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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 446 of 1992

Cuttack this the 22nd day of November, 1996

Ananta Charan Mohapatra ... Applicant (s)

Versus

Union of India & Others ... Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

N. Sahu
(N. SAHU) 22/11/96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 446 of 1992

Cuttack this the 22nd day of November, 1996

PRONOUNCED IN THE OPEN COURT

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

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Ananta Charan Mohapatra
Son of Late Sankar Mohapatra
Lower Ganga Circle, Central
Water Commission, P.O. Maithon
Dam District Dhanbad (Bihar)
permanent resident of
Vill/P.O. Golabai
District: Puri

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Applicant

By the Advocate:

M/s. J. Patnaik
H.M. Dhal
S.K. Patnaik

Versus

1. Union of India represented through
the Secretary, Home Affairs,
Department of Personnel and A.R.S.
North Block, New Delhi
2. Chairman, Central Water Commission
Seva Bhawan, R.K. Puram
New Delhi-110066
3. Superintending Engineer
Central Water Commission,
Lower Ganga Circle,
P.O. Maithon Dam District: Dhanbad (Bihar)
4. Dandakaranya Development Authority
represented through its Project Director
At/PO/District: Koraput (Orissa)

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Respondents

By the Advocate:

Mr. Akhaya Kumar Mishra,
Addl. Standing Counsel
(Central Govt.)

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE) :

Heard Shri H.M. Dhal, learned Counsel for the applicant and Shri Akhaya Kumar Mishra, Additional Standing Counsel (Central) for the Respondents.

2. The applicant was initially appointed as a Tracer under Respondent No.4, D.D.A. Project in the pay scale of Rs. 260-430/- in 1961. He subsequently worked in the same Project as Assistant Draftsman and his service was placed under Surplus Cell vide Ministry of Home Affairs Order dated 12.11.1984. At that time the pay scale of Ferro Printer and Tracer were same. He was, therefore, placed as Ferro-Printer under L.G. Circle, C.W.C., Maithan (Refer letters dated 21.12.1984 and 31.1.1985). He joined Maithan on 22.2.1985 protesting his posting as Ferro Printer. At that time, he received a posting order as Tracer in the office of Soil Survey Officer, Calcutta. He was not relieved but his S.E. Recommended to M.H.A. for absorbing him in an existing vacant post of Tracer at Maithan. No action was taken on this.

3. In this application, the applicant impugns the orders passed under Annexures 7, 10 and 13. Annexure-7 addressed to Respondent No.3 contains reasons of the Central Water Commission as to why the applicant should not be allowed to draw Rs. 200-2040/-. There was a direction that the applicant should be reverted to the post of Ferro Printer to which he was originally appointed by letter

dated 12-2-1985. There was a direction that his basic scale as Ferro Printer be fixed at Rs. 975-1450/-. Annexures-10 and 13 re-affirm the decision of the Central Water Commission referred to above. Annexure-13 is a letter dated 9.11.1991 rejecting the applicant's representation. The applicant's case was vigorously presented by Respondent No.3, viz., Superintending Engineer to Respondent No.2, Chairman, Central Water Commission. The crux of the applicant's case for higher scale has been highlighted by Respondent No.3 in his letter dated 23.11.1991 (Annexure-11). He referred to the decision of the Ministry of Personnel, P.G. & Pensions, vide their letter No.4(68)/87-CS-III, dated 6.4.1988, wherein in a similar case, the Ministry had allowed the protection of higher scale to another junior scale officer from surplus Cell. It is, further reiterated that in the applicant's case, the scale of Rs. 1200-2040/- should be allowed as personal to him vide item No.2 of the above cited Office Memorandum of the Ministry of Personnel.

4. AS things stand, learned Additional Standing Counsel has filed a Miscellaneous Application today enclosing thereto three important documents which have a bearing on this Original Application. The first document is Office Memorandum dated 30.5.1995 which is Annexure- R/1 to the Miscellaneous Application on the subject of redesignation of the posts of Ferro Printer in C.W.C. This O.M. says that the earlier order dated 26.9.1986 is partially modified and "all the posts of Ferro Printer are re-designated as Draftsman, Gr.III along with erstwhile Tracer.

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This order will take retrospective effect from 30.8.1986". It is further stipulated that the benefits of redesignation is subject to fulfilment of conditions laid down in the Ministry of Finance Department of Expenditure O.M. No. 13(1)-IC/91 dated 19.10.1994. This letter is annexed to Miscellaneous Application as Annexure-R/2. For draftsman, Gr.III which is the status of the applicant, the minimum period of service for placement for the scale of Rs.1200-2040/- is seven years. It is admitted in the Bar that the applicant did possess this experience of seven years when by Annexure-6 he was granted scale of Rs. 1200-2040/-. Annexure-6 is the order dated 9.8.1983. It is very important and organic to the disposal of this Application and therefore, it is extracted hereunder:-

"Consequent upon the revision of scale of pay of Draftsman, I, II and III after the implementation of IVth Pay Commission, vide No. 13/12/84-Estt.I dated 13.6.1988 of Ministry of Water Resources, Communication vide CWC No. A-11012/1/87-Estt.IV dated 8.7.1988 and in terms of OM No.1/10/68-CS.III dated 4.12.1986 of Ministry of Home Affairs, Shri A.C. Mohapatra, a Surplus Asstt. Draftsman-Cum-Tracer of Dandakaranya Project nominated as Ferro Printer in this office by the Central Surplus Cell has joined his duty on 12.2.1985, is hereby allowed to draw the scale of pay of Rs.1200-30-1560-EB-40-2040/- personal to him with effect from 9.11.1987. His annual increment date will be 1.11.1988".

5. Even otherwise, purely on the basis of existing facts, the applicant is entitled to succeed. What all, Respondent No.3 had done was to protect his pay as Tracer which was his cadre post at the time of his enrolment in Surplus Cell. In M.H.A's

O.M. No.1/10/68-CS(III), dated 4.12.1968, it is laid down that even though a person whose service is under Surplus Cell is absorbed in a post lower than his cadre post, he may be allowed higher scale as applicable to his cadre post. That is, even though he is working in a post carrying lower scale, the difference of pay will be treated as his personal pay. The Government of India by virtue of Annexure - 3.3. dated 17.7.1995 submitted by Shri Akhaya Mishra had confirmed the same thing.

6. In the light of the above discussion, Respondent No.2's objection to the scale of Rs. 1200-2040/- in the case of the applicant can not hold good. In the light of the OM dated 30.5.1995, the office order dated 9.8.1983 confirming the scale of Rs. 1200-2040/- can not be modified by Respondent No.2. The scale of Rs. 1200-2040/- from 9.11.1987 conferred on the applicant can not be withdrawn. Annexures-7,10 and 13 are no longer valid and are accordingly quashed. The application is allowed. If the Respondents have recovered any amount from the salary by virtue of the final order of Respondent No.2 (as per Annexure-13), the same shall be refunded. No costs.

N. Sahu
(N. SAHU) 22/11/96
MEMBER (ADMINISTRATIVE)

B.K. Sahoo, CM.