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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 540 OF 1994
Cuttack this the 17th day of January / 2001

Chintamani Mohanty & Others ... Applicants

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

SOMNATH SOM
(SOMNATH SOM)
VICE-CHAIRMAN

17.1.2001

17.1.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 540 OF 1994
Cuttack this the 17th day of January/2001

CORAM:

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

1. Chintamani Mohanty, S/o. Late Ghanshyam Mohanty
A resident of - Quarters No.P 112/1, I.T.R.
Defence Colony, Balasore

2. Upendra Apato, S/o. Late Rama Hari Apato,
Presently residing at Quarters No.P 111/1,
I.T.R. Defence Colony, Balasore-756001

3. Purna Chandra Pati, S/o. Late Raghava Pati,
Presently residing at - Quarters No.113/3,
I.T.R. Defence Colony, Balasore-756001

4. Benudhar Sahoo, S/o. Late Daitari Sahoo,
Presently residing at - SPECTRA VILLA,
Azimbad, Balasore

5. J.Ramachandra Sorma, S/o. J.Venkatramappa,
Presently residing at - Teling Sahi, Balasore

6. Amit Mazumdar, S/o. Shri Shambunath Mazumdar,
Presently residing at - Quarters No. P 115/2,
I.T.R. Defence Colony, Balasore-756001

7. Sushanta Kumar Raul, S/o. Late Arjun Ch. Raul,
Presently residing at - Quarters No. P/113/2,
I.T.R. Defence Colony, Balasore

8. Nityananda Naik, S/o. Late B.D. Naik,
Presently residing at - Quarters No.116/1,
I.T.R. Defence Colony, Balasore

9. Susanta Kumar Behera, S/o. Sri Bhanu Charan Behera,
Presently residing at - Quarters No. P 114/1,
I.T.R. Defence Colony, Balasore-756001

10. Gopinath Das, S/o. Kashinath Das,
Presently residing at - Kanchanibag, PO: Sunhat
Balasore-756002

11. Adikanda Pati, S/o. Gouranga Pati,
Presently residing at - 111/2, I.T.R. Defence
Colony, Balasore

12. Bijay Kumar Biswal, S/o. Ramanath Biswal,
Presently residing at - Quarters No. P/110/7,
I.T.R. Defence Colony, Balasore

13. Bikash Roynath, S/o. Late Dr.Birendra Mohan Roynath
Presently residing at - Quarters No. P 114/3
I.T.R. Defence Colony, Balasore

Applicant Nos. 1 to 12 are working as Senior Scientific Assistants, Interim Test Range, Chandipur, Balasore. Applicant No.13 is working as Senior Scientific Assistant, Estate Management Unit, Defence Research and Development Organisation, Chandipur, Balasore

... Applicants

By the Advocates

Mr. Biswajit Mohanty

-VERSUS-

1. Union of India, represented through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi
2. Deputy Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi
3. The Scientific Advisor and Director General of Research and Development, Defence Research and Development Organisation, 'B' Wing, Sena Bhawan, New Delhi
4. Assistant Director (Personnel), Defence Research and Development Organisation, Directorate of Personnel, Ministry of Defence, 'B' Wing, Sena Bhawan, New Delhi
5. Officiating Senior Administrative Officer, Interim Test Range, Chandipur, Balasore
6. Director, Interim Test Range, Chandipur Balasore
7. The Manager, Estate Management Unit, Interim Test Range, Chandipur, Balasore

... Respondents

By the Advocates

Mr. U.B. Mohapatra
Addl. Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): 13 Applicants are Senior Scientific Assistants under Defence Research and Development Organisation (D.R.D.O.), serving at Chandipur in the District of Balasore. Applicant Nos. 1 to 5 were directly appointed as Senior Scientific Assistants (SSA in short) and the remaining applicants were promoted from the cadre of Junior Scientific Assistants (J.S.A. in short). D.R.D.O. is a Wing of the Ministry of Defence. Next promotional post for S.S.A. is Junior Scientific Officer (Gazetted Class-II). Posts of Foreman

