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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.362 OF 1994
Cuttack, this the 22nd day of April, 1998

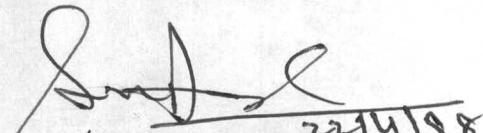
Shri Manas Shankar Ray Applicant

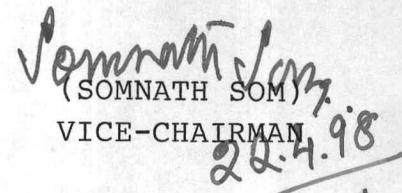
Vrs.

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.


(S.K.AGRAWAL) 32.4.98
MEMBER (JUDICIAL)


(SOMNATH SOM) 32.4.98
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.362 OF 1994
Cuttack, this the 22nd day of April, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

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Shri Manas Shankar Ray,
aged 35 years
son of Shri Sudhansu Sekhar Ray,
a permanent resident of Banth Chhak,
Opposite Sales Tax Colony,
at present serving as Asst.Commissioner,
Income Tax (Headquarters),
Bhubaneswar

Applicant

By the Advocates -

M/s A.K.Misra,
S.K.Das, S.B.Jena
J.P.Rath &
J.Sengupta.

Vrs.

1. Union of India,
represented through its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chairman, Central Board of Direct Taxes,
North Block,
New Delhi-110 001.
3. Secretary, Ministry of Personnel,
Public Grievances & Pension,
Department of Personnel & Training,
New Delhi

Respondents.

By the Advocate -

Mr.U.B.Mohapatra,
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of

Administrative Tribunals Act, 1985, the petitioner has prayed

for quashing the order dated 8.4.1994 rejecting the representation of the petitioner for fixation of his pay. There is also a prayer to declare the circular dated 7.8.1989 of Department of Personnel & Training (Annexure-3) as unconstitutional. The third prayer is for a direction to the respondents to fix the pay of the petitioner taking into account the last pay drawn by him as an officer of State Bank of India as on 14.12.1985. The last prayer is for a declaration that the petitioner's pay should be re-fixed in accordance with the circular at Annexure-3 at least with effect from 1.8.1989.

2. Facts of this case fall within a small compass and can be briefly stated. The petitioner joined as Probationary Officer in the State Bank of India on 14.12.1981 after selection by the Banking Service Recruitment Board in the scale of pay of Rs.700-1800/- . His pay was initially fixed at Rs.860/- and he was confirmed in the State Bank of India on 14.12.1983. While continuing as an officer of State Bank of India, he appeared in the Combined Civil Services Examination in 1984 and was selected in the Indian Revenue Service which he joined on 16.12.1985.

*V. Somnath Jha
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After training as an Income Tax Officer and after posting at various places, the petitioner is at present continuing as Assistant Commissioner of Income-tax (Headquarters), Bhubaneswar. With effect from 1.1.1986 the recommendation of the Fourth Pay Commission came into force and as per the Revised

Pay Rules, 1986, scale of pay of Rs.700-1300/- was revised to Rs.2200-4000/-. Accordingly, the pay of the petitioner was fixed as on 1.1.1986 at Rs.2200/-. In the State Bank of India there was an earlier pay revision with effect from 1.2.1984 where the scale of pay of Rs.700-1800/- in which the petitioner was in the State Bank of India was revised to Rs.1175-2675/-. The petitioner submits that had he continued in the State Bank of India, he would have enjoyed the revised pay scale of Rs.1175-2675/-. The petitioner further submits that Department of Personnel and Training in their circular dated 7.8.1989 (Annexure-3) decided that in respect of persons working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed in Government service as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their pay should be protected. In this circular it was ordered that on joining Government service, their pay should be fixed at a stage in the scale of pay attached to the post in the Government so that the pay and D.A. as admissible in the Government will protect the pay + D.A. already being drawn by them in their parent organisations. In case such a stage is not available in the post to which they have been recruited in Government, their pay may be fixed at a

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stage just below in the scale of pay of the post to which they have been recruited so as to ensure a minimum loss to the persons concerned. It was also indicated in this order that this order will take effect with effect from 1.8.1989. The petitioner submits that because of this circular, persons who are similarly situated like the petitioner got their pay fixed in Government protecting their pay drawn in the parent organisation prior to joining the Government. He has mentioned that two other officers, Mr.D S.Sunder Singh and Mr.John V.D.Langstieh have been allowed the same benefit of the circular at Annexure-3. Mr.Sunder Singh was working in Union Bank of India and Mr.Langstieh was working in State Bank of India prior to their joining the Income Tax Department. The petitioner made representations to the departmental authorities, but the same were rejected. That is how he has come up in this application with the prayers referred to earlier.

