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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 642 OF 1992

Cuttack, this the 1st day of July, 1999

Sri Ganeswar Mishra 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)

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(SOMNATH SOM)
VICE-CHAIRMAN
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CORAM:

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

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Sri Ganeswar Mishra,
aged 65 years,
son of late Biswanath Mishra, Retd. A.P.M, Bolangir H.O.,
At-Club Para, Bolangir Applicant

Advocates for applicant - M/s S.K.Mohanty &
S.P.Mohanty.

Vrs.

1. Union of India, represented by its Secretary,
Department of Posts, Dak Bhawan,
New Delhi.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar.
3. Superintendent of Post Offices,
Bolangir Division, Bolangir ...Respondents

Advocate for respondents - Mr.S.Behera
A.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 a direction to the respondents to refix his pension at a stage higher than the pension fixed for one Upendra Nanda whose last pay drawn before retirement was less than the applicant and who retired prior to 1.1.1986 which, according to the applicant, was the cut off date for revision of pension. The second prayer is for a direction to the respondents to pay all arrear dues to the applicant.

2. The case of the applicant is that he retired as Assistant Post Master, Bolangir on 31.7.1985. At that time his last pay was Rs.600/- and his pension was fixed at Rs.812/-. One Upendra Nanda retired as Assistant Post Master, Bolangir H.O. on 28.2.1985 earlier than the applicant and his last pay drawn was Rs.580/-, but he has been drawing higher pension at Rs.975/-. The applicant found this as a discrepancy, and this was brought to the notice of Deputy Director of Accounts (F) by the Superintendent of Post Offices, Bolangir, in his letter dated 10.4.1990 at Annexure-1. Thereafter the applicant moved the higher authorities by several representations for reconciliation of the discrepancy. In letter dated 28.5.1992 (Annexure-2), Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, intimated the applicant that his representation has been forwarded to the Department of Posts for consideration. Ultimately, Assistant Director of Accounts in his letter dated 7.7.1992 at Annexure-3 disposed of the applicant's representation and informed the applicant that his pension has been correctly fixed and needs no modification. The applicant's case is that as he had retired later than Upendra Nanda and his last pay drawn was higher than what was drawn by Upendra Nanda as last pay, his pension should have been fixed at a level higher than Upendra Nanda. That is how he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have admitted that the petitioner at the time of his retirement on superannuation on 31.7.1985 as Assistant Post Master, Bolangir H.O., was drawing last pay of Rs.600/- per month. The Fourth Pay Commission recommendations came into force with effect from 1.1.1986 after his retirement. For the

pensioners retired prior to 1.1.1986 Government of India laid down separate formula for fixing pension. The pension of the petitioner was fixed as per Item 4.1(D) of Appendix 17 which is at Annexure-R/1. This formula applies to persons retiring in between 31.3.1985 and 31.12.1985. The petitioner having retired on 31.7.1985 came under this category and his pension was recalculated at the rate of 50% of the average emoluments. The total emoluments being Rs.1498/- his pension was fixed at Rs.749/-. By way of revision of pension pursuant to the instruction issued after implementation of the Fourth Pay Commission recommendations and as per the conversion table provided, the applicant's pension was revised by adding Rs.63/- to his pension of Rs.749/- and therefore, his pension was fixed at Rs.812/-. It is necessary to note at this stage that right from the date of his superannuation the applicant was getting personal pension of Rs.138/- and this was in addition to the pension of Rs.812/- which was fixed for the petitioner. As regards Upendra Nanda with whom the petitioner has compared his case, the respondents have stated that Shri Nanda retired on 28.2.1985 with the basic pay of Rs.580/- in the pre-revised scale. Initially his pension was fixed at Rs.460/-. After the Fourth Pay Commission recommendation with regard to pensioners came into force, Upendra Nanda came under the category covered under Rule 4.1(C) which applied to persons who retired in between 31.1.1982 and 31.3.1985 and according to the conversion table provided, for this category, pension of Rs.460/- stood increased straightaway to Rs.975/- and accordingly the pension of Upendra Nanda was fixed at Rs.975/-. The respondents have further stated that the pensions of Upendra Nanda as also the applicant have been correctly fixed and correctly revised and therefore the

