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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 81 OF 1995
Cuttack, this the 11th day of August 2000

Shri Pradeep Kumar Nanda and othersApplicants

vrs.

Central Board of Trustees and othersRespondents

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 .

(G. NARASIMHA)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2000

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CORAM:

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

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1. Shri Pradeep Kumar Nanda, aged about 31 years, son of Purna Chandra Nanda of village/post-Sunderpada, Bhubaneswar-2, District-Khurda, at present working as Manager-cum-Salesman.
 2. Shri Aruna Kumar Panda, aged about 28 years, son of late Nandakishore Panda of village/Post-Oddiso, P.S-Dharmasala, Dist.Jajpur, at present working as Coutner Clerk.
 3. Shri Bijay Kumar Sahoo, aged about 32 years, son of Kunjabihari Sahoo of village/post-Mendhasal, PS-Chandaka, District-Khurda, at present working as Halwai
 4. Shri Rabindranath Pradhan, aged about 34 years, son of Sadhu Charan Pradhan of village/post-Golabai, P.S-Jankia, District-Khurda, at present working as Bearer
 5. Shri Durga Charan Mallik, aged about 30 years, son of Shri Chakradhar Mallik of village/post-Badapandusar, P.S./District-Nayagarh, at present working as Bearer.
 6. Shri Arnada Prasad Sahoo, aged about 31 years, son of late Kanuni Sahoo of village Ramachandrapur, Post-Sukarpada, District-Cuttack, at present working as Tea and Coffee Maker
 7. Shri Abhiram Behera, aged about 28 years, son of Shri Hagar Behera of village Sugo, Post-Gopaljew Sugo, District-Bhadrak, at present working as Wash-boy.
 8. Shri Laxman Pradhan, aged about 35 years, son of Shri Khadi Pradhan of village/post-Dighri, P.S-Bolagarh, District-Khurda, at present working as Wash Boy ...
Applicants

(all above are employed in Bhavishyanidhi Departmental Canteen, Office of the Regional Provident Fund Commissioner, Janpath, Unit-9, Bhubaneswar-7)...Applicants

Advocates for applicants -M/s K.C.Kanungo
S.S.Mohapatra

Vrs.

1. Central Board of Trustees, represented by Central

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Provident Fund Commissioner, 9th Floor, Mayur Bhawan,
Connaught Circus, New Delhi-1.

2. Regional Provident Fund Commissioner, Orissa, Unit-9,
Janapath, Bhubaneswar-751 007.
3. Director of Canteen, Department of Personnel &
Training, 3rd Floor, Lok Nayak Bhawan, New Delhi.

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Respondents

Advocates for respondents - Mr. Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioners have prayed for a direction to respondent nos. 1 and 2 to make payment of 30% of the arrear pay and allowances of the petitioners for the period from 1.4.1989 to 28.2.1993 and from 1.5.1993 onwards, bonus for the period of 1991-92, 1992-93 and 1993-94 and Interim Relief from 1.9.1993 onwards amounting to altogether Rs. 3,05,268/- by 31.12.1994 along with interest.

2. The applicants' case is that they were appointed as Manager-cum-Salesman, Counter Clerk, Halwai, Bearers, Coffee/Tea Maker and Wash Boys on different dates from 26.11.1986 to 11.12.1990 in the Departmental Canteen in the office of respondent no. 2 who was the ex officio Chairman of the Canteen Committee as per the administrative instructions on Departmental Canteens in Government offices known as Green Book. This Canteen was a D-Type non-statutory Departmental Canteen. Though the applicants were appointed by the concerned Department, their service conditions and entitlement and all allied matters were determined and regulated on the basis of periodic guidelines and direction of the Director of Canteens (respondent no. 3). Applicant nos. 3, 4 and 5 were appointed before 1.3.1989, the

