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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 318 OF 1994.

Cuttack, this the 19th day of October 2001

BIMAL KISHORE MISHRA
AND OTHERS.

....

APPLICANTS.

-VERSUS-

UNION OF INDIA & 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)
VICE-CHAIRMAN
19.10.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 318 OF 1994.

Cuttack, this the 19th day of October 2001

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

BIMAL KISHORE MISHRA,
Aged about 70 years,
S/o, Late Bimalkishore Mishra,
44, Forest Park,
Bhubaneswar.

1.(a). Umakanta Mishra,
S/o, late Bimalkishore Mishra,
Resident of 44 Forest Park,
Bhubaneswar, Dist; Khurda.

1 (b). Srikanta Mishra,
S/o, late Bimalkishore Mishra,
Sr. Staff Consultant,
INTEPA, 101, Convention Centre,
Drive Suit 527, LAS VEGAS,
NEVADA, 891 -09 USA.

1 (c). Sukanta Mishra,
S/o, late Bimalkishore Mishra,
Resident of 44 Forest Park,
Bhubaneswar, Dist; Khurda.

1 (d). Mrs. Nilima Nanda (D/o, Late Bimalkishore Mishra),
W/o, Sri S. P. Nanda, Resident of Qr. No. C-179,
NALCO NAGAR, Dist; Angul.

1 (e). Sashikanta Mishra,
Resident of 44 Forest Park,
Bhubaneswar, Dist. Khurda.

: APPLICANTS.

- VERSUS -

1. Union of India represented by the
Secretary to Government of India,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Personnel & Training,
North Block, New Delhi-1.

S. J. M.

2. State of Orissa represented by the Chief Secretary to Govt. of Orissa, Orissa Secretariat, At/PO: Bhubaneswar, Dist: Khurda.

: RESPONDENTS.

By the Applicants : M/s. M. Mishra, U.C. Patnaik, P.K. Das, Advocates.

By the Respondents : Mr. K. C. Mohanty, Government Advocate for Respondent No. 2.

: Mr. U. B. Mohapatra, Additional Standing Counsel (Central) for Respondent No. 1.

O R D E RMR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 04-09-1993, at Annexure-12 of the State Government rejecting the prayer of the Applicant for sanctioning the additional pay and the order dated 11-02-1994 of Government of India at Annexure-14 intimating that no appeal lies to Government of India against the order of the State Government under IAS Pay Rules, 1954. He has also prayed for a direction to the State Government to sanction additional pay to the applicant as claimed in para 17 of the Original Application for the periods he was appointed to hold additional posts alongwith interest on delayed payment and to sanction the consequential pensionary benefits.

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2. Before proceeding further it has to be noted that during the pendency of this Original Application, the Applicant passed away and was substituted by his sons and daughter.

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3. Applicant's case is that he was a direct recruit in the Indian Administrative Service with 1950 as the year of allotment. While he was working as Additional Development Commissioner cum Secretary to Government of Orissa in Planning and Co-ordination Department, he was posted as Additional Chief Secretary in order dated 26.3.1980 in addition to his own duties. Applicant joined the post of Additional Chief Secretary, in addition to his other post held by him on 30.3.1980 and continued to hold this post till 10.8.1981. From 11.8.1981 to 21.8.1981, he was on leave and on his return, he was again re-posted as Addl. Chief Secretary and Additional Development Commissioner Cum Secretary to Government in Planning and Co-ordination Department in order dated 16-7-1981 at Annexure-2. From 1.9.1982, he was deputed to the O.M.C Alloys Ltd. Bhubaneswar as Chairman under Rule -212(b) of the Orissa Service Code on foreign service terms and the post was declared equivalent to the cadre post of Member, Board of Revenue in order dated 3.9.1982 at Annexure-3. Applicant has stated that while he was on deputation, on foreign service terms, he was also directed to hold the additional charge of the post of Addl. Chief Secretary as also Additional Development Commissioner Cum Secretary to Government, Planning and Co-ordination Deptt. and order issued by the State Government to that effect on 26.8.1982 is at Annexure-4. Applicant has stated that under Rule 9-8 of the Indian Administrative Service (Pay) Rules, 1954, he is entitled to additional pay during the period he was appointed to hold two or three posts simultaneously. He has also stated that according to Government order of