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representation of the applicant has been rightly rejected and the order communicated to the applicant. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri S.Behera, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

5. We have checked up the rules regarding revision of pensionary benefits arising out of Fourth Pay Commission recommendations from the **Swamy's Brochure on Revision of Pension Benefits (Fourth Pay Commission)**. At the time of his retirement Upendra Nanda was getting pay of Rs.580/- and his pension was fixed at Rs.460/-. The applicant retired five months later on 31.7.1985 getting pay of Rs.600/- and his pension was fixed at Rs.749/-. Besides this amount, the applicant was also getting Personal Pension of Rs.138/- per month. Thus, at the time of initial fixation of pension, the applicant was getting higher pension than Upendra Nanda. The situation changed because of the formula laid down for revision of pension on the basis of the Fourth Pay Commission Recommendations. According to this formula, the retired employees were put in four categories. The first and second categories do not concern us in this case. The third category applied to persons who retired on or after 31.12.1982 and prior to 31.3.1985 and who had opted or deemed to have opted for merger of ADA upto 320 points. Upendra Nanda having retired on 28.2.1985 came within this category. The fourth category related to those persons who retired on or after 31.3.1985 and had been given the benefit of ADA and ad hoc DA upto 568 points. Thus, it is seen that at the time of revision of pension, Upendra Nanda and the applicant came under two different categories and their pensions were revised

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accordingly. According to the tabular statement, Upendra Nanda, who was getting pension of Rs.460/-, had his pension revised to Rs.975/- and this was correctly done as per the conversion table given at the end of the instructions. So far as the applicant is concerned, he came under the fourth category and in the circular dated 16.4.1987 of the Department of Pension and Pensioners' Welfare it was laid down in paragraph 4.1(D) that in the case of Government servants who retired on or after 31.3.1985 and up to 31.12.1985 no additional relief would be admissible corresponding to the increases sanctioned to categories (A), (B) and (C). The applicant's pension, as earlier noted, was Rs.749/- and according to the conversion table for those coming under the fourth category and getting pension of Rs.500/- and above the amount of increase was limited to Rs.63/- in all cases. Accordingly, the applicant's pension was increased by Rs.63/-. This added to his original pension of Rs.749/- plus his personal pension of Rs.138/- came to Rs.950/- and accordingly, the applicant's pension was correctly fixed at Rs.950/-. It has been submitted by the learned counsel for the petitioner that as Upendra Nanda retired earlier and was getting lesser pay at the time of retirement than the pay received by the applicant, the applicant should have got higher pension than Upendra Nanda. The learned counsel for the petitioner has not quoted any rule which provides that it should be so. As a matter of fact, the original pension fixed for the applicant was at a level higher than what was fixed for Upendra Nanda. But pension of Upendra Nanda became higher at Rs.975/- because of the formula of revision of pension arising out of Fourth Pay Commission recommendations and the pension of the applicant became lower at Rs.950/- because of the formula. The applicant and Upendra Nanda came under two different categories of

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pensioners according to their date of retirement and option regarding merger of ADA upto differing points and therefore pension of Upendra Nanda became higher. It is certainly open for the Government to lay down different formulae for revision of pension for different categories of pensioners and this cannot be termed illegal. In any case the applicant has not prayed for quashing the formula for revision of pension. In view of this, we find that the applicant has not been able to make out a case for any of the reliefs claimed by him.

6. Before parting with the case it requires to be mentioned that the above position has undergone substantial change with the coming into force of the recommendations of the Fifth Pay Commission with regard to revision of pension. Under this formula, the pension of the applicant when revised would become higher than the pension of Upendra Nanda. But we are not going into that matter because that aspect is not before us.

7. In the result, we hold that the application is without any merit and the same is rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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