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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 546 OF 1994
Cuttack, this the 12th day of Sept. 2000

Tapas Kumar Das and others 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*.

1. —
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
12.9.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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Cuttack, this the 12th day of Sept., 2020

CORAM;

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

.....

1. Tapas Kumar Das, aged about 37 years, son of Sailendra Nath Das, village Chandasa, PO-Deganga, Dist. 24 Parganas (N), Pin-743423, West Bengal, At present C/o Rama Chandra Mohanty, At/PO-Madhusudan Nagar, Tulasipur, Cuttack-753 008.
2. Ashok Kumar Chakraborty, aged 34 years, son of Sukhamaya Chakraborty, At/PO-Haridaspur, Dist. 24 Parganas (N), West Bengal, at present C/o Biswambar Mohanty, At-Kesharpur Canal Road, PO-Buxi Bazar, Dist.Cuttack.
3. Tapan Kumar Swain, aged about 33 years, son of Dhrubananda Swain, At-Badakhir, PO-Nischintakoili, Dist.Cuttack, PIN-754 207, at present C/o Nrusingha Narayan Das, At-Mathasahi, PO-Tulasipur, Dist.Cuttack.
4. Abinas Roy, aged about 30 years, son of Anil Ch.Roy, At-A/21, No.2 Poddar Nagar, PO-Jadavpur University, Calcutta-32, West Bengal, At present C/o R.N.Behera (Retd.Joint Director), At-Madhusudan Nagar, PO-Tulasipur, Dist.Cuttack.
5. Prabir Kumar Ray Choudhury, aged about 35 years, son of Sri Ranjit Ray Choudhury, At-Sarat Pally, B.M.Banerjee Road, Belghoria, Calcutta-700 056, West Bengal, at present 7/22, MIG-II B.D.A., OMFED Chowk, Bhubaneswar.
6. Salil Kumar Dhara, aged about 35 years, son of late J.K.Dhara, At/PO-Goghat, Dist.Hooghly, West Bengal.
7. Saumitra Chattopadhyaya, aged about 33 years, son of Sri S.N.Chatterjee, At-Maniktola (West), At-Ichhapur, PO-Nawab Gang, Dist. 24 Parganas (N), West Bengal-743 144.
8. Madhusudan Dey, aged about 27 years, son of Sri Kanheilal Dey, At-Basantitala, PO-Bishnupur, Dist. Bankura, West Bengal-722 122.
9. Prabir Kumar Saha, aged about 31 years, son of Parimal Kanta Saha, At-Sibadham, 10/C, Patwar Bagan Lane, PO-Amher Street, Calcutta-700 009.

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10. Tapan Kumar Kapuria, aged about 33 years, son of late Jatindranath Kapuria, At/PO-Deganga, Dist. 24 Parganas (N), West Bengal.

11. Rama Chandra Sethi, aged about 27 years, son of Bhagaban Sethi, At/P.O-Machhadiha, Via-Basta, District-Balasore.

12. Chandi Charan Mandal, aged about 27 years, son of Sri Haripada Mandal, At-Purusottampur, PO-Agarda, Dist.Bankura, West Bengal-722 144.

Nos. 6 to 12 are at present Office of the Executive Engineer (Civil), Civil Construction Wing, All India Radio, Sainik School Compound, Bhubaneswar-5 ...Applicants

Advocates for applicants - M/s B.N.Bhuyan
 A.K.Sahu
 S.K.Panda
 Mrs.U.R.Padhi.

Vrs.

1. Union of India, represented through the Secretary, Information & Broadcasting, Sastree Bhawan, New Delhi-110 001.
2. Director General, All India Radio, Civil Construction Wing, PTI Building, Parliament Street, New Delhi-110 001.
3. Chief Engineer (Civil) Level-I, Civil Construction Wing, All India Radio, Iind Floor,PTI Building, 4 Parliament Street, New Delhi-110 001.
4. Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Doordarshan Bhawan, 4th Floor, Gulf Greet, Calcutta-700 045.
5. Executive Engineer (Civil), Civil Construction Wing, All India Radio, Sainik School Compound, Bhubaneswar-5. Respondents

Advocate for respondents - Mr.U.B.Mohapatra
 A.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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 In this Application under Section 19 of Administrative Tribunals Act, 1985, the twelve applicants, who have been permitted to pursue this petition jointly, have prayed for quashing the order dated 23.2.1993 (Annexure-6) denying grant of higher scale of pay to the Junior Engineers including the applicants. The second

prayer is for a direction to the respondents to allow the applicants the scale of pay of Rs.1640-2900/- with effect from 1.1.1986 as has been granted to other Junior Engineers working under C.P.W.D. and P & T (Civil Wing).

