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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 320 of 1994
Cuttack, this the 15th day of September, 2000

N.S.Raju and another Applicants

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
15.9.2000

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ORIGINAL APPLICATION NO. 320 OF 1994
Cuttack, this the 15th day of September, 2000

CORAM:

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

1. N.S.Raju, aged about 58 years, son of late Peda Venkata Raju, at present working as Senior Project Manager, Construction, S.E.Railway, Rayagada, Orissa.
2. South Eastern Railway Promotee Officers Association, represented by its Divisional Secretary, Khurda Road Division of S.E.Railway, Shri Manoj Gupta, son of late Phanibhusan Gupta, aged about 50 years, at present working as Assistant Signal & Telecommunication Engineer (II), Khurda Road, District-Khurda

..... Applicants

Advocates for applicants - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo

Vrs.

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
3. Chief Personnel officer, South Eastern Railway, Garden Reach, Calcutta-43.

Advocates for respondents - M/s B.Pal
O.N.Ghosh

O R D E R

S.Jom · SOMNATH SOM, VICE-CHAIRMAN

In this application applicant no.1 and S.E.Railway Promotee Officers Association represented by its Divisional Secretary, one Manoj Gupta (applicant no.2) have prayed for quashing the notifications dated 5.6.1987 and 10.9.1992 at Annexures 4 and 5 and withdrawal of the concordance table at Annexure-6. They have prayed for a direction to the respondents to adhere to the system of fixation of pay first notionally in the Junior Scale and

thereafter under concordance table in the senior scale while fixing the pay of Group-B officers on promotion from Assistant Officer to Senior Scale.

2. The applicants in their petition have elaborately dealt with the system of promotion from Assistant Officer to Senior Scale in Group-A. For the purpose of present petition it is only necessary to note the salient points in their averments. According to the petitioners the services of the employees in Indian Railways are divided into Groups A, B, C and D. Groups A and B services are gazetted and the other two groups are non-gazetted. Promotees on their first appointment to gazetted cadre are called Group-B officers and were enjoying a scale of Rs.670-1200/-, revised to Rs.2000-3500/- after the Fourth Pay Commission from 1.1.1986. Directly recruited Junior Scale officers are called Group-A officers in gazetted cadre and are granted a scale of Rs.700-1300/- revised to Rs.2200-4000/- from 1.1.1986. The post of Assistant Engineer commonly known as Assistant Officer is the lowest rank in the gazetted cadre and is held both by directly recruited Junior Scale Group-A officer and promotee Group-B officers. Promotee Group-B officers while holding the post of Assistant Engineer perform the same duties and shoulder the same responsibilities and exercise the same powers as directly recruited Junior Scale Group-A officer. The post of Assistant Officer is interchangeable between direct recruit Junior Scale Group-A officer and promotee Group-B officer. Applicant no.1 is at present working as Senior Project Manager in Junior Administrative Grade. He joined Railway service on 13.7.1957 as Assistant Permanent Way Inspector in Group-C non-gazetted cadre. He was promoted to C.P.W.I which is again in Group-C and thereafter to the cadre

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12 of Assistant Engineer Group-B in March 1983 in the erstwhile scale of Rs.650-1200/-. Applicant no.1 was further promoted with effect from 22.11.1986 to the post of Divisional Engineer which is in the cadre of Senior Scale Group-A post in the pay scale of Rs.3000-4500/-. The pay of applicant no.1 on promotion from Assistant Engineer to Divisional Engineer has been fixed under FR 22-C/ Para 2018(b) of Indian Railway Establishment Code Volume II . While fixing his pay on promotion from Assistant Engineer Group-B to Senior Scale in Group-A, his pay was fixed without first notionally fixing his pay in Junior Scale of Group-A and thereafter at the corresponding stage in Senior Scale in Group-A under the concordance table which was being done earlier since last four decades. The applicants have stated that earlier when an Assistant Officer used to be promoted to the rank of Divisional Engineer in the senior scale of Group-A his pay was to be fixed first notionally in the Junior Scale of Group-A and then at the corresponding stage in the Senior Scale. This was the practice in British days and had been followed for a period of 40 years after independence. The applicants have stated that under the old fixation formula, i.e., the concordance table the resultant benefit of pay which used to accrue to promotee officer on promotion from Assistant Officer to Senior Scale in Group-A was almost the same as the benefit to the direct recruit Assistant Engineer in Junior Scale of Group-A on their promotion to Senior Scale as Divisional Engineer. The applicants have stated that the Third Pay Commission while dealing with fixation of pay under the concordance table, recommended to continue the said principle of fixation of pay not only for the Railways but also recommended to introduce this kind of fixation of pay in other organised services. The applicants have quoted paragraphs 28

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and 29 of Chapter 8 of Third Pay Commission's report. The applicants have referred to the manner of pay fixation under FR 22(a)(i) and FR 22-C and have mentioned that the third type of fixation of pay is in pursuance of the concordance table. The applicants have furtherstated that the Fourth Pay Commission in paragraphs 23.14 and 23.15 have analysed the manner of fixation of pay under FR 22(a)(i) and FR 22-C and note have taken of grievances of the staff that under FR 22(a)(i) the benefit accuring on promotion to an employee is not adequate and this requires improvement. After considering the grievances of the employees, the Pay Commission recommended that FR 22-C should apply in all cases of promotion from one post to another subject to the condition that the amount to be added to pay in the lower post before fixation of pay in the higher post should not be less than Rs.25/-.