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3. The respondents in their counter have pointed out that when the applicant joined the Income Tax Department in December 1985 the circular at Annexure-3 was not in force. This circular came into force from 1.8.1989 and was given only prospective operation as it is mentioned specifically in the circular that this order will take effect from 1.8.1989. Therefore, according to the counter, the petitioner is not entitled to the benefit of this circular. It is further

submitted that the cases of Mr.D.S.Sunder Singh and Mr.John V.D.Langstieh, who have got the benefit of the circular, stand on a different footing because Mr.Sunder Singh joined the Department in 1990 and Mr.Langstieh in 1991 when the circular was in operation. The respondents have also pointed out that the petitioner's case is similar to the case of one Mr.P.V.Rao, Assistant Commissioner of Income-tax and his case for protecting his pay which he was drawing prior to his joining the Income Tax Department has been rejected. In view of the above, the respondents have opposed the prayers of the applicant.

4. We have heard Shri Aswini Kumar Misra, the learned lawyer for the petitioner, and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing on behalf of the respondents, and have also perused the records.

5. It has been submitted by the learned lawyer for the petitioner that from the circular dated 7.8.1989 it is clear that the Government have provided pay protection to the persons who prior to joining Government were working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies in order to draw upon the talent which is available in such non-Government organisations. It is submitted by the learned lawyer for the petitioner that this object of getting better talent for Government from these organisations is a consideration which must be taken to be valid both before and after 7.8.1989 which is the date of issue of the circular. In view of this, it is submitted that fixation of the date of 1.8.1989 for providing pay protection to such persons is arbitrary and capricious. Further it is submitted by the learned lawyer for the petitioner that treating similarly placed persons unequally is *prima facie* discriminatory and offends Article 14 of the Constitution. So far as harnessing the talents available in non-Government organisations for Government service

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concerned, the petitioner who joined Government service prior to 1.8.1989 and the two other persons who joined Government service in the Income Tax Department after 1.8.1989 and whose cases have been referred to by the petitioner stand on the same footing. But by this circular, the petitioner is being treated differentially from the other two persons and this, according to the learned lawyer for the petitioner, is discriminatory. In support of his contention, the learned counsel for the petitioner has relied on the decisions reported in AIR 1967 SC 1301 (D.R.Nim v. Union of India), AIR 1974 SC 555 (E.P.Royappa v. State of Tamil Nadu and another), and AIR 1983 SC 130 (D.S.Nakara and others v. Union of India). In D.R.Nim's case (supra), the petitioner was a State Police Service officer in Uttar Pradesh, who was promoted to Indian Police Service on 22.10.1955. He had earlier officiated as Superintendent of Police from 25.6.1947. Government of India in the order impugned before the Hon'ble Supreme Court in that case decided that for fixing the seniority of promoted officers, their continuous officiation in the senior post with effect from 19.5.1951 would be taken into account and not the period of officiation prior to this date. This decision was challenged by the petitioner and the Hon'ble Supreme Court, after considering the explanation of Union of India as to how this date of 19.5.1951 was fixed, held that this date was arbitrary. It was

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observed that the Central Government cannot pick out a date from a hat and that is what it seems to have done in that case. It is submitted by the learned counsel for the petitioner that in the circular dated 7.8.1989 the benefit of pay fixation has been allowed as mentioned earlier with effect from 1.8.1989. It has been submitted by the learned lawyer for the petitioner, going by the decision in **D.R.Nim's case (supra)**, that this date is arbitrary and the benefit sought to be given in the circular dated 7.8.1989 cannot be legally denied to persons whose cases had come prior to this date. We have considered this submission of the learned counsel for the petitioner carefully. Firstly, **D.R.Nim's case (supra)** is a case of officiation in the post in Indian Police Service by the State Police Service officers. There the date was considered arbitrary because it was noticed by the Hon'ble Supreme Court that notwithstanding fixation of this date certain officers have been allowed the benefit of officiation prior to 19.5.1951. It was also held that the date was fixed because that was the date when the gradation list for the Indian Administrative Service officers was finalised and the same date was made applicable for the Indian Police Service Officers for reckoning their period of continuous officiation. The facts of this case are widely different. As the circular dated 7.8.1989 itself indicates that the benefit of pay protection was given to the persons who were earlier working in

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Public Sector Undertakings, Universities, etc., in order to draw their upon the talent for utilising in Government service. It is to be noted that even prior to this date the benefit of such pay fixation was allowed to persons who were appointed through Union Public Service Commission if such persons were in Government service earlier. The decision to allow this benefit of pay protection is for the purpose of drawing upon the talent of persons working in Public Sector Undertakings, Universities, etc. The Government decided, at the time of issuing of the circular dated 7.8.1989, that talents available in such organisations should be encouraged to join Government service and that is how this circular was issued making it effective from 1.8.1989. Facts of the present case are widely different from D.R.Nim's case (*supra*) and that decision cannot, therefore, have any application to the facts of the instant case. The justification for fixing 1.8.1989 is that at the time of issuing of the circular Government decided to draw upon the talents available in Public Sector Undertakings, Universities, etc. and therefore, this date cannot be held to be arbitrary. The learned lawyer for the petitioner has also relied on E.P.Royappa's case (*supra*) and D. S. Nakara's case (*supra*). It is not necessary to go into the details of those two cases. It is only relevant to note that the learned lawyer for the petitioner drew our attention to paragraph 85 of the judgment in E.P.Royappa's case.