2. The applicants are Junior Engineers (Civil) and are working in the office of Executive Engineer (Civil), Civil Construction Wing (C.C.W), All India Radio, Bhubaneswar. They have joined as Junior Engineers on dates ranging from June 1983 to April 1989 and are in the scale of Rs.1400-2300/-. C.C.W. came into existence in 1971 and 1972 and became fully operative in 1972-73. The employees ^{under} in the C.C.W. are governed C.P.W.D. Prior to formation of C.C.W., CPWD was handling all the civil works pertaining to All India Radio. According to All India Radio Manual (Annexure-2) Civil Construction Wing is working generally on the pattern of C.P.W.D. The Rules contained in C.P.W.D.Account Code, C.P.W.D.Code and C.P.W.D.Manuals and subsidiary instructions apply to C.C.W. This is mentioned in paragraph 3.5.5 of Chapter III Section V relating to Civil Construction Wing in All India Radio Manual Volume I. Paragraph 3.5.4 lays down that the organisational set up of C.C.W. has been generally based on the pattern of C.P.W.D./P&T Civil Wing. The applicants state that from Annexure-2 it is clear that for the employees of C.C.W. particularly the applicants, the conditions of service are similar to that of Junior Engineers employed under C.P.W.D. and P & T Civil Wing. They are thus at par with the Junior Engineers in C.P.W.D. and P & T Civil Wing. Government of India decided that there would be two pay scales for Junior Engineers, Rs.1400-2300/- and Rs.1640-2900/- and it was laid down the entry grade will be Rs.1400-2300/- and on completion of five years of service in the entry grade the Junior

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Engineers will be placed in the scale of Rs.1640-2900/- unless they are declared unfit. But the higher grade will not be treated as promotional one and pay fixation will be done on the basis that there has been no increase of duties and responsibilities. After the above decision of Government of India the same was implemented by different Departments. Ministry of Urban Development (Works Division) in their letter 22.3.1991 (Annexure-3) introduced two scales of Rs.1400-2300/- and Rs. 1640-2900/- for Junior Engineers in C.P.W.D. in terms of what has been mentioned above. Similarly, Ministry of Communication, Telecom Commission in their letter dated 9.5.1991 (Annexure-1) also issued similar orders giving two scales to Junior Engineers; the higher scale of Rs.1640-2900/- being applicable on completion of five years of service in the lower grade. The applicants state that from Annexures 3 and 4 it is clear that counterparts of the applicants similarly placed and discharging similar duties and responsibilities are drawing different scales of pay and the applicants have been discriminated against. The applicants filed representation and Superintending Engineer (Civil), C.C.W., Calcutta, forwarded their representations to Chief Engineer enclosing a copy of the Ministry of Communication's letter dated 9.5.1991. In a further communication the Superintending Engineer (Civil) reminded the Chief Engineer about the representations of the applicants and enclosed therewith the copy of the order dated 22.3.1991 of the Ministry of Urban Development. Ultimately, Director General, All India Radio (Civil Construction Wing) in the impugned order dated 23.2.1993 informed the Superintending Engineer that proposal of placement of Junior Engineers of C.C.W. in the pay scale of Rs.1640-2900/- has been considered by the

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Ministry of Finance (Department of Expenditure), but it has not been found possible to accept the proposal. After receipt of this rejection letter the applicants made further representation to Director General, All India Radio and Chief Engineer, C.C.W. Technical Staff Association also took up the matter with the Head Office of Civil Construction Wing at New Delhi in their letter dated 18.12.1993 at Annexure-8. The matter was discussed in a joint meeting on 18.11.1993 of the authorities and the Association. Minutes of this meeting are an enclosure to Annexure-8. The further representations from the Association are at Annexures 9 and 10. The applicants have further stated that Junior Engineers in P & T, Telecom Division, had been given higher scale of Rs.1640-2900/- after completion of five years in order dated 15.8.1993 at Annexure-11. In the context of the above facts, the applicants state that even though they are similarly situated like the Junior Engineers in C.P.W.D and P & T, they have been discriminated in so far as they have not been allowed the higher scale on completion of five years of service. It is also stated that the impugned order dated 23.2.1993 at Annexure-6 is illegal and discriminatory and that is how they have come up in this petition with the aforesaid prayers.

