding the manner in which his pay is to be fixed in Indian Revenue Service is at Annexure-2. In accordance with this order, the Collector, Central Excise & Customs, Bhubaneswar (respondent no.2) and Additional Collector, Bhubaneswar (respondent no.3) fixed his pay at Rs.1400/- per month. Copy of the letter dated 4.4.1990 of Chief Accounts Officer, Central Excise & Customs, Bhubaneswar, enclosing a copy of pay fixation statement is at Annexure-3. After the pay has been so fixed, respondent nos. 2 and 3 entered into correspondence with Secretary, Ministry of Finance, regarding pay fixation of the

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applicant and the latter clarified in letter dated 27.11.1991 (Annexure-4) that advance increments to the petitioner are to be granted in the scale of re-employed civil post, i.e. Rs.700-1300/- and not in the scale of pay of Rs.1150-1500/- which he enjoyed while in Military Service. The applicant further states that on receipt of this clarification at Annexure-4 respondent no.3 re-fixed the applicant's pay at Rs.900/- and directed recovery of an amount of Rs.71,357.00. This order is at Annexure-5 which has been impugned in this application. The applicant's case is that Government of India order dated 22.2.1990 at Annexure-2 makes it clear that his pay was rightly fixed originally and the subsequent reduction of his pay is because of wrong fixation. The applicant has also stated that in accordance with these instructions as also FRs 22, 27 and 9(23)(b) the basic pay last drawn by the applicant is to be protected and if this is beyond the maximum of the scale of pay of the post now held by the applicant, then it has to be given to him as personal pay. It is also stated that once the pay has been fixed by the competent authority, it is not possible to change the same. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant joined Indian Revenue Service on 26.12.1984 in the scale of Rs.700-1300/-. According to the Ministry of Finance's instruction dated 22.2.1990 which is at Annexure-2 of the O.A., the pay of the applicant should have been fixed by giving him five increments at the rate of Rs.40/- for his five years of service in the Army on the minimum of the basic pay of

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Indian Revenue Service at Rs.700/-. Therefore, the respondents have stated that his pay should have been fixed at Rs.900/-. Instead of that, his pay was fixed at Rs.1400/- resulting in over-payment. The respondents have stated that original fixation of pay at Rs.1400/- was incorrect and that has been corrected. It is further submitted that when the applicant was promoted to Senior Time Scale, for fixing his pay in the Senior Time Scale his Service Book was verified and it was seen that there was only one entry with regard to his pay on 1.1.1986. There was no entry with regard to his pay on the date of joining, i.e., on 26.12.1984 and there was no mention in the Service Book as to how the basic pay was fixed at Rs.3500/- as on 1.1.1986. Accordingly, the Ministry's clarification was sought. The Ministry clarified in their letter dated 27.11.1994 at Annexure-4 that he should be granted advance increments in the scale of re-employed civil post, i.e. Rs.700-1300/- and not that of Army Medical Corps, i.e., Rs.1150-1500/-. Accordingly, the respondents have stated that his pay has been rightly refixed at Rs.900/- and the recovery has been correctly ordered. The respondents have also stated that the scale of pay of Indian Revenue Service at that time ended at Rs.1300/- and the pay of the applicant at Rs.1400/- could not have been protected. The respondents have also stated that the fixation of pay of the applicant is governed by Ministry of Home Affairs' circular dated 29.11.1984 at Annexure-A to the counter and the circular dated 31.10.1985 at Annexure-B, and FRs 22, 27 and 9(23)(b) have no application to his case. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. The applicant has filed a reply to the counter in which it is stated that the Department have misunderstood the Government of India instruction at Annexure-2 as well as the clarification of the Ministry at Annexure-4 to the O.A. According to the applicant, when he joined Indian Revenue Service, instructions dated 29.11.1984 and 31.10.1985 were in force. Subsequently, Government of India have issued Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 and paragraph 8 of the orders deals with pay fixation of Emergency Commissioned Officers and Short Service Commissioned Officers who are commissioned after 10.1.1968 and who have joined civil Departments after their release from Military Service. This rule also carries the same formula as has been mentioned in the circular dated 29.11.1984. Accordingly, the applicant has stated that his second pay fixation has been wrongly done. It has been further stated by the applicant in his reply to the counter that the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 also apply to persons who are re-employed in Public Sector Undertakings, Local Bodies, etc. He has further stated that for re-employed pensioners including Short Service Commissioned Officers in the Insurance Industries, Ministry of Finance, Department of Economic Affairs have issued circular dated 9.5.1988, which is at Annexure-7, in which it has been clearly mentioned that even after allowing additional increments, ^{if} fitment even ^{of civil post} at the ceiling of the entry grade does not provide full protection, then personal allowance should be granted which may be absorbed against future increase in

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emoluments. This circular dated 9.5.1988 of Ministry of Finance, Department of Economic Affairs gives an example how the salary of released Short Service Commissioned Officers is to be fixed. In view of this, the applicant has reiterated his prayer in the O.A.