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date from which they did not receive their full salary. The other applicants were paid 70% of their total pay and allowances from their respective date of joining which is contrary to settled principles of labour law and also the interim decision of the Hon'ble Supreme Court. It is stated that the staffing pattern of this Canteen was strictly in accordance with the norms fixed in the Green Book which provided that 30% of the salary is to be paid from the canteen funds, meaning the profits earned out of sale proceeds of food articles. The applicants have stated that as the canteen was run on "No profit no loss" basis it is not possible to meet 30% of the salary of the employees because the canteen had been set up as a measure of staff welfare. As a result the canteen employees in many Government of India Departmental Canteens did not get their full pay and allowances at the end of the month. They approached the Hon'ble Supreme Court in the case of C.K.Jha and others and P.N.Sharma and the Hon'ble Supreme Court directed on 26.9.1983 that pending final disposal of these petitions, all employees of non-statutory canteens are to be paid at the same rate and on the same basis at which the employees of statutory canteens are paid. Thereafter provision of interest-free loan to the extent of 30% of the wages was evolved and paid to the canteen to meet 30% deficit first on ad hoc measure from 26.9.1983 to 29.2.1984 and thereafter without any break. Respondent no.2 complied with the interim decision of the Hon'ble Supreme Court and as a result applicant nos.3,4 and 5 could draw their arrear 30% from the date of their respective appointment till

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1.3.1989. The applicants have also stated that 30% of the salary has been paid to the applicants for the period from 1.3.1993 to 31.5.1993, but thereafter it was not paid. The applicants have stated that in the order at Annexure-1 the Central Provident Fund Commissioner's office has intimated all Regional Provident Fund Commissioners that references have since been received as to whether the Organisation has to bear 100% of the wage bill of the staff canteen in accordance with the revised instructions of the Central Government in this regard. In this letter it has been clarified that pending approval of the competent authority the present practice of granting a subsidy to meet 70% of the wage bill of the staff of the canteen and grant of interest-free loan to meet 30% wherever necessary be continued. The applicants have stated that this circular makes it clear that by this way 100% of their salary was required to be paid to them. It is stated that the applicants were paid the adhoc bonus for 27 days for 1989-90 and 29 days for 1990-91. Thereafter even though they were eligible the bonus was not paid for 1991-92, 1992-93 and 1993-94. It is further stated that the applicants are receiving 30% City Compensatory Allowance with effect from 1.3.1991. A statement has been given at Annexure-2 showing the entitlement of these applicants for 30% of arrear dues, bonus, HRA, CCA, Interim Relief, etc., from 1.4.1989 to 31.12.1994. The applicants have stated that on the basis of the judgment of the Hon'ble Supreme Court, services of the canteen employees of the Central Government offices have since been regularised with effect from 1.10.1991 and they are receiving their full pay and allowances like regular Central Government employees. For such employees of Central

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Government canteens payment of salary from subsidy and interest free loan have been discontinued. But the services of the applicants have not been regularised for which they have filed OA No.82 of 1995 which is also pending adjudication. The applicants have stated that they have not yet received their arrear 30% of pay and allowances for the period which amounts to Rs.2,48,000/- and odd and they have also given figure with regard to their differential bonus and IR and have come up for getting the above payments through the prayers referred to earlier.

3. The respondents in their counter have stated that the Employees Provident Fund Organisation is a statutory organisation under the control of Government of India and orders and instructions of Government of India as applicable to the Central Government employees of comparable status are made applicable to the employees of the Organisation after due approval of the Central Board of Trustees. It is stated that the Hon'ble Supreme Court in their judgment dated 11.10.1991 have held that employees of non-statutory departmental/co-operative canteens and tiffin rooms located in Central Government offices should be treated as Government servants with effect from 1.10.1991. The employees of such canteens should be extended all benefits that are available to Central Government employees. Accordingly, the Central Government have issued orders in pursuance of the above decision of the Hon'ble Supreme Court treating the employees in non-statutory departmental canteens as Government employees. The respondents have pointed out that implementation of any order of the Central Government in respect of employees of EPF Organisation requires approval of the Central Board of Trustees. It is