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3. The respondents in their counter have stated that service conditions of the applicants are governed by Central Civil Service Rules and the Rules and Regulations of C.P.W.D. are only applicable for the planning and execution of the works of the Civil Construction Wing of All India Radio but not for any other purpose. It is further stated that service conditions and promotional prospects available to Junior Engineers in

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C.C.W., A.I.R. are different from the Junior Engineers of C.P.W.D. and P & T. More particularly it is stated that Junior Engineers in C.C.W. have better promotional prospects and on many occasions they have been promoted to the next higher grade of Assistant Engineer much prior to their counterparts in C.P.W.D. and a person joining as Junior Engineer in C.P.W.D. may not get a promotion even after serving for fifteen years. Junior Engineers in C.C.W. of A.I.R. get promotion to the grade of Assistant Engineers within fifteen years. It is further stated that the case of the applicants was considered in consultation with the Ministry of Finance (Department of Expenditure) but was turned down as the Department of Expenditure did not agree to the demand. However, the respondents have taken up the matter and referred the case to the Ministry of Finance for reconsideration. The respondents are waiting for the final order from the Finance Ministry. It is further stated that higher scale of Rs.1640-2900/- has been granted to Junior Engineers (Civil/Electrical) of C.P.W.D. and Department of Telecommunication keeping in view their promotion prospects and stagnation in the grade. The respondents have stated that the Fourth Pay Commission in its report has recommended two distinct scales of pay for Junior Engineers (Civil/Electrical) of C.P.W.D. and Department of Telecommunications. However, following an agitation by Junior Engineers of CPWD and Department of Telecommunications for the uniform pay scale of Rs.1640-2900/-, the Government re-examined the whole matter. After considering the recommendation of the then Additional Secretary (Pensions), orders with regard to revised pay scale for Junior Engineers of C.P.W.D. were issued with the approval of the Cabinet and this is not extendable to Junior Engineers of other organisations. The

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Additional Secretary (Pensions) who examined and reconsidered the whole issue did not make any suggestions in the case of Junior Engineers of Civil Construction Wing, taking into account the promotion prospects available to them. The respondents have stated that the impugned order dated 23.2.1993 (Annexure-6) has been issued taking into consideration all relevant facts and the order is not illegal or discriminatory. It is further stated by the respondents that the two applications, O.A Nos. 377/94 and 156/94 filed by Technical Staff Association before Central Administrative Tribunal, Bombay Bench and Shri Gujan Paul and others before the Patna Bench respectively are pending in respect of similar grievances.

4. The applicants in their rejoinder have contested the averments of the respondents that the service conditions and promotional prospects of Junior Engineers in C.C.W. are quite different from their counterparts in C.P.W.D. and P & T. They have also contested the stand of the respondents that the service conditions of Junior Engineers in CCW are different from Service conditions of Junior Engineers in C.P.W.D. on the ground that Superintending Engineer (Civil), C.C.W. in his letter dated 17.5.1993 (Annexure-12) has dealt with the claim of Junior Engineers of C.C.W. for Overtime Allowance on the basis of the provisions in the C.P.W.D. Manual Vol.I. Thus, it is stated that in the matters of service conditions also Junior Engineers in C.C.W. are governed by the rules and regulations applicable to Junior Engineers in C.P.W.D. It is stated by them that the applicants have completed more than eight years of service but are not due to be promoted as

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Assistant Engineers and therefore the promotion prospects of Junior Engineers of C.C.W. are also bleak like Junior Engineers in C.P.W.D. The applicants have further stated that no material has been given by the respondents along with their counter showing that their prayer is now pending for reconsideration of the Ministry of Finance. In view of this, they have reiterated their prayers in the O.A.

5. We have heard Shri B.N.Bhuyan, the learned counsel for the petitioners and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents. In course of hearing the learned counsel for the petitioners submitted that the pay scales of Junior Engineers in C.C.W. and Junior Engineers of C.P.W.D. and P&T have been equalised by the Fifth Pay Commission whose recommendations have been given effect to from 1.1.1996. Thus, the present claim in the O.A. is confined to getting the higher scale of Rs.1640-2900/- from 1.1.1986 to 31.12.1995. The applicants have filed the decision of Patna Bench in O.A.No.156 of 1994 and Contempt Petition arising out of it and the decision of the Hon'ble Supreme Court in the case of Vishnu Prasad Sinha and another v. Union of India and others, in SLP (Civil) No. 4663/96 which, however, relates to Transmission Executives in All India Radio. The notes of submissions filed by the applicants and the notes of submissions filed by the respondents have also been taken note of.