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1978, additional pay for holding two or more posts should be sanctioned only when the Officer is relieved of his combined appointment. Applicant, Bimal Kishore Mishra was finally relieved of his combined appointment on his superannuation on 31-1-1983. Applicant has stated that after superannuation, he enquired from General Admin. Deptt. about sanction of additional pay to him and he was informed that his case would be considered alongwith some other IAS Officers. Bimal Kishore Mishra, waited for four years till he knew that some other IAS Officers have already been paid their dues and his case has been overlooked, and thereafter on 03-04-1987, he represented (Annexure-5) claiming additional pay. Mishra also sent two letters to Special Secretary to Government of Orissa, General Admin. Department at Annexures-6 and 7. He received letter dated 27.4.1991 (Annexure-8) rejecting his prayer for Additional Pay. He thereafter, preferred an appeal on 15-5-1991 to Central Government against the order, at Annexure-8. This appeal which is at Annexure-9 was sent under Rule-16(iii) (a) & (b) of All India Services (Discipline and Appeal) Rules, 1969. His appeal was also forwarded to the Central Government by the State Government on 11-7-1991. Central Government remanded the matter to the State Government in their letter dated 5-9-1991 (Annexure-10) and the applicant was directed to pursue the matter with the State Government. Government of India wrote a further letter in July, 1993 to the Chief Secretary, advising early decision on the case of Shri Bimal Kishore Mishra. Applicant has also stated that

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thereafter he wrote several DO letters to the Chief Secy. but without any result. Ultimately, in the impugned order dated 4-9-1993, at Annexure-12, his claim was rejected for being not admissible. Applicant, thereafter, submitted a further appeal to the Government of India, in his letter dated 15-9-1993, at Annexure-13 and the Government of India in the impugned order dated 11-2-1994, at Annexure-14 informed him that there is no provision for appeal to the Government of India, under IAS (Pay) Rules. Thereafter, Applicant filed a further representation to Government of India on 19.2.1994, at Annexure-15 bringing to the notice of the Government of India, the provisions of Rule-16 of All India Services (Discipline and Appeal) Rules, 1969 pointing out that against the order of the State Government rejecting his claim for additional pay, an appeal under the rules lies to the Government of India but he got no further response, from Government of India. Applicant Bimal Kishore Mishra, has stated that in accordance with Rule-9-B of IAS (Pay) Rules and Rule-96 of Orissa Service Code, he is normally, entitled to additional pay. He has also stated that in order dated 8.2.1985, several other officers similarly situated, who had held the charge of more than one post, have been allowed additional pay of 20% subject to a limit of Rs. 3000/- but his case has been ignored. Applicant has further stated that all the posts held by him were very senior posts under the State Government and involved very responsible, heavy, onerous, sensitive and time-bound duties and the applicant discharged these duties to the entire satisfaction of the State Government. Therefore, applicant

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has stated that he is entitled to the maximum amount of additional pay admissible under Rule-96 of the Orissa Service Code namely 50% of the presumptive pay of which posts held additionally. He has also stated that as per the Government of India decision, additional charge allowance granted to a member of the All India Service under Rule-9-B of IAS Pay Rules, shall be treated as pay and therefore, by depriving the additional pay, he has been denied the consequential pensionary benefits which also should be allowed to him. In the context of the above facts, he has come up in this Original Application with the prayers referred to earlier.

4. Government of India, Respondent No.1 has not filed any Counter but has adopted the counter filed by the State Government.

5. Government of Orissa , Respondent No.2 in his counter have opposed the prayer of the applicant. It has been stated that the grievance of the Applicant, Bimal Kishore Mishra, arose prior to 1-11-1982. Therefore, this Tribunal lack jurisdiction to entertain this application. Secondly, it has been urged that the claim of the applicant is for payment of additional pay for the period from 30-3-1980 to 31-1-1983. For this he gave representation for the first time on 3-4-1987 which is morethan four years after his retirement and his representation was rejected by the Government on 27-4-1991 (Annexure-8). In
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view of this it has been claimed that the Original Application filed in 1994 is hit by limitation. It is also stated that subsequent order of the State Govt. dated 4-9-1993, at Annexure-12, rejecting the applicant's claim can not have the effect of extending the period of limitation. Thirdly, it has been urged that the present Applicants (a) to 1 (e) being the legal representatives of the deceased applicant, have no locus standii for continuance of the application seeking to enforce a claim which had not been materialised and ripened to an enforceable right against the State Government. On the question of limitation, it has further been averred that the Applicant Bimal Kishore Mishra, never enquired in the General Admin. Department for grant of Additional Pay, after his superannuation on 31.1.1983 as has been alleged by him. He was also not given any idea that his case will be considered alongwith other Officers. It is stated that while Bimal Kishore Mishra, was working as Additional Development Commissioner Cum Secretary to Government of Orissa in Planning and Co-ordination Department was drawing the pay of Rs. 3,500/- which is above the Supertime scale. He was appointed Addl. Chief Secretary in P&S Department Notification dated 26.3.1980 (Annexure-R/2/2) in addition to his own duties. Subsequently, he was appointed as Chairman OMC Alloys and was allowed to continue as Additional Chief Secretary and Additional Development Commissioner cum Secretary to planning and Co-ordination Department. It is further stated that granting of Additional Pay to Officers of All India