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and Draughtsman are also Feeder posts for promotion to the post of Junior Scientific Officer. As per the pay scales recommended by the 3rd Pay Commission, the S.S.A. was in the pay scale of Rs.550-900/-, while the Chief Draughtsman in the pay scale of Rs.700-900/- and the Foreman in the pay scale of Rs.840-1040/-, with effect from 1.1.1973. This anomaly in the pay scales gave rise to a dispute initiated by the staff side which was ultimately referred to an Arbitration Board. The Board, in its Award dated 12.8.1985, so far as the dispute relevant to this particular case accepted the demand of the staff side for the grant of pay scale of Rs.840-1040/- to the S.S.A. and Draughtsmen, working in the Research and Development Organisation and the Director General of Inspections (both in the Ministry of Defence), with an observation that this pay will be in addition to those which are already admissible to these categories in the two Organisations and further held that proportion of posts to be allocated in the new pay scales should broadly bear the same proportion as obtained at that time in the Foreman category vis-a-vis bear the highest grade of Assistant Foreman in the said Organisation, and that the Board also directed that the Award will come into operation with effect from 22.9.1982. Ultimately the Government in Parliament, accepted the Award to be effective from 1.1.1988. In Office Memorandum dated 11.11.1988 issued by the Government of India, this decision of the Government was notified with an intimation that 822(49%) posts of Senior Scientific Assistants under D.R.D.O. would be given the benefit of pay scale, which under the 4th Pay Commission was Rs.2375-3500/- (equivalent to 3rd Pay Commission pay

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scale from Rs.840-1040/-) from the scale of Rs.1640-2900/- (equivalent to Rs.540-900/- under the 3rd Pay Commission), which they were hitherto getting. The Ministry of Defence in their circular dated 10.12.1990 (Annexure-A/2) made it clear that this benefit of higher pay scale would not mean to higher grade, but is merely upgradation of pay scales. These facts are not in dispute.

2. The grievance of the applicants is that selected S.S.A.s, who were allowed higher scale of pay were not required to shoulder any higher responsibility. Their duties remained unchanged and that they discharge the same duties as other SSAs, like the applicants, who were not given the benefit of that pay scale. Besides, their designation remained the same. There was also no change in the seniority roll of SSAs. Hence, allowing the higher scale of pay only to the few percentage of SSAs with effect from 1.1.1988 was illegal. Accordingly, the applicants made representation to Respondent No.3 in December, 1993, to allow them the higher pay scale of Rs.2375-3500/. These representations were rejected on 9.2.1994 and rejection orders have been communicated to the applicants vide Annexure-A/4 and Annexure-A/5.

3. While praying for quashing of the orders under Annexures-A/4 and A/5 and praying for issue of direction to respondents to allow them the benefit of pay scale of Rs.2375-3500/- with effect from the date(s) on which they joined as S.S.As, as indicated in Para-4.1 of the Original Application with consequential benefits, the applicants urge that the decision of the Government in allowing this benefit of pay scale to a limited number of SSAs offends the well settled principle

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 Equal Pay for Equal Work and Article 14 of the Constitution, in view of the grounds mentioned above.

In the counter the stand of the Department is that the Award of the Arbitration Board as ultimately accepted by the Government in Parliament is binding on the authorities. The Arbitration Board, in its Award held that the benefit of higher pay scale of Rs.840-1040/- (3rd Pay Commission) is in addition to the pay scales, which are already admissible to the two categories, i.e., SSAs and Chief Draughtsman and the two scales would broadly bear the same proportion ~~which as it was~~ obtaining, at the relevant time in the category of Foreman Foreman and the highest Grade of Assistant in the Organisation. There was ~~challenge~~ challenge of this effective of benefit of higher pay scales with effect from 1.1.1988 only instead of from the date recommended by the Board before the various Benches of the Central Administrative Tribunal. Ultimately the Apex Court in Civil No.3954/90, 1883/94 and 1887/94 arising out of the decisions of those C.A.T. Benches disallowed such prayers made in the Original Applications filed before those Benches of the C.A.T. At this stage we may say that there is no prayer in this Original Application that the benefit of higher pay scale should be given from the date as recommended by the Arbitration Board. It is the further case of the Respondents that the applicants are not coming within the 49% of SSAs and as such, they would not be entitled to benefit of higher scale of pay from the date(s) they joined as S.S.As. Since no procedure or guidelines were indicated in the Award for grant of higher pay scale, keeping in view the substantial differences in the regular pay scale and the higher pay scale, it was decided that

the approval of the Secretary-cum-Defence (R&D) to implement the Award in the following manner.