6. The admitted position is that the organisational set-up of Civil Construction Wing of All India Radio has been generally based on the pattern of C.P.W.D. and P & T Civil Wing except for some variance with regard to ministerial staff. It is also the admitted position that the C.C.W. works generally on the pattern of CPWD and the rules contained in CPWD Account Code, CPWD Code and CPWD Manuals and subsidiary instructions apply to CCW. This is mentioned in paragraphs 3.5.4 and 3.5.5 of Chapter III of Section V of All India Radio Manual Vol.I which is at Annexure-2 to the O.A. The respondents while admitting

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the above position have stated that the service conditions of Junior Engineers in CCW and Juniors in CPWD are different particularly with regard to promotional prospects which, according to the respondents, are better for the Junior Engineers in CCW. The applicants have contested this. They have enclosed along with the rejoinder the Recruitment Rules for the post of Assistant Engineer (Civil) which is the next promotional post for Junior Engineers. According to the Recruitment Rules, Junior Engineers holding Degree in Civil Engineering with five years regular service in the grade are eligible for promotion to the grade of Assistant Engineer and those with Diploma in Civil Engineering are eligible for consideration for promotion after eight years of regular service as Junior Engineer. Their case is that the applicants have joined between June 1983 and April 1989 and even after completion of ten years for the earlier recruits amongst the applicants and five years of service by the later recruits, they are not due to be promoted as Assistant Engineers and therefore, they are also suffering due to lack of promotional prospects. In this context, the applicants have claimed that the benefit of the two orders issued for Junior Engineers in CPWD and Junior Engineers in P & T, at Annexures 3 and 4, giving them the higher scale of Rs.1640-2900/- after completion of five years of service as Junior Engineer in the entry grade of Rs.1400-2300/- should be extended to Junior Engineers in C.C.W. From these two orders (Annexures 3 and 4) it is clear that higher scale of Rs.1640-2900/- was allowed to Junior Engineers of CPWD and P & T as a Selection Grade. We are conscious of the fact that the Fourth Pay Commission abolished selection grade in most services.

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But after the recommendation of the Fourth Pay Commission was implemented from 1.1.1986, the Government apparently in their orders at Annexures 3 and 4 have introduced the higher scale of pay of Rs.1640-2900/- which is in the nature of a selection grade. This is borne out by the fact that in these two orders it is clearly mentioned that Junior Engineers in the scale of Rs.1400-2300/- will be placed in the scale of Rs.1640-2900/- on completion of five years of service subject to rejection of unfit. It is also mentioned that the higher grade will not be treated as a promotion but will be non-functional and benefit of FR 22(I)(a)(i) will not be admissible while fixing the pay in the higher scale as there will be no change in the duties and responsibilities. From this it is clear that non-functional scale of Rs.1640-2900/- was allowed to Junior Engineers in CPWD and P & T in a sort of selection grade by the Government orders in March 1991 and May 1991 after the implementation of the Fourth Pay Commission recommendations from 1.1.1986. It is also to be noted that the representations of the applicants were forwarded to the Ministry of Finance by the Chief Engineer and presumably Director-General, All India Radio, but these were turned down by the Department of Expenditure. In the impugned order at Annexure-6 no reason for turning down the proposal has been mentioned. The respondents have also not indicated the reason why the proposal was turned down by the Ministry of Finance except showing that the promotion prospects for Junior Engineers in CCW are better compared to the Junior Engineers in CPWD & P & T. Besides this bland statement the respondents have not given any details in their counter as to how promotion prospects of

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Junior Engineers in CCW, AIR, are better than the Junior Engineers in CPWD & P & T. On the other hand, it is clear from the pleadings that even though the rules for appointment to the post of Assistant Engineer, the next promotional post for Junior Engineers, provide for eligibility for Degree holders with five years regular service as Junior Engineers and for Diploma holders with eight years of regular service, these applicants some of whom have put in more than ten years of service by the time the O.A. was filed have not been promoted to the grade of Assistant Engineers. There is also no averment that they have been considered for such promotion. In view of this, it cannot be said on the basis of the pleadings of the parties that promotion prospects of Junior Engineers in CCW are so much better as to deny them the higher scale which has been brought in as some sort of selection grade for Junior Engineers in CPWD & P&T. It is also to be noted that the respondents have stated in their counter that even after the Department of Expenditure have turned down the proposal for giving Junior Engineers of CCW the higher scale of Rs.1640-2900/- on completion of five years of service, they have again taken up the matter with the Ministry of Finance for reconsideration and the final decision is awaited. In this case, after implementation of the recommendation of the Fourth Pay Commission and in the context of the agitation by the Junior Engineers of CPWD and P&T the Government have allowed them higher scale of pay of Rs.1640-2900/- on completion of five years of service in the lower scale subject to the conditions referred to earlier. There is, therefore, no reason why the same benefit should be denied to the applicants.