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Service for holding morethan one post, is governed by Rule 9-B(b) of IAS(Pay) Rules,1954 and Rule-96 of Orissa Service Code. It is stated that the Appointing Authorities have been delegated with full powers by the Finance Deptt, in their letter dated 14.10.1978 at Annexure-R/2/4. According to the State Government, for Officers of Super Time Scale holding morethan one post, the maximum limit of Additional pay is 20% of grade pay subject to the limit that the pay and the additional pay should not exceed Rs.3000/- per month. In the Selection grade and Senior Time scale, limit of Additional Pay is 20% subject to the condition that in the former case, pay and additional pay together should not exceed Rs.2,750/- and in the second case Rs.2,450/-. It is stated that the Finance Department have agreed to grant additional pay upto the level of Super Time Scale of IAS but they have not agreed for grant of additional pay at the level of officers getting Rs.3000/- and Rs.3,500/-. It is further stated that number of officers at the level of Rs.3000/- and Rs.3,500/- are holding morethan one posts from time to time. Such arrangements are made on the full understanding and consideration that the duties of both the posts taken together are not arduous for an officer to discharge. It is stated that former dual charge of applicant was extended for a period of two years and five months. As such, the additional charge is to be treated as a regular arrangement. As his additional charge exceeds a period of six months, his claim for additional pay is not

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admissible. Respondents have referred to the views of the Finance Department and Law Department and have stated that under the orders of the then Chief Minister, the applicant was not sanctioned the additional pay. It is further stated that in accordance with the instructions issued by the Government of India, on the representation filed by the Applicant, applicant's case was again examined in consultation with the Law Department and the same was rejected. His appeal against that order to the Government of India, was disposed of by the Government of India intimating the State Government and the Applicant that under I.A.S. (Pay) Rules, no appeal lies to the Government of India, against the order of the State Government. On the above grounds, the State Government have opposed the prayers of the applicant.

6. Applicant in his rejoinder has mentioned that Government itself delayed giving a decision in the matter. He filed representation on 3.4.1987 and thereafter, He has given a date chart intimating the dates on which he had sent reminders and had met the successive Chief Secretaries and on getting the first order of rejection dated 27.4.1991, had again taken up the matter with the state Government and on getting the second order of rejection, with Government of India. In view of this, it is stated that there is no delay or lapses on the part of the applicant and therefore, the State Government is estopped in raising any allegation regarding the alleged delay. It is further stated that the claim of the applicant, being a claim of monetary terms his legal representatives have every right to continue in the litigation. It is also stated that Rule 96 of Orissa Service Code is equally applicable to officers getting the pay of

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Rs. 3000/- or Rs. 3500/- and in any case, the decision of the Government not to allow the benefit of Rule-96 to officers to that level his violative of statutory rules. On the above grounds, the applicant has reiterated his prayer in his rejoinder.

7. We have heard Mr. M. Mishra, learned Counsel for the Applicant, Mr. K. C. Mohanty, learned Government Advocate, for the Government of Orissa and Mr. U. B. Mohapatra, learned Addl. Standing Counsel appearing for the Government of India and have also perused the records.

8. In course of hearing, we had directed the learned Government Advocate Mr. K. C. Mohanty, to file a copy of the decision of the Hon'ble Supreme Court in the case of P.C. WADHWA VRS. STATE of HARYANA in Civil Appeal No. 1475/1972 a copy of which was sent by the Government of India to the State Government in their letter dated 5.9.1991, at Annex-10 directing the State Government to consider the claim of the applicant in the light of this decision. We had also directed the learned Government Advocate to submit the file in which the claim of the deceased applicant was considered because Res. No. 2, alongwith the counter, had enclosed certain portions of the notesheet from the file leaving out certain other portions. Accordingly, learned Government Advocate, Mr. Mohanty, had filed these papers and we have taken note of the same. Learned Counsel for the applicant has filed written note of argument and additional written note of argument, which have also been taken note of.

