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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 661 OF 1995
Cuttack, this the 30th day of Sept., 1997

Sri Bhimsen Sahu

.....

Applicant

Vrs.

Union of India and others

.....

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?

(L. SWAMINATHAN)
MEMBER (JUDICIAL)

S. Som
(S. SOM)
VICE-CHAIRMAN 30.9.97

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(11)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN
AND
HONOURABLE SMT. L.SWAMINATHAN, MEMBER(JUDICIAL)

Shri Bhimsen Sahu,
aged about 48 years,
son of late Babaji Charan Sahu,
Transmission Assistant,
Telephone Exchange,
Office of S.D.O.T.,
Jajpur Town

...

Applicant

-versus-

1. Union of India, represented by the
Director General, Telecom,
Sanchar Bhawan, New Delhi-110 001.
2. Chief General Manager, Telecom,
Orissa Circle,
Bhubaneswar-751 001.
3. Director, Telecom (HQ),
Office of the Chief General Manager, Telecom,
Orissa Circle,
Bhubaneswar.
4. Telecom District Manager,
Cuttack-753 001.
5. Accounts Officer (Cash),
Office of Telecom District Manager,
Cuttack-753 001

...

Respondents.

Advocates for applicant -

M/s P.V.Ramdas &
P.V.Balakrishna Rao.

Advocate for respondent -

Mr.P.N.Mohapatra.

O R D E R

S.SOM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a Transmission Assistant, has prayed for a direction to be issued to the respondents for fixing his pay in accordance with FR 22(I)(a)(1) and to allow fixation of pay of the applicant from 1.12.1983. His second prayer is for issuing a direction to the respondents with regard to payment of arrears from 1.12.1983 instead of 1.4.1993. In course of arguments, it was submitted by the learned lawyer for the applicant that his second prayer has already been met. Thus the only question for consideration is about fixation of pay of the applicant from 1.12.1983. For the purpose of considering the issues which have come up in this case, a few facts have to be stated. The applicant joined as Time Scale Clerk under the respondents on 1.3.1966. On 1.12.1973 he was promoted as Transmission Assistant and his pay was fixed under old FR 22-C. The One Time Bound Promotion Scheme (OTBP Scheme) came into force for the employees of the basic cadre with effect from 30.11.1983. In the circular dated 20.11.1990 it was ordered that the officials who were in the higher post of Transmission Assistant, etc., could be allowed to give option to draw their pay in the basic (original) cadre if it was advantageous to them. After introduction of OTBP Scheme the pay of the applicant was fixed with effect from 30.11.1983. The applicant, however, opted to get his pay fixed under OTBP Scheme with effect from the next day, i.e. 1.12.1983 which was his date of annual increment, he having been promoted to the post of Transmission Assistant on 1.12.1973. The point at issue is whether he has a right to opt for the OTBP Scheme from 1.12.1983 or if his pay is to be fixed from 30.11.1983 as has been done by the respondents.

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2. This question hinges on the relevant portion of the circular dated 20.11.1990, which is at Annexure-1 to the Original Application. The relevant portion of the circular is quoted below:

".....The OTBP Scheme provides, inter alia, Group 'C' cadres like Transmission Assistants, Wireless Operators etc. in the pre-revised scale of Rs.380-560/- (who are recruited by promotion from basic cadres like Telephone Operator, Telecom, Office Assistant etc. in the pre-revised scale of Rs.260-480) would be eligible for placement in the higher scale of Rs.425-750/-, after rendering service of 16 years in the promotional cadre of Transmission Assistant, Wireless Operator, etc. These officials (i.e. T.As., W.Os., etc.) are not eligible for OTBPromotion in the erstwhile basic cadre of Telephone Operator, Telecom Office Assistant, etc. The staff side of the Departmental JCM have requested that such of these officials (promotional cadres) in Group 'C' and Group 'D' may be allowed to opt for drawing pay in the OTBP Scheme of their basic (original) cadre, if it is advantageous to them.

3. The case has been examined. It has been decided that officials in the higher cadres of Group 'C' and 'D' of the Department of Telecom (such as P.I., A.S.A., etc.) who are covered by the One Time Bound Promotion Scheme may be allowed option to draw pay in the basic (original)cadre, if it is advantageous to them. Those officials who opt for such OTBP scale of basic cadre will, however, continue to work in the existing cadre such as Transmission Assistant, Wireless Operator, etc."

From the above, it would be clear that those persons, like the present applicant, who were already in the higher scale, were given an option to draw their pay under the OTBP Scheme in their basic (original)cadre if it was advantageous to them. The original cadre of the applicant was Time Scale Clerk. Had he not been promoted as Transmission Assistant in the meantime, he would have been entitled to come over to the higher scale under OTBP Scheme from 1.3.1982 on completion of sixteen years of service if OTBP Scheme was in existence on that date, but the OTBP Scheme came into force for him and persons similarly placed like him with effect from 30.11.1983. Under the OTBP

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Scheme and in accordance with the circular dated 20.11.1990 the applicant had an option to draw his pay in his basic cadre if it was advantageous to him. This circular does not give him any option to choose the date on which he will avail of the benefit of OTBP Scheme, which has been introduced on 30.11.1983, and the applicant having completed 16 years of service on 1.3.1982, he has been rightly brought over to higher scale from 30.11.1983 and his pay has been rightly fixed with effect from that date. Under the circular the applicant can draw his pay in the basic cadre if it is advantageous to him. It does not give him any option to go over to the higher scale under OTBP Scheme on a date to be chosen by him. It is no doubt true that in this case the departmental authorities have fixed his pay on 30.11.1983 and he wants his pay to be fixed on 1.12.1983 which is the next date. But it does make some difference to him because in the scale of Transmission Assistant his annual increment falls due, as has been earlier mentioned, on 1st December. He cannot get advantage of that in the higher scale. The advantage or option to him is for drawing pay in the basic (original) cadre. This contention made on behalf of the applicant is, therefore, rejected.

3. The other point is about fixing his pay under FR 22-C (old rule). The learned lawyer for the applicant has brought to ~~our~~ notice a decision of Ernakulam Bench of Central Administrative Tribunal in the case of M. Madhavan Nair v. Union of India and others, 11/96 Swamynews 922, date of judgment 9.1.1996. Facts of that case are quite different from the facts here. In that case, the point for determination was whether an employee,

who got ad hoc promotion and got his pay fixed under FR 22-C at the time of ad hoc promotion, could again get his pay re-fixed under FR 22-C when he was regularly promoted after continuous officiation in an ad hoc capacity without any break. In the facts and circumstances of the case, the Tribunal took the view that FR 22-C does not place any restriction that it can be applied only once to an individual on promotion. In this case, the applicant got promotion from the post of Time Scale Clerk to Transmission Assistant on 1.12.1973 and at that time his pay was fixed in the higher scale under FR 22-C. While working as Transmission Assistant, he got benefit of OTBP Scheme. There was no increase in his responsibilities and his pay could not again be fixed under FR 22-C, firstly because as Transmission Assistant he got the benefit of OTBP Scheme and no promotion was involved from the post of Transmission Assistant to any other higher post when he got One Time Bound Promotion, and secondly he continued to hold the post of Transmission Assistant which he held from 1.12.1973 and there was no increase in the responsibilities. This contention of the learned lawyer for the applicant also fails.

4. In the result, therefore, we hold that the application is without any merit and is rejected. There shall be no order as to costs.

Lakshminathan
(L.SWAMINATHAN)
MEMBER(JUDICIAL)

S. Somasundaram
(S.SOM)
VICE-CHAIRMAN
30.9.97