5. We have heard Shri J.Patnaik, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records.

6. The main controversy in this case is with regard to fixation of pay. Even though the applicant has made a prayer about counting his Military Service for the purpose of seniority, in the O.A. no averment has been made in this regard except stating that the matter is pending consideration even now. The basis on which the petitioner has made this prayer for counting his Military Service for the purpose of seniority has not been indicated. As such we hold that the applicant has not been able to make out a case for counting his military service towards his seniority in the Indian Revenue Service. This prayer is, therefore, held to be without any merit and is rejected.

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7. As earlier mentioned, the main controversy in this case is with regard to fixation of pay. Both the applicant and the respondents rely on the letter dated 22.2.1990 in which a reference has been made to the letter dated 29.11.84 (wrongly typed as "89") and the letter dated 31.10.1985 (wrongly typed as "31.10.89"). These two circulars have been attached as Annexures A and B of the counter of the respondents. The sole question for consideration, therefore, is whether the fixation of pay of the applicant at Rs.1400/- or at

Rs.900/- has been correctly done in accordance with these two circulars.

8. Before proceeding further it has to be mentioned that the circular dated 31.10.1985 is not relevant for the present purpose. In this circular it has only been laid down that the benefit of circular dated 29.11.1984 would be applicable to those Short Service Commissioned Officers who have joined civil posts prior to 1.11.1984. As the applicant has joined civil post on 26.12.1984, the circular dated 31.10.1985 is of no application to his case, and his case is squarely covered by circular dated 29.11.1984. Paragraph 2 of this circular dated 29.11.1984 is quoted below:

"2. A question has been raised as to how the pay of those ECOs/SSCOs who joined pre-commissioned training or were commissioned after 10.1.1968 should be fixed on their appointment to the various Civil posts. The matter has been considered in consultation with the Ministry of Finance etc. and it has been decided that those officers may be granted advance increments equal to the completed years of service rendered by them in Armed Forces on a basic pay (inclusive of deferred pay but excluding other emoluments) equal to or higher than the minimum of the scale attached to the civil post. The pay so arrived at should not, however, exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by them in the Armed Forces."

From the above, it is clear that fixation of pay of the applicant has to be done by granting him advance increments equal to the completed years of service rendered by him in Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the

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civil post. It is also laid down that the pay so arrived at should not exceed the basic pay last drawn by the applicant in the Armed Forces. For the present purpose, we have left out the reference in this circular to the deferred pay which is not applicable in the case of the applicant and other emoluments which are in any case are excluded. The admitted position is that the applicant had put in five years of service in Army Medical Corps. He is, therefore, to be given five advance increments. The respondents have given him the five advance increments on the minimum of the scale of pay of Indian Revenue Service, which is Rs.700/-. The increment being Rs.40/-, for five years advance increments an amount of Rs.200/- has been allowed and his pay has been fixed at Rs.900/-. Prima facie it is clear to us that this pay fixation is incorrect and also not in accordance with the clarification dated 27.11.1991 issued by the Department of Revenue at Annexure-4. While refixing the pay of the applicant at Rs.900/- the respondents have given him advance increments for five years from a stage equal to the minimum of the scale of pay attached to the civil post. If that is to be done, then the circular would not have provided for the following words: "equal to or higher than the minimum of the scale attached to the civil post". In other words, the advance increments can be sanctioned either at a level which is the minimum of the scale of pay of the civil post or at a level which is higher than the scale of pay of the civil post. The obvious purpose of adding these words: "higher than the minimum of the scale attached to the civil post" is for