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9. The first point urged by respondent 2 is that the claim of the applicant has arisen prior to 1.11.1982 as

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per his own averments and under section-21 of the A.T. Act, 1985, any application relating to a grievance, which has arisen beyond the period of three years from the date of functioning of the Tribunal would not be ordinarily entertainable by the Tribunal. On this ground, it is alleged that the application is not maintainable. The Tribunal was established w.e.f. 1.11.1985. The claim of the applicant for additional pay is for the period from 30.3.1980 to 31.1.1983. Therefore, a part of the period of claim falls after 1.11.82. Moreover, his prayer was rejected in order dated 27.4.1991 (Annexure-8) and again in order dated 4.9.1993 (Annexure-12). Grievance of applicant must be held to be arisen on his claim having been rejected and as these orders have come after 1.11.1982 the petition is maintainable before this Tribunal.

10. The second ground urged by learned Government Advocate is that the claim and the Original Application is barred by limitation. It has been submitted that the claim relates to the period from 30.3.1980 to 31.1.1983 when the applicant superannuated. He made his first representation only on 3-4-1987 four years after his superannuation. He should have approached the Tribunal within one and half years of the date of filing of the representation but he has filed this application only in 1994 and on this ground, the application should be rejected at the outset on the ground of limitation.

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11. It has been submitted, on the other hand, by the learned Counsel for the applicant that on the date of admission of this application i.e. on 27.5.1994 no question of limitation was ever raised and therefore, question of limitation can not be raised at this stage. Secondly, it has

been urged by learned counsel for the applicant that according to the instructions of the Government of Orissa, additional pay can be sanctioned only after holding of more than one post comes to an end. This has been clearly mentioned in the circular dated 19.10.1973 filed by the Respondents at Annexure-R/2/4 in which it has been mentioned in the last sentence that additional pay should be sanctioned only when the period of such combined appointments is over, so that the time limits stipulated, as mentioned above, are adhered to strictly. Applicant's counsel has stated that holding of combined appointment came to an end with the superannuation of the applicant on 31.1.1983. Thereafter, he approached the State Government personally several times and he had been told that his case is being considered. When no action was taken in his case but such special pay was sanctioned to other officers, he filed a representation on 3-4-1987. Thereafter, he had reminded the State Government repeatedly and the first order of rejection came only on 27-4-1991 and the second order of rejection on 4-9-1993. It has been stated that after the second order of rejection dated 4.9.1993, the applicant filed this application on 26-5-1994 and thus, the petition is within time.

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12. In support of his contention, learned counsel for the Respondents has relied on Section 21 of the Limitation Act as also the decision of the Hon'ble Supreme Court in the case of RAMESH CHANDRA SHARMA VRS. UDHAM SINGH KAMAL reported in A.I.R. 1999 SC 3837. In the appeals before the Hon'ble

Supreme Court, in the above case, the order of promotion of Ramesh Chandra Sharma, was challenged before the Tribunal after expiry of three years. The representation of the applicant before the Hon'ble Supreme Court was rejected on 2.7.1991 and he made another representation pointing out the factual limitation and it was urged before the Hon'ble Supreme Court that the period of limitation should be counted not from 2nd July, 1991 but from the date of rejection of his second representation. Hon'ble Supreme Court noted that the date of rejection of the second representation has not been mentioned in the record. It was also held that no foundation has been laid with regard to the explanation sought to be given for the delay and therefore, this point can not be urged before the Hon'ble Apex Court in appeal. On the above ground, it was held that the claim of the Respondents Udhamp Singh Kamal allowed by the Tribunal is liable to be rejected on the ground of limitation and accordingly the Civil appeal was allowed and the order of the Tribunal allowing the original Application was set aside on the ground that the Tribunal should not have entertained the application beyond the period of limitation.