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further stated that the Executive Committee of the Central Board of Trustees in their meeting held on 2.2.1995 decided that the orders and instructions issued by Department of personnel & Training with regard to regularisation/departmentalisation of the Canteen employees in the light of the judgment of the Hon'ble Supreme Court, as issued from October 1991 will apply mutatis mutandis in regularising the Canteen employees of the EPF Organisation. The respondents have indicated the various conditions on which such regularisation has been ordered. It is not necessary to refer to these conditions except to note that it has been mentioned by the respondents that regularisation has been ordered to be done on notional basis from October 1991 but additional benefits shall be extended prospectively from the date the scheme is put into operation after approval by the competent authority. This point is noted specifically because this does not seem to be borne out by the order dted 9.3.1995. The respondents have stated that the departmental canteen in the office of respondent no.2 started functioning on 20.1.1986 an was got registered with the Director of Canteens (respondent no.3) on 18.8.1987. The 70% of the wages was payable by Government and remaining 30% had to be paid out of the profits of the canteen. Initially an interest free loan of Rs.5000/- was sanctioned for making bulk purchase of the material. Even though this amount was repayable within a period of three years the canteen repaid the loan of Rs.5000/- in full only during December 1994. It is furtherstated that the departmental canteen in which the applicants are employed had been incurring loss for years together. It is also stated that respondent no.2 had no

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discretion to grant interest free loan except on receipt of specific instruction from the Director of Canteens. But no such instruction has been received from Director of Canteens to grant frequently interest free loan to meet 30% of the wages. It is further stated that Regional Provident Fund Commissioner is required to strictly adhere to the budgetary allocation as made by respondent no.1, out of which the the wage expenditure of the employees of the canteen is met. Basing on such budgetry allocation, 70% of the wage bill has been paid upto March 1995. The respondents have stated that applicant nos.3,4 and5 were appointed on 26.11.1987, 20.3.1987 and 9.9.1988 were receiving 70% of the wages till 1.3.1989 as the canteen was not running in a good condition and was not making good profits. The other applicants were not appointed prior to 1.3.1989. As the canteen sustained loss with effect from 1.3.1989 as per the audited accounts, all the applicants engaged prior to 1.3.1989 or thereafter ar getting 70% of the wages. The respondents have stated that after the canteen was registered, it was managed in accordance with the provisions of the Green Book which lays down that 30% of the staff salary has to be contributed from the profits of the canteen and it would be a joint responsibility of all canteen employees who deal with consumption of raw-material, daily cash sale proceeds, quantum of purchases to be made etc. under the overall responsibility of the Manager of the canteen. It is further submitted that respondent no.2 has paid 30% of the wages with effect from 1.3.1993 to 31.5.1993 to the applicants. This payment was made wrongly and in any case the canteen did not earn any profits and therefore the employees are not entitled to 30% of the wages. The respondents have admitted

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that in order at Annexure-1 to the OA it was provided that 70% of the wage bill has to be met out of the subsidy and 30% out of interest free loan. But respondent no.2 was unable to grant 30% of the wages as interest free loan because of lack of funds and respondent no.1 was moved by respondent no.2 to sanction 30% of the grant. But till today no such grant has been received. With regard to bonus, it is stated that the applicants were paid ad hoc bonus in 1989-90 and 1990-91 in the light of the instructions of the competent authority, and thereafter in the absence of instruction and budgetary provision such bonus had not been paid for 1991-92, 1992-93 and 1993-94. The respondents have stated that the canteen has been deregistered by respondent no.3 and after deregistering of the canteen the guidelines of the Central Government are not applicable to the applicants. On the above grounds the respondents have opposed the prayers of the applicant.

4. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri ashok Mohanty, the learned counsel for the respondents and have also perused the records.

5. Before considering the submissions made by the learned counsel for the parties in this case it is necessary to note that these applicants have filed another OANo. 82 of 1995 claiming regularisation as employees of EPF Organisation. In a separate order delivered today we have disposed of that OA directing the respondents to consider regularisation of these applicants as employees of EPF Organisation notionally from October 1991 and effectively from 2.2.1995 in accordance with the order dated 9.3.1995

for regularisation of such canteen employees issued by respondent no.1. We have also directed that the process of regularisation should be completed within a period of sixty days from the date of receipt of copy of that order. The prayers of the applicants in this petition have to be considered in the context of the above position.

