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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.573 OF 1995  
Cuttack, this the 28<sup>th</sup> day of June, 1996

Kailash Chandra Sethi ... Applicant

• • •

**Applicant**

Vrs.

Union of India & others ... Respondents

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## Respondents

(FOR INSTRUCTIONS)

1) Whether it be referred to the Reporters or not?

2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

A. K. Chatterjee  
(A. K. CHATTERJEE)  
VICE-CHAIRMAN

(b)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.573 OF 1995  
Cuttack, this the 28<sup>th</sup> day of June, 1996

CORAM:

HONOURABLE SHRI JUSTICE A.K.CHATTERJEE, VICE-CHAIRMAN  
(Calcutta Bench)

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Kailash Chandra Sethi,  
son of late Nakul Charan Sethi,  
Vill-Karadiapatna, P.O.R.K.Patna,  
District-Kendrapara, at present working  
as L.S.G.P.A., S.B.C.O., Kendrapara  
Head Post Office, At/P.O/Dist.Kendrapara

... Applicant

By the Advocates

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M/s R.N.Naik,  
B.S.Tripathy, P.Panda,  
D.K.Sahoo & M.P.J.Roy

-versus-

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle, At/P.O-Bhubaneswar, Dist. Khurda.
3. Director General Posts, New Delhi.
4. Superintendent of Post Offices, Cuttack North, At/P.O/Dist. Cuttack.
5. Shri Ramakanta Satpathy, L.S.G.P.A.(SBCO), Bhubaneswar GPO, Dist-Khurda

.... Respondents

By the Advocate

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Mr.Ashok Mishra.

....

O R D E R

A.K.CHATTERJEE, VICE-CHAIRMAN This is an application for stepping up of pay of the applicant to bring it at par with that of the respondent No.5 in the circumstances as follows.

2. Both the applicant and the respondent No.5 were appointed as L.D.C. in S.B.C.O., the applicant having joined about two years prior to the date of joining of the respondent No.5. The applicant was thus senior to the respondent No.5 in the gradation list of L.D.C. as well as in the gradation list of U.D.C. to which both of them have been promoted. However, the applicant is getting basic pay of Rs.1600/- per month while the respondent No.5's basic pay is Rs.1640/- per month. The applicant made more than one representation for stepping up of his pay, but as those were lost he moved this Tribunal in O.A.No.100 of 1995 which was disposed of on 15.2.1995 with a direction to the Director General, Department of Posts, to dispose of a representation which had already been given by the applicant, within a period of three months by a judicious and reasoned order. This representation too was also rejected on the ground that the claim of the applicant was not covered under the Rules. In such situation, the instant application has been filed.

3. The position taken by the respondents is that stepping up of pay of the applicant was not permissible under the Office Memorandum of the Department of Personnel & Training No.4/7/92/Estt. (Pay-I) dated 4.11.1993. It has been stated that the applicant and the respondent No.5 were working in different zones and the respondent No.5 got an opportunity to

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officiate as U.D.C. on 9.2.1980 while the applicant was promoted to this cadre on 11.3.1981. Thus at the time of promotion of the applicant to the post of U.D.C. the respondent No.5 had already put in one year service as U.D.C. and had earned an increment which accounted for his higher pay. The Office Memorandum referred to above specifically laid down that if a senior joins the higher post later than the junior for whatever reason whereby he draws less pay than the junior, in such cases the senior cannot claim stepping up of pay at par with the junior. In such circumstances, the claim of the applicant could not be favourably considered by the Department. A moment's scrutiny will indicate that this contention raised on behalf of the respondents has no merit.

(The Office Memorandum dated 4.11.1993 cannot be attracted so as to deny the claim of stepping up of pay of the applicant which arose much earlier to the issue of this O.M. In other words, this O.M. cannot be given any retrospective effect because it is firmly settled position of law that by <sup>an</sup> executive act a person cannot be divested of a right which has already vested in him. It is also noticed that this question came up for consideration before different Benches of this Tribunal and in O.A.No. 393 of 1994 (Baidyanath Bandopadhyay v. Union of India and others) and O.A. No.274 of 1995 (Motilal Chanda & ors v. Union of India & others) before Calcutta Bench and in O.A.No.337 of 1993 (G.K.Nair v. Union of India) before Ernakulam Bench, stepping up of pay was allowed even in the face of the Office Memorandum dated 4.11.1993.) In the circumstances, it is found that the only defence taken by the Respondents to resist the claim of the applicant cannot be sustained and the application must succeed.

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4. The application is, therefore, allowed and it is disposed of with the order that Respondents 1 to 4 shall step up the pay of the applicant so as to bring it at par with that of Respondent 5 with effect from the date of promotion of the applicant to the post of U.D.C. with all consequential benefits as may be admissible under the Rules which shall be released within three months from the date of communication of this order.

No order is, however, made as to costs.

*A.K. Chatterjee*  
28.6.86  
(A.K.CHATTERJEE)  
VICE-CHAIRMAN

A.Nayak, P.S.