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13. We have considered the rival submissions of the counsel for both sides on this point carefully. The admitted position between the parties is that the applicant ceased to hold more than one post on his superannuation on 31.1.1983 and he filed the first representation only on 3.4.1987. Thus, there is a delay of four years on the part of the applicant to file representation before the State Government but we are not concerned here with the delay in filing representation by the applicant before the State Government. We have to consider

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whether the present original Application has been filed beyond the period of limitation. It has been urged by the learned Government Advocate that when orders were not passed by the State Govt. on his representation dated 3-4-1987, the applicant should have approached the Tribunal within one year from the period of six months from 3.4.1987 as laid down under section 21 of the AT Act and therefore, the application is barred by limitation. In his rejoinder, the applicant has given a detailed date chart indicating various reminders sent by him to the State Govt. He had also indicated that he was given a personal hearing by the then Chief Secretary, Government of Orissa on 2.9.1990. These averments of the applicant in his rejoinder, has not been denied by the Respondents. Moreover, the State Govt. having entertained his representation and rejecting it on 2.7.1994, it can not be said that within a period of one and half years from 3.4.1987, the original Application should have been filed. This contention, is therefore, rejected.

14. Second ground urged by learned Government Advocate is that repeated representations will not extend the period of limitation and when his representation was rejected in order dated 27.4.1991, he should have approached the Tribunal within one year of that and entertainment of some of subsequent representations of the applicant by the State Govt. and subsequent order of rejection dated 4.9.1993, would not extend the period of limitation. This contention, is wholly without any merit because immediately on receipt of the order dated 27.4.1991 (Annex.8), rejecting his representation by the State Govt. the petitioner filed an appeal to the Government of India on 15.5.1991 (Annex.9).

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It is relevant to note at this stage that such an appeal lies under clause(iii) of Rules 16 of All India Services (Discipline and Appeal) Rules, 1969 which is quoted below:

*16. Orders against which lies - Subject to the provisions of Rule-15 and the explanations to Rule 6, a member of the Service may prefer an appeal to the Central Government against all or any of the following orders, namely:

(i) xx xx.;

(ii) xx xx.;

(iii) an order of a State Government which-

(a) denies or varies to his disadvantage his pay, allowances or other conditions of service as regulated by rules applicable to him; or

(b) interprets to his disadvantage the provisions of any such rule.**

From the above, it is clear that against an order of the State Government which denies to a member of a service to his disadvantage his pay, allowances or other conditions of service as regulated by rules applicable to him or interprets to his disadvantage the provisions of any such rule, an appeal will lie to the Central Government. It is also to be noted that under explanation to these rules, Member of service for the purpose of this rule, includes a person who has ceased to be a member of service. In response to his representation, Government of India in their letter dated 5.9.1991 (Annex.10) remanded the matter to the State Government and mentioned that question of grant of additional pay during the period, the applicant held the post of Chairman, OMC Alloys Limited, Orissa will have to be examined by the State Government in the light of the Supreme Court's decision in the case of P.C. Wadhwa (supra). Thereafter,

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Government of India sent another reminder to the Chief Secretary with copy to the applicant in July, 1993 in which the Chief Secretary was advised to decide the matter expeditiously. It was also mentioned that an early decision in the matter would enable the applicant to seek legal remedies in the matter in his case. It is only after the letter in July, 1993 from the Government of India, the order dated 4.9.1993 rejecting his claim was issued. From the above, it is clear that immediately after the rejection of the representation dated 27.4.1991, the applicant could not have approached the Tribunal without exhausting the statutory remedy of filing the appeal before the Union Government and the order dated 4.9.93 came as a result of the direction of the Govt. of India to the State Govt. that the applicant's grievance to be considered in the light of the Hon'ble Apex Court's decision in the case of P.C. Wadhwa (supra). In view of this, it is clear that in this case limitation will run only from 4.9.1993 when the matter was examined by the State Govt. apparently in the light of the decision of the Hon'ble Supreme Court referred to above and the claim of the applicant was rejected. Moreover, it is also to be reiterated that the applicant in this case, has asked that on the basis of the additional pay granted to him his pensionary benefits should also be increased and this being his pensionary claim is a continuing cause of action and therefore, it can not be held that the application is beyond limitation. In the case of R.C. Sharma (supra) decided by the Hon'ble Supreme Court, the petitioner before them, had challenged the promotion given to the Respondents and the Hon'ble Supreme Court held that delay of three years in filing the petition can not be entertained by the

Hon'ble Supreme Court, as no foundation thereof was led before the Tribunal. The facts of that case was entirely different. Learned Government Advocate relied on the decision of the Hon'ble Supreme Court in the case of GAINSINGH MANN VRS. PUNJAB HIGH COURT reported in AIR 1980 SC 1892. In this case, the Hon'ble Supreme Court noted that the petition was filed about 11 years from the date on which promotions were claimed. It was held that such inordinate delay could not be overlooked on the ground that the applicant was making successive representation to the Department. In the present case, before us, after rejecting his representation in Annexure-8, the applicant had filed a statutory appeal before the Union Govt. as required under the rules and at the direction of the Union Government at Annexure-10, and 11, the matter was apparently reexamined and his representation was again rejected in order dated 4.9.1993. This is not a case where he had filed successive representation for the purpose of extending the period of limitation. In view of this, it is held that that the Gainsingh's case is clearly distinguishable and not applicable to the facts of this case so also the case of Ramesh Chandra Sharma (supra). In the light of our discussions above, we hold that this Original Application is within the period of limitation having been filed within a period of few months after the final order of rejection dated 4.9.1993.