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7. We have gone through the decision of Patna Bench in O.A.No. 156 of 1994, decided on 26.8.1996 (Gunjan Paul and others v. The Union of India and others) in which direction has been given to the Government that in case in the recommendation of the Fifth Pay Commission as accepted by the Government the pay scales of Junior Engineers of CCW, AIR, are not brought at par with that of C.P.W.D. and P&T Civil Wing, then the Government should consider the question of allowing the Junior Engineers of C.C.W. the same scales of pay taking into ^{consideration} all factors within a period of six months from the date of communication of the order. Arising out of OA No.156 of 1994, Contempt Petition (CCPA No.28 of 1997) was filed before the Patna Bench who noted in their order dated 9.12.1999 that with effect from the date of adoption of the Fifth Pay Commission pay scales the pay of Junior Engineers of CCW have been brought at par with Junior Engineers of C.P.W.D. and P & T Civil Wing. The Tribunal noted that thereby their order dated 26.8.1996 in OA No.156/94 has been complied with. The Tribunal noted that the applicants' grievance is that they should be allowed higher pay scale on completion of five years of service and this was held to be a separate cause of action and on that ground the Contempt Petition was dropped. We have also gone through the order dated 24.9.1997 of Jabalpur Bench in OA No.194 of 1996(P.Radhakrishna and 13 others v. Union of India), in which the Junior Engineers of C.C.W. have claimed parity of pay scale with that of Engineering Assistants in the Information & Broadcasting Department whose pay has been revised with effect from 1.1.1996 by according them a time scale of Rs.2000-3200/-.. In that case the Tribunal took note of the order dated 14.3.1996 of the Hon'ble Supreme Court in SLP(C)

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No. 4663 of 1995 in which their Lordships of the Hon'ble Supreme Court held that in the event of the Fifth Pay Commission finding that the post of Transmission Executive held by the petitioners is equivalent to the post of Engineering Assistant, the Central Government may consider giving this benefit of revision of pay scale to the petitioners with retrospective effect as claimed by them. In consideration of the above decision of the Hon'ble Supreme Court, OA No. 194 of 1996 was disposed of by the Jabalpur Bench with a direction that the Department may also in that case consider giving the benefit of revision of pay scale to the petitioners with retrospective effect. The learned counsel for the petitioners has also relied upon a decision of the Single Bench of the Tribunal in OA No. 74 of 1990 disposed of on 8.8.1991 in which the Tribunal have considered the case of Junior Engineers in the Dandakaranya Project and have held that the duties performed by them are similar to the duties performed by similarly placed persons in the Department of Telecommunications and C.P.W.D. Accordingly, the Tribunal have allowed them the higher scale of Rs.1640-2900/-. We have gone through this judgment and we find that in that case the Tribunal have referred to certain other orders in the cases filed earlier before the Tribunal in OA Nos.103 and 105 of 1987 and OA No.10/89 where it was held that Junior Engineers in the selection grade post under Dandakaranya Development Authority perform the same duties and functions as Junior Engineers in CPWD and Telecommunication Department. From this it is clear that higher scale of pay of Rs.1640-2900/- has been allowed to Junior Engineers other than those in CPWD and P&T Department.

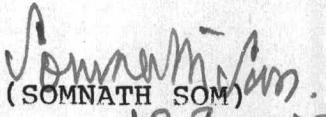
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8. In consideration of all the above, we hold that the applicants are entitled to the scale of Rs.1640-2900/- on their completion of five years of service in the entry grade subject to rejection of unfit. This scale should be allowed to them in terms of the Government orders applicable to Junior Engineers in CPWD and P&T Department, i.e., the orders dated 22.3.1991 (Annexure-3) and dated 9.5.1991 (Annexure-4), as has been ordered by Jabalpur Bench of the Tribunal in OA No.194/96, decided on 24.9.97. In that case the Tribunal have directed the Department to consider giving the benefit of revision of pay scale to the applicants with retrospective effect as per the direction of the Hon'ble Supreme Court, quoted by them earlier in their order. This action should be completed by the respondents and a final view taken within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

9. In the result, therefore, the Original Application is allowed in terms of the observation and direction given above but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
12.9.2000
VICE-CHAIRMAN