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(supra) where the Hon'ble Supreme Court indicated the true meaning and import of Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court observed that Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Their Lordships also observed that Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. Now it is well settled position of law that the concept of equality as laid down in Articles 14 and 16 does permit reasonable classification, but the classification must satisfy the twin test of having been founded on an intelligible differentia which distinguishes those that are grouped together from others and that differentia must have a rational nexus to the object sought to be achieved. This has been laid down in paragraphs 15, 16 and 32 of the judgment in **D.S.Nakara's case** (supra) referred to by the learned counsel for the petitioner.

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The circular dated 7.8.1989 classifies the persons who have joined Government service as direct recruits on selection through a properly constituted agency into two groups, namely, those who have joined after 1.8.1989, the date the circular came into force, and those who have joined prior to 1.8.1989. As we have already noted the rationale for issuing the circular was the desire of Government to draw upon the talents available in non-Government organisations. This cannot be called

an arbitrary or capricious ground and therefore, the classification of such persons into two groups, those who have joined prior to issue of the circular and those who have joined later cannot be held to be discriminatory. It is thus seen that the above cases cited by the learned lawyer for the petitioner do not go to support his contentions.

6. The settled position of law is that an executive order is given prospective effect unless it is specifically provided in the order that it will have retrospective operation. With regard to giving financial benefit to the Government servants, it is always open to Government to give financial benefits with prospective effect and in the process somebody can be left out of the financial benefit sought to be given prospectively. It cannot be argued by such person that the Government should have given financial benefit with retrospective operation covering his case. Moreover, in the circular dated 7.8.1989 it has been mentioned in paragraph 1 that orders were already in existence prior to this circular for giving pay protection to persons who were in Government service and who have been recruited to another Government service through Union Public Service Commission. The benefit of such pay protection was not allowed to the persons recruited in the Government service who were earlier working in non-Government organisations like Public Sector Undertakings, Universities, etc. and in this circular dated 7.8.1989 this benefit was given

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for the first time to such persons. The petitioner has no right as such to claim that the circular should be given retrospective effect.

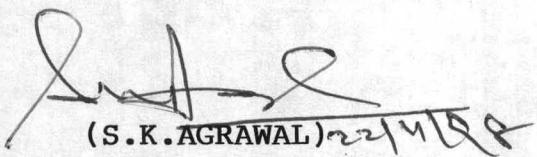
7. The second limb of argument of the learned counsel for the petitioner is that in this circular similarly situated persons are being treated differentially and this is discriminatory and offends Article 14 of the Constitution. We are unable to accept this contention because the cases of Mr.D.S.Sunder Singh and Mr.John V.D.Langstieh stand on a different footing because Mr.Sunder Singh and Mr.Langstieh were respectively recruited in 1990 and 1991 after coming into force of the circular dated 7.8.1989. There are many other persons like the petitioner who joined Government service prior to issue of this circular leaving their jobs in the Public Sector Undertakings, Universities, etc. Therefore, such persons who joined prior to 1.8.1989 must be taken to be a separate class.

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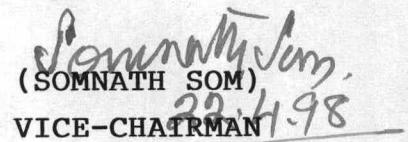
The respondents have cited the case of one P.V.Rao whose case is similar to the petitioner and Mr.Rao has been denied pay protection as in the case of the petitioner. Therefore, it cannot be said that the petitioner and Mr.Sunder Singh and Mr.Langstieh are similarly situated persons. This contention must, therefore, fail and is hereby rejected. We also hold, in view of the above discussion, that the circular dated 7.8.1989 is not discriminatory and does not offend Article 14 of the Constitution.

8. The last point urged by the learned lawyer for the petitioner that the applicant should get his pay fixed at least from 1.8.1989 when the circular came into force and should get the differential. This contention is without any merit because on his joining the Income Tax Department on 16.12.1985 his pay has to be fixed in the Income Tax Department as on 16.12.1985 and this has been done. His pay has been further revised with effect from 1.1.1986. Because the circular came into force from 1.8.1989, his pay cannot be again re-fixed in accordance with this circular as on 1.8.1989 because he had joined the Income Tax Department much prior to 1.8.1989, i.e. on 16.12.1985.

9. In view of the above discussion, we hold that the petitioner has failed to make out a case justifying the reliefs asked for by him. The application is, therefore, held to be without any merit and the same is rejected but, under the circumstances, without any order as to costs.



(S.K. AGRAWAL) 22/4/98
MEMBER (JUDICIAL)



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(SOMNATH SOM)
22/4/98
VICE-CHAIRMAN