- 1) To treat the higher pay scale as "non-functional Selection Grade" to be granted on the basis of seniority subject to fitness;
- ii) Minimum three years regular service is essential for grant of higher scale and
- iii) to provide reservation for SC/ST as per the existing instruction

The Department was well within its right to lay down certain yardsticks as aforesaid in this regard. In substance, the stand of the Department is that the well-known principle of Equal Work for Equal Pay ^{and} is, the provision under Article 14 of the Constitution has not been violated by conferring the benefit of the higher pay scale to 822 SSAs constituting 49%.

5. The applicants filed rejoinder and additional rejoinder also. Their stand in the rejoinder is that extension of benefit only to 49% SSAs no more remains because of the decisions of various Benches of the Central Administrative Tribunal, which allowed the higher scale of pay to those applicants, who have been wrongly deprived of the higher pay scale like the present applicants. Since the conferment of higher scale does not amount to promotion, question of applicants getting the higher scale of pay depending on the availability of vacancies would not arise. The guidelines adopted by the Department are not backed by any Government order, and as such those guidelines have no force of law. Allowing the benefit of higher scale to Junior SC/ST SSAs and not giving the same to the applicants is highly discriminatory since there are decisions of the C.A.T. Benches that reservation roster cannot be made applicable in conferment of this benefit of higher scale.

6. We have heard Shri B. Mohanty, the learned counsel for

the applicants and Shri U.B.Mohapatra, the learned Addl. Standing Counsel for the Respondents. During hearing, both the counsels filed xerox copies of several judgments of different Benches of the C.A.T. and of the Apex Court. The full text of the Arbitration Award was also filed by the learned Addl. Standing Counsel.

7. After hearing the counsels and perusing the records it is noticed that in the Original Application filed on 13.9.1994, there is no averment at all that juniors to the applicants in S.S.A. Cadre belonging to SC/ST community were conferred with the benefit of the higher pay scale and were among the 822 SSAs getting that benefit. There is also no averment that any of their juniors getting this benefit of higher scale ignoring their claim. It is true that xerox copies of the decisions filed by both sides and forming part of the record do lay down that reservation roster cannot be made applicable in granting this benefit as it is not a promotion, but upgradation of pay scales. But this cannot be a ground to consider the prayer of the applicants, because, as earlier stated, there is no averment in the O.A. that SSAs junior to the applicants and belonging to reserved communities were conferred this benefit and Original Application has not been subsequently amended to include any such plea. It is true that in the rejoinder a line was added to this effect. Such averment in the rejoinder would not amount to amendment of the O.A. This apart, while making such averment in the rejoinder, the applicants, for the reasons bestknown to them had not even mentioned the names of such juniors. If the applicants stand by such averment, those so called SSAs, juniors to them would be necessary parties, as ultimately they

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are likely to be affected in case this Original Application is allowed. It is for this reason the Apex Court in Civil Appeal No.7728/96, while setting aside the Original Judgment dated 5.11.1993 of the Hyderabad Bench of the C.A.T. in O.A.947/89, not on merit, remitted back to that Bench with a direction to allow the applicants to implead all other persons as respondents in that Original Application, who were likely to be affected by the ultimate decision rendered by that Bench and thereafter, to decide the matter on merits. A xerox copy of that Apex Court judgment dated 8.9.1998 has been filed by the Department and forms part of this record. This being the legal position, averment in the joinder that some of the juniors of the applicant belonging to reserved communities have been conferred the benefit will in no way improve the case of the applicants.