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protecting his pay. Therefore, the pay of the applicant has to be fixed by giving him five increments from a stage in the scale of Rs.700-1300/- which would take him to his last pay drawn in the Military Service, which is Rs.1400/-. But the difficulty here is that the scale of pay of Indian Revenue Service ends at Rs.1300/-. So even allowing him the last five increments in the scale, his pay cannot be fixed at Rs.1400/-. In such a situation, obviously his pay has to be fixed at Rs.1300/- in the scale of Rs.700-1300/- and he has to be allowed Rs.100/- as personal pay to be absorbed against the future increase in emoluments. The Ministry's circular dated 27.11.1991 at Annexure-4 which has been relied upon by the respondents in fixing the applicant's pay at Rs.900/- has been misunderstood. In this circular, the Ministry have merely mentioned that advance increments are to be granted to the applicant in the scale of Rs.700-1300/- and not in the scale of Rs.1150-1500/-, i.e., the scale of pay the applicant enjoyed while he was in Army Medical Corps. Obviously, there is nothing wrong in this circular. The increments have to be allowed in the scale of Rs.700-1300/-. But the point is that the increments are to be allowed not necessarily from the minimum of the scale of pay but from a stage which is higher than the minimum in the case of the applicant so as to reach his last pay drawn by him in the Army Medical Corps. In view of this, we have no doubt that the pay fixation done in the order dated 10.4.1992 at Annexure-5 is not in accordance with the Government circular and therefore the same cannot be sustained and is quashed.

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9. The other aspect of the matter is that the original pay fixation of the applicant, which is at the enclosure to annexure-3 of the O.A. also appears to have been done incorrectly. This pay fixation has been done on coming into force of the Fourth Pay Commission Revised Scale of pay from 1.1.1986. The replacement scale of Rs.700-1300/- in the Fourth Pay Commission's recommendation was Rs.2200-4000/-. In this enclosure to annexure-3 the applicant's pay has been fixed as on 1.1.1986 at Rs.3500/-. Prima facie this also appears to be incorrect because as it appears from the second page of this pay fixation statement his pay has been taken at Rs.1400/- as on 1.11.1984. Reference to 1.11.1984 is wholly misconceived because the applicant joined Indian Revenue Service, as admitted by both sides, on 26.12.1984 and therefore, his pay has to be fixed as on 26.12.1984 in accordance with the circular dated 29.11.1984. This mistake possibly has been committed because in the circular dated 29.11.1984 it is mentioned that this order will take effect from 1.11.1984 and the Ministry in their letter dated 22.2.1990 at Annexure-2 have wrongly mentioned that arrears of pay, however, will be admissible from 1.11.1984 only going by the circular dated 29.11.1984 as also the circular dated 31.10.1985 in which it has been mentioned that arrears will be allowed with effect from 1.11.1984. But on 1.11.1984 the applicant had not joined Indian Revenue Service and therefore, his pay has to be fixed on 26.12.1984 at Rs.1300/- plus Rs.100/- as personal pay. The pay fixation statement which is at the enclosure to Annexure-3 is also

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incorrect because on 1.8.1985 the applicant has apparently been allowed an increment raising his pay to Rs.1450/- and as on 1.1.1986 his pay has been taken as Rs.1450/-. There might be a mistake in this also, but unfortunately there has not been any submission by either side at the Bar on this point. The point here is whether during his period of probation any increment is allowable to the applicant. Normally during the period of probation no increment is allowed. In this case, in the absence of any averment in the pleadings or any submission at the Bar at the time of hearing, it is not possible to take a view on this. But this cannot be a subject-matter of controversy. In case the applicant is not entitled to any increment during the period of probation and in case his probationary period is for two years, which is the usual period, then his pay as on 1.1.1986 has to be fixed taking his basic pay at Rs.1300/- and personal pay at Rs.100/-, which will also count towards his pay fixation in accordance with the Central Civil Services (Revised Pay) Rules, 1986, which were brought into force for implementing the Fourth Pay Commission revised pay scales. In view of this, taking his basic pay at Rs.1450/- as on 1.1.1986 appears to be incorrect. If, on the other hand, the applicant is entitled to annual increment even during the period of probation, even then he having reached the maximum of the scale at Rs.1300/- he would be entitled to stagnation increment only after two years which again will be absorbed by adjustment from his personal pay. In other words, either way his pay has to be fixed as on 1.1.1986 by taking his pay at Rs.1300/- plus personal pay at Rs.100/-. As the pay fixation at Annexure-3 has been

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wrongly done, we direct the respondents to re-fix the pay of the applicant strictly in accordance with rules and in accordance with the observation above within a period of 60 (sixty) days from the date of receipt of copy of this order. If the pay is so fixed, it is likely that some case of overpayment will come up. The respondents would be free to recover the amount so fixed from the applicant.

10. With the above observation and direction, the Original Application is partly allowed but without any order as to costs.


(G.NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
17.12.98

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