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15. The third ground urged by learned Government Advocate is that the applicant having passed away on 22.8.1994, it is not open for his legal representatives, his sons and daughter to maintain this Original Application. This has been strenuously

opposed by learned counsel for the applicant who has submitted that legal representatives of the Original Application can pursue this Original Application. In support of his contention, learned counsel for the applicant has relied on the following decisions :

1. RAMESHWAR MANJHI THROUGH HIS SON LAKHIRAM MANJHI VRS. MANAGEMENT OF SANGRAMGARH COLLIERY AND OTHERS reported in AIR 1994 SUPREME COURT 1176.
2. CENTRAL BANK OF INDIA VRS. PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AND OTHERS reported in 1996(3) SLR 557.

We have gone through these decisions. Substitution of legal representatives of the Original Application was allowed in order dated 15.11.1994 on MA No. 637 of 1994. The claim of the Petitioner in this case is a monetary claim and it is in the nature of property and therefore, on his death the claim is maintainable by his legal representatives. This contention of learned Government Advocate, is therefore, held to be without any merit and is rejected.

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16. Before coming to the merits of this case, it would be necessary to refer to the statutory provisions relevant to the present case. Rule 9 of Indian Administrative Service (Pay) Rules, 1954 deals that pay of members of the service appointed to hold more than one post. The relevant rule is quoted below :

*9-B PAY OF MEMBERS OF THE SERVICE APPOINTED TO HOLD MORE THAN ONE POST - The grant of additional pay to a member of the service appointed to hold more than one post simultaneously shall be regulated:-

(a) in the case of a member of the service service in connection with the affairs of the Union, by the rules, regulations

and orders applicable to officers of the Central Services Class I;

(b) in the case of a member of the service serving in connection with the affairs of a State, by the rules, regulations and orders applicable to officers of State Civil Services Class-I*.

The admitted position is that during the relevant time for which the applicant had asked for additional pay he was serving in connection with the affairs of a State Govt and therefore, under Rule 9-B grant of additional pay to him shall be regulated by Rules regulations and orders applicable to officers of State Civil Services Class-I. The relevant provision is rule 96 of Orissa Service Code which is quoted below:

*96. The pay of a Government servant appointed by the State Government to hold substantively as a temporary measure or to officiate in two or more independent posts at one time shall be regulated as follows:-

(a) The highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post.

(b) For each other post he may draw such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and

(c) if a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix, provided that such allowance shall not exceed the total of the compensatory allowances attached to all the posts.*

17. Applicant's case is that during the period from 30.3.1980 to 31.1.1983 he held the charge of two posts. From 30.3.1980 to 31.8.1982 barring the period from 11.8.1981 to 20.8.1981, when he was on earned leave and he held the charge of three posts from 1.9.1982 to 31.1.1983. Respondent

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NO.2 in his counter, at page-6 has mentioned that leaving aside the period of earned leave from 30.3.1980 to 31.8.82, the substantive appointment of the applicant was Additional Secretary and Secretary to Government in P&C Department and the additional appointment was additional Chief Secretary. For the period from 1.9.1982 to 31.3.1983, his substantive appointment was Chairman, OMC Alloys Ltd. and additional appointment were Additional Chief Secretary, and Additional Development Commissioner and Secretary to Government P&C Department. Respondents have stated that his case was considered by the Finance Department and Law Department who have advised against sanctioning of additional pay to the applicant for the above period. It is also stated that the case of the applicant is squarely covered by the decision of the Hon'ble Supreme Court in the case of DD Suri vrs. Union of India reported in 1979 AISLJ page 534 and according to this decision, the applicant is not entitled to the additional pay. Before going into the grounds on which the claim has not been agreed to by the Law Department and the Finance Department of the State of Orissa, the decision of the Hon'ble Supreme Court in the case of DD Suri (supra) will have to be referred to. In that case, the Petitioner DD Suri who was an officer of Orissa cadre asked for additional pay for the period from 11.9.1961 to 23.12.1963 during which he was working in Govt. of India and held dual charge of the posts of Salt Commissioner and MD Hindustan Salt Ltd. with headquarters at Jaipur, Rajasthan. The claim of additional pay of DD Suri related to the period from September, 1961 to December, 63. At that time Rule-9B of IAS Pay Rules quoted by us earlier had not come into force as Rule-9B was inserved by Notification dt. 03.10.1975.