8. It is next to be considered whether the applicants are entitled to get the benefit of higher scale with effect from 1.1.1988, like the other 822 S.S.As, on the ground of Equal Pay for Equal Work. It is not in dispute that the applicants and the S.S.As, who have ultimately been conferred with the benefit of higher scale in terms of Arbitration Award, accepted by the Government in Parliament, perform the same nature of duties. The learned counsel for the applicants placed reliance on the judgment dated 27.1.2000 of Hyderabad Bench of C.A.T. in Original Application No.947/89 (xerox copy filed). In that case filed by 40 persons working as Senior Scientific Assistants in the Defence Research and Development Laboratory, Hyderabad claimed this higher pay scale on the ground that 76 S.S.As of that Laboratory were given that benefit of pay scale with effect from 1.1.1988, on the acceptance of the Arbitration Award by

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the Government in Parliament. Earlier this Application was dismissed by that Bench and the matter was carried to the Apex Court in Civil Appeal No.7728/96. By order dated 8.9.1998, the Apex Court, without going ~~into~~ the merits, remitted the matter back to that Bench with a direction that it should permit the applicants to implead all other persons as Respondents, who were likely to be affected by the ultimate decision rendered by it and thereafter to decide the matter on merits. Pursuant to this direction of the Apex Court, all the persons, who were likely to be affected by the decisions had been impleaded as Respondents. The Apex Court remitted the matter to that Bench mainly on the ground that in the absence of S.S.A.s of that Laboratory, who got the benefit, the application could not be effectively decided. After complying the direction of the Apex Court the matter was re-heard by that Bench and ultimately by judgment dated 27.1.2000, the official respondents were directed to grant the benefit of pay scale of Rs.2375-3500/- to the S.S.As w.e.f. 1.1.1988. The Original Application before us has been filed by 13 SSAs, out of whom 12 are serving at Interim Test Range, Chandipur and the remaining one at Estate Management Unit at Chandipur. They have not impleaded the ~~of those units~~ S.S.A.s, who have been included in 822 SSAs constituting 49% and on whom benefit of higher pay scale was conferred. It is not their case that none of the S.S.As, of Interim Test Range Chandipur and Estate Management Units have been conferred such benefit of higher pay scale. Hence in the absence of those S.S.As, as held by the Apex Court in Civil Appeal No.7728/96, this Original Application cannot be effectively decided and on this ground alone, the Original Application is liable to be

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dismissed.

9. Even on merits, we cannot follow the reasoning of the Hyderabad Bench of C.A.T. in judgment dated 27.1.2000, because it runs contrary to the observations of the Apex Court on this point in Civil Appeal Nos.7314/97, disposed of along with Civil Appeal Nos.3339/96, 7316-7317/97, 7315/97 and 3338/96, vide their judgment dated 13.7.1999 (xerox copy filed), which was not apparently brought to the notice of the Hyderabad Bench of the Tribunal. The Apex Court's judgment covers the very same issue. At Page-19 of their judgment, the Apex Court, while taking note of the submissions of the learned counsel for the applicants that classification of the Senior Scientific Assistants in the very same Department merely on the basis of seniority was unconstitutional, observed that the submission though attractive on the face of it, yet is without substance when examined in depth. At Page-20, the Apex Court further observed as follows :

"As noticed earlier, in the instant case, pay scales were granted to a number of Senior Scientific Assistants on the basis of the Award at the instance of the appellants' Association with the objective of giving them incentives. There was no intention of creating any discrimination as has been argued before us".

Further At Page-22 of the judgment, the Apex Court observed as follows :

"We are, therefore, of the opinion that the Central Administrative Tribunal had rightly rejected the applications of the appellants as it did not find any legality or unconstitutionality in the classification of two grades of the S.S.As, particularly, when the classification was shown to have been made on the basis of an Award in which the SSAs themselves were shown to have demanded two pay scales".

Thus, this decision of the Apex Court clinches the issue requiring decision by us, and this observation of the

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Apex Court is certainly binding on us.

In the result, we do not see any merit in this Application, which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

17.1.2001

17-1-2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//