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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 782 OF 1995
Cuttack, this the 7th day of May, 1997

Sri Sunil Kumar Ghose

.....

Applicant

Vrs.

Union of India and another

.....

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 no -
Central Administrative Tribunal or not?

Sumanth Singh
(S.SOM) 7.5.97
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

(8)

ORIGINAL APPLICATION NO. 782 OF 1995
cuttack, this the 7th day of May, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

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Sri Sunil Kumar Ghose,
aged about 75 years,
son of late Atul Krishna Ghose (Retd. Assistant
Collector, Central Excise Department),
resident of Oriya Bazar, P.O-Buxi Bazar,
P.S-Lalbag, Town & District-Cuttack Applicant

-versus-

1. **Union of India,**
represented through the Secretary,
Ministry of Finance,
Government of India,
At-Central Secretariat,
New Delhi.
2. **Collector of Central Excise,**
Calcutta-II,
15/1, Stand Road, Custom House,
Calcutta-1 (West Bengal) Respondents

Advocates for applicant - M/s T.K.Sen & B.K.Bal.
Advocate for respondents - Mr.B.K.Bal.

O R D E R

S.SOM, VICE-CHAIRMAN

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has prayed
for the following reliefs:

- (i) his promotional differential salary
from 1956 to 1976;
- (ii) interest at the rate of 12% on the
total emoluments already paid and to
be paid; and
- (iii) cost of litigation amounting

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to Rs.1,50,000/- (Rupees one lakh and fifty thousand) only for 32 years, i.e. from 1967 to 1989.(sic)

For appreciating the points involved in this application, a few facts of the case can be briefly stated.

2. The applicant was appointed as Supervisor in the Central Excise Department in 1943 and was promoted to the post of Inspector in 1952. On 20.10.1956 he was promoted to the post of Selection Grade Inspector. At the relevant time, he was working in and was the administrative head of the ^{Burdwan} Range of the Department which had two units. He was in charge of one unit and one Mr. Dharendra Nath Bala, another Inspector was in charge of the other unit. On 29.5.1957 Mr.Bala was caught in a trap case after accepting a bribe of Rs.12/-. The applicant and the other Inspector Mr.Bala were working in the same room and at the same table when apparently Mr.Bala took the bribe. It is not necessary for the present purpose to go into the details of this matter except to say that because of the trap case, proceedings were drawn up against the applicant and Mr.Bala, and on conclusion of the proceedings the applicant while under suspension was dismissed from service on 13.9.1960. The applicant challenged the dismissal order by filing Suit No.1581 of 1962 in the original side of the Hon'ble High Court at Calcutta. This suit was decided in order dated 21.8.1974 (Annexure 3) and the order of dismissal was set aside and the applicant reinstated to his post. The relevant portion of the order, the process of implementation of which has given rise to several litigations before the Tribunal, is quoted below:

"..It is an admitted fact that the date of retirement of the a plaintiff is October 31, 1976. It is also an admitted fact that no salary has been

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paid to him as shown in Annexure "A" to the plaint. Hence, he is entitled to Rs.75,974.08 as arrears of salary upto July 31, 1974 from the defendant and further salary from August 1, 1974 to October 31, 1976. He is also entitled to be reinstated to his post with a declaration in terms of prayer (b) of the plaint.

In the premises, there will be a decree for Rs.75,974.08 p. with interim interest and interest on decree, both at the rate of 6 per cent per annum, with a declaration that the plaintiff is entitled to be reinstated to his post on the same salary which he is entitled to under his service conditions from August 1, 1974 to October 31, 1976 with all benefits attached to his post. The defendant shall pay the costs of this suit to the plaintiff certified for two counsel. I give three months time to the defendant under Section 82 of the Code of Civil Procedure, 1908 to pay the decretal amount to the plaintiff.