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In view of this, Hon'ble Supreme Court held in DD Suri's case that after coming into force of Indian Administrative Service (Pay) Rules, FRSR-49 applicable to officers of Central Services Class-I ceased to apply to him. In the present case, applicant was working in connection with affairs of the State Govt. and the period for which he has claimed additional pay is from March, 1980 to January, 1983 by which time, Rule-9-B had come into force. Obviously, therefore, DD Suri's case is not applicable in the case of the applicant. Moreover, in DD Suri's case provisions of Rule-96 of Orissa Service Code was not considered as the applicant DD Suri was working in connection with the affairs of Union Government. In view of this, it is clear that the claim of the applicant can not be rejected on the basis of the decision of the Hon'ble Supreme Court in the case of DD Suri (supra).

18. Coming to the grounds on which his claim has been rejected, the State Govt. in their counter have merely indicated that according to Rule-96 of Orissa Service Code, appointing authorities have been delegated with full ^{power} powers to the effect that if the period of additional appointment is not less than one month and not more than six months, they can sanction additional pay to the officers concerned and for any period which is more than six months finance Deptt. clearance is necessary. They have also stated that the matter was referred to the Finance and Law Deptts. and they have advised against allowing the claim of the applicant. They have also enclosed the notings of the Finance and Law Deptts. As earlier noted, we had called for the file and seen the entire notings in the file as also the orders thereon. From the notesheet

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at pages-80 to 83 of the file, we find that the Law Deptt. took the view that the case of the present applicant before us is fully covered by the decision of the Hon'ble Supreme Court in the case of DD Suri (supra). We have already pointed out that the decision in DD Suri's case was made prior to coming into force of Rule-9B of IAS Pay Rules which was inserted by Notification dated 3.10.1975. In view of this we are not prepared to accept the stand of the State Govt. that the case of applicant is covered by the decision of the Hon'ble Supreme Court in DD Suri's case. Holding of dual charge by DD Suri was from September, 1961 to December, 1963. Rule 9B of Pay Rules came into force on 3.10. 1975 and this contention can not therefore be accepted.

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19. We find from annexure-10 to the O.A. that in this letter dated 5-9-1991 the Department of Personnel, New Delhi advised to the Chief Secretary Govt. of Orissa that question of granting of additional pay during the period the applicant held the post of Chairman OMC Alloys Ltd., ~~have~~ to be examined in the light of the decision of the Hon'ble SC in the case of P.C. Wadha (supra). Copy of this decision is at page 176 of this file. This decision relates to sanction of deputation allowance. There the applicant who was an IPS Officer was sent on deputation to Haryana State Electricity Board and the question of his entitlement to get deputation allowance was considered. In the present case deputation allowance is not a matter of issue and in view of this the PC Wadha's case is of no support to either of the parties before us. We have already noted that the representation of applicant was initially

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rejected by the State Govt. in their order dated 27.4.91 at Annexure-8. On a reference to the corresponding note sheet in the file, we find that the then Chief Secretary in his note dated 26.3.1991 had mentioned that ordinarily the applicant would have been entitled to additional pay not exceeding 20% of his presumptive pay for a period of six months only and with the concurrence of the Govt. of India, he would have been entitled to such additional pay beyond six months for a period of 12 months. It has been further recorded by the then Chief Secretary that there is a convention in the State Govt. that officers of the rank above the Super time Scale will not get additional pay for holding additional post and on that basis a large number of cases have been rejected earlier and therefore, the then Chief Secretary advised rejection of the applicant's representation, which having accepted by the Government, the order at Annexure-8 was issued. The matter was again reexamined on receipt of Govt. of India's letter and the matter went to the Chief Secretary on 1.6.1992. There again the succeeding Chief Secretary made the following orders:

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"It is not as if the Wadhwa case is totally inapplicable to Shri Mishra's claim. It is true that the Supreme Court's judgment is about entitlement of deputation allowance but it would not be difficult to take a view that while Shri Mishra is not entitled to additional pay, he would be entitled to deputation allowance. What really stands in the way is the long standing convention that when Officers of the supertime scale and above

have been deputed to a public undertaking and have also been allowed to hold duty posts in the State Government, they have not been given any additional pay or deputation allowance. If a departure is made in the present case, we will have to break this convention and allow such claims from a number of officers. The matter may, therefore, rest.