6. The prayer of the applicants in this case is to get 30% of their wages from 1.4.1989 to 28.2.1993 and from 1.5.1993 onwards. The applicants have stated that the concept of paying 70% of the wages through subsidy and 30% of wages through interest free loan to the Canteen Committee is against all principles of labour law. In this connection it must be noted that prior to their regularisation the applicants cannot be treated as employees of EPF Organisation. Their regularisation would notionally take effect from October 1991 and effectively from 2.2.1995. In case of employees working in canteens in Central Government Offices, the Hon'ble Supreme Court have ordered that they should get their wages at par with the employees of the statutory canteens from 1.10.1991. The Department of Personnel & Training have also issued instructions to this effect. But the decision of the Hon'ble Supreme Court applies to the employees of canteens in the Central Government offices. The instructions of Government of India are not ipso facto applicable to EPF Organisation until the same are adopted by the Board of Trustees. This has been done by the Board of Trustees in their 17th meeting on 2.2.1995. In terms of this order of regularisation the canteen employees of the EPF Organisation will be regularised notionally from October 1991, the same date as the order of the Hon'ble supreme Court, but the actual benefits will be given from 2.2.1995. The applicants' prayer

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is to get 30% of arrear pay and allowance from 1.4.1989 to 28.2.1993 and again from 1.5.1993 onwards. In OA No.82 of 1995 the applicants have submitted their orders of initial appointment and these orders specifically provide that 70% of the pay and allowances will be borne by the organisation and 30% will be paid from the profits of the canteen. This condition is there in the initial appointment order of all the applicants except in the case of Halwai in whose case it has been mentioned that he would be paid at the same rate and in the same manner as canteen employees. In consideration of this, it is clear that the applicants have joined knowing fully well that 70% of their salary will be paid by the Organisation and the rest 30% will have to be paid from the profits of the canteen. As the canteen has not made profits, naturally they have not been paid. During the period prior to their notional or actual regularisation, they were not employees of the EPF Organisation and therefore they have no claim for getting 30% of the wages from the EPF Organisation. Moreover, this claim relating to 30% of the wages for the period from 1.4.1989 to 28.2.1993 and from 1.5.1993 has been made only in 1995. It has been stated by the applicants that three of them had got this 30% of wages prior to 1.4.1989. The respondents have denied this. The applicants have not filed any document in support of their statement that prior to 1.4.1989 three of the applicants who had joined as canteen employees, had got 30% element of their wage. In view of this, we hold that they have no right to claim from respondent nos.1 and 2 30% of their wages prior to their regularisation as employees of EPF Organisation. These applicants have been ordered to be regularised notionally from October 1991 and actually from February 1995. This order dated 9.3.1995 of the Central

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Provident Fund Commissioner has not been challenged by the applicants with regard to notional application of this order from October 1991. In view of this, it is held that the applicants are not entitled to get 30% of the wages prior to 2.2.1995.

7. The second prayer of the applicants is for bonus from 1991-92 onwards. The order dated 9.3.1995 provides that bonus will be paid from 2.2.1995 and therefore the applicants will not be entitled to bonus for the years 1991-92, 1992-93 and 1993-94. We however note that under respondent nos. 1 and 2 there are a large number of such non-statutory departmental canteens and if in case of employees of such departmental canteens 30% of the wages and bonus from 1991-92 have been allowed from October 1991, then the same should be allowed in respect of these applicants as well.

8. As regards House Rent Allowance, City Compensary Allowance and Interim Relief, we direct that these claims of the applicants for the above period should be disposed of within a period of 90 days from the date of receipt of copy of this order following the same approach which respondent nos. 1 and 2 have adopted with regard to the canteen employees of EPF Organisation in other cases.

9. With the above observations and directions the Original Application is disposed of. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
11.8.2000
VICE-CHAIRMAN