The applicants have stated that a careful reading of these two paragraphs would indicate that the Fourth Pay Commission made the above recommendation after analysing the manner of pay fixation under FR 22(a)(i) and FR 22-C. They did not take note of manner of pay fixation under concordance table nor did they recommend abolition of the same. But the Ministry of Railways decided to abolish the concordance table and issued Establishment Serial No.136/87 and Establishment Serial No. 213 of 1987 which are at Annexures 3 and 4. Against the abolition of concordance table, representations were made by Indian Railways Promotee Officers Federation to which applicant no.2 Assciation is affiliated and after negotiation the Joint Director(Establishment) in his order dated 28.12.1993 indicated to the Secretary General of All India Federation with regard to the action taken on the minutes of the meeting held with the Board on 23.2.1993. In this, against

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serial no.8.6 it has been mentioned that concordance table has been abolished after the Fourth Pay Commission and the same cannot be revived. This letter is at Annexure-6. In the context of the above the applicants have come up with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicants and the applicants have filed rejoinder reiterating their prayers in the OA. It is not necessary to record the averments made by the respondents in their counter and the applicants in their rejoinder because these will be referred to while considering the prayers of the applicants and the submissions made by the learned counsel for the respondents.

4. When the matter was called on 10.7.2000 the learned counsel for the petitioners and his associates were absent without any request seeking adjournment. Accordingly we heard Shri B.Pal, the learned Senior Panel Counsel for the respondents in part and the matter was posted to 3.8.2000. On that day also the applicants' counsel were absent without any request for adjournment and we heard Shri B.Pal, the learned Senior Panel Counsel for the respondents and the hearing was concluded.

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5. The respondents have rightly pointed out that the real prayer of the applicants is to quash FR 22-C/Paragraph 2018(b) of Indian Railway Establishment Code Vol.II regarding fixation of pay on promotion from Group-B to Senior Scale of Group-A and withdrawal of the concordance table and to fix the pay of such officers first notionally in Junior Scale of Group-A and thereafter under concordance table in the Senior Scale. From the above recital of facts mentioned

by the applicants themselves, it is clear that the new method of pay fixation has been brought into force by Government as a matter of policy. *Prima facie* this is also the recommendation of the Fourth Pay Commission. The applicants have ~~stated~~ ^{J. J. M.} stated that the recommendations in paragraphs 23.14 and 23.15 of the Fourth pay Commission's report do not deal with the pay fixation under concordance table. We are unable to accept this proposition. Just because in their report the Commission had not specifically mentioned the manner of pay fixation under concordance table it cannot be held that they had not taken note of this. They have clearly mentioned in the beginning of paragraph 23.14 that there are two main rules for pay fixation under FR 22(a)(i) and FR 22-C. This by itself means that they have taken note of other methods of pay fixation. Their recommendation in paragraphs 23.15 is clear and unambiguous where they have recommended that FR 22-C should apply to "all cases of promotion from one post to another" subject to the conditions mentioned therein regarding minimum benefit being not less than Rs.25/-. Therefore, it cannot be said that the manner of fixation of pay earlier followed in the Railways on promotion of Group-B promotee officers to Senior Scale in Group-A was not taken note of by the Fourth Pay Commission. Secondly it must be noted that this is a matter of policy and the manner of pay fixation recommended by the Fourth Pay Commission is applicable to all classes of employees in all Departments of Government of India including the Railways. The Fourth Pay Commission's recommendations came into force from 1.1.1986 and the Railway Board in Establishment Serial No. 136/87 issued on 26.5.1987 adopted the recommendation. It was further clarified in letter dated 3.8.1987 in Establishment Serial No.213/87 at Annexure-4 that in case of Group-B

officers regularly promoted to Senior Scale in Group-A on or after 1.1.1986 the pay should be fixed in Senior Scale. The earlier system of fixing notional pay in the Junior Scale of Group-A and thereafter again in Senior Scale of Group-A ceased to be operative from 1.1.1986. Thus the concordance table was done away with basing on the recommendation of the Fourth Pay Commission in the orders issued in 1986 and clarified in 1987. The applicants have come up in this OA only in 1994. On this ground also the O.A. is not maintainable. Moreover, the manner of pay fixation adopted by the Government on the recommendation of the Fourth Pay Commission is a matter of policy and cannot be challenged merely on the ground of previous practice. It is also to be noted that in many other organised services including All India Services officers are promoted from feeder services to Senior Scale of All India Services, but in those cases pay of such promotee officers is not notionally fixed in the Junior scale and again in the Senior Scale.

6. In view of the above, we hold that the Application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.9.2000
VICE-CHAIRMAN