Sd/-Chief Secretary
1.6.1992 *

20. From the above, it is clear that the case of applicant was rejected on the ground that for officers of Super Time scale and above, no additional pay or deputation allowance is granted even when they are made to hold more than one posts. It is clear therefore, that the case of applicant was rejected because of convention which is stated to be followed in the matter. This stand can not be accepted because the applicant has enclosed at Annexure-17 an order dated 8.2.1995 which has obviously been issued much prior to the order of the then Chief Secretary of Super Time scale extracted by us above, in which a large number of officers have been allowed 20% of the Grade pay as additional pay subject to the condition that their pay and additional pay shall not exceed Rs. 3000/-. From this it is clear that this order which has also been concurred by the Finance Department and has not been denied by the Respondents in their counter has been passed giving additional pay to officers of Super Time scale for holding more than one post. In view of this, it can not be held that there is such an inflexible convention in the State Govt. in not giving the officers of super Time scale and above, the additional pay which is provided under the Rules for holding more than one

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post.

21. The next point to be considered is even if it is taken for argument sake that there is such a convention, whether such convention/practice can be given effect to in the face of statutory rules. Learned counsel for the petitioner has relied on a large number of decisions in course of his submission as also in his written note of argument, on this point. It is not necessary to refer to all these decisions. It is obvious that State Govt. can not follow a practice which is ^{not} in conformity with the statutory rules. In the instant case, Rule-9B of IAS Pay Rules and Rule-96 of Orissa Service Code are statutory in nature and there can not be a convention or practice in the State Govt. not to follow the statutory rules/provisions. The practice is all the more to be deprecated because this has the effect of denying an employee the financial benefits, which he is entitled to under the statutory rules. In view of the above, we hold that the applicant is entitled to the additional pay under Rule-9B of the IAS Pay Rules and Rule-96 of the Orissa Service Code. The Two orders of the State Government rejecting his representations are accordingly quashed.

of sum.

22. The next point which arises for consideration is what relief the applicant is entitled to. Rule-96 of the Orissa Service Code provides for fixation of additional pay by the State Govt. for each of the additional post held by an officer but such additional pay shall in no case exceed the half of the presumptive pay ~~of~~ the post held by him by way of additional charge. Applicant has stated that

as the post held by him by way of additional charge carried heavy and onerous responsibilities, he should be allowed the maximum limit permissible under the Rules i.e. 50% of the presumptive pay of the additional post. From the file itself we find that at several stages, it was stated that he is entitled to 20% of his grade pay as additional pay but this has not been allowed because of the convention/practice ~~with~~ which we have already dealt with. In view of this, we direct that the applicant will be entitled to 20% of his grade pay as additional pay for all the ~~together~~ additional posts held by him during the aforesaid period, subject to the condition that his grade pay plus additional pay should not exceed Rs. 4000/- per month. In the file, a point has been raised that Govt. of India clearance has not been obtained for allowing the applicant to continue to hold the charge of more than one post beyond six months but for that reason the applicant can not be made to suffer and therefore, we direct that the additional pay as directed by us shall be paid to the applicant for the entire period during which he held charge of more than one post. This should be done within a period of sixty days from the date of receipt of a copy of this order.

Sd/m

23. The next prayer of applicant is that his pensionary entitlement should be accordingly revised. Department of Personnel and Administrative Reforms in their letter dated 16.2.1978 have laid down that additional charge allowance granted to a member of All India Service under Rule-9-B of IAS Pay Rules should be treated as pay for the purpose of calculation of pension. The gist of

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of the circular has been printed at page 324 of Mishra's publication of All India Services Manual (3rd edition). From this it is clear that the applicant is entitled to have his pensionary entitlements recalculated on the basis of the additional pay ordered to be paid by us above. We direct that the pensionary entitlement of the applicant from the date of his superannuation till his death should be calculated as per the rules within a period of another 90 days from the date of expiry of the period earlier indicated by us and paid to the legal heirs.

24. In the result, therefore, in the terms of the observations and directions made above, the Original Application is allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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SUMNATH SOM
VICE-CHAIRMAN
19.10.2001

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