Against this, the Department went up in appeal before the Division Bench of the Hon'ble High Court at Calcutta, in Appeal No.25 of 1975, which was dismissed in 1987. After dismissal of the Appeal, the arrear salaries amounting to Rs. 99,468.00 were paid to the applicant on 8.5.1990. This was for the period from 5.12.1957 to 30.11.1979. The applicant came up in OA No.31 of 1993 before this Tribunal for retirement benefits from 1.12.1979 and D.C.R.G. as also interest on retirement benefits. This Original Application was disposed of in order dated 31.5.1993. In this order it was noticed that the Department has mistakenly paid the applicant excess by way of salary for the period from 1.11.1976 to 30.11.1979 because the applicant should have retired on 31.10.1976, the retirement age then being 55 years and the applicant having been born on 22.11.1921. In OA No.31/93 it was ordered that the applicant should refund to the Department the excess payment by way of salary received by him for the three years with 12% interest per annum from 17.4.1990 till the date of refund. In the above

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order, the Tribunal also directed that pensionary dues of the applicant should be calculated from 1.11.1976 till the date of payment with interest at the rate of 12% per annum. I have mentioned the above facts because in the context of those facts, the present prayers of the applicant have to be considered.

3. The respondents have stated that all payments have been made to the applicant on the basis of the judgment of the Hon'ble High Court at Calcutta. The respondents have admitted that interest at the rate of 6% per annum, as directed in the judgment of the Hon'ble High Court at Calcutta, has not been paid. They have said that this will be paid shortly. They have also contested the claim of notional promotion and payment of arrear salary on that basis. As regards the costs of litigation, the respondents have stated that these are to be determined by the Taxing Officer of the Hon'ble High Court at Calcutta and for this, the applicant has to make application to the Hon'ble High Court at Calcutta.

4. Coming to the prayers of the applicant in this application, his first prayer is for payment of differential salary for promotions which he should have been given during the period from 1956 to 1976. It is submitted by the learned lawyer for the applicant that vide Annexure-2 to the application, he was promoted to the post of Selection Grade Inspector and in this order his name appears against serial No.11. Two persons, S/Sri Manmatha Nath Chowdhury and Ananta Lal Pal, appearing against serial Nos. 12 and 13 were thus junior to him. According to him, these two persons were subsequently promoted to the post of Superintendent and then Assistant Collector, and he claims that he should be

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promoted to the posts of Superintendent and Assistant Collector from the dates his juniors, as mentioned above, were so promoted. For the reasons indicated below, I hold that the applicant is not entitled to notional promotions, as claimed by him. Firstly, in the order of the Hon'ble High Court at Calcutta it has been stated that "the plaintiff is entitled to be reinstated to his post on the same salary which he is entitled to under his service conditions from August 1, 1974 to October 31, 1976 with all benefits attached to his post". A plain reading of this portion of the order of the Hon'ble High Court would indicate that the Hon'ble Court ordered his reinstatement for the period from August 1, 1974 to October 31, 1976 in the same post of Selection Grade Inspector and on the salary with all benefits attached to his post. It was not specifically ordered by the Hon'ble Court that he should be considered for future promotions. The benefits attached to his post would obviously mean that if after the passing of the order the salary of his post underwent any upward change the applicant would be entitled to the same. The applicant did not challenge this order in Cross Appeal in the Hon'ble High Court at Calcutta asking for notional promotions in future years and therefore, he cannot claim such promotions at this belated stage. Secondly, in OA No.31/93 the applicant came up with a prayer for getting his pension from 1.12.1979. It has been held by the Tribunal in their order dated 31.5.1993 in OA No.31/93 that the applicant deliberately asked for retiral benefits from 1.12.1979 instead of 1.11.1976 for retaining the excess payment of salary paid to him mistakenly by the Department. In this application also, while asking for retiral benefits, he did not ask for notional promotions on the basis of which, his retirement benefits would have worked out to

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his advantage. Since he should have made this claim at that time as a necessary part of his main prayer for retiral benefits and as he did not make any such claim, it must be held that his claim is barred on the principle of constructive resjudicata under Section 11, Explanation IV, of the Code of Civil Procedure, 1908. Thirdly, in OA No.31/93, in paragraph 4(K), he makes this specific averment:

"(K) That the applicant most humbly submits that when he has already been allowed his all service benefits as per Annexure-4 above, the payment of his pension with effect from Dt.1.12.79 has to be paid by the respondent No.2....."

Thus it is seen that besides the principle of constructive resjudicata he made a specific averment that all his service benefits except pension have been paid to him in accordance with the judgment of the Hon'ble High Court at Calcutta. It is, therefore, not open to him now in this Original Application to claim notional promotions. Fourthly, a Government servant has no right to be promoted. He has only a right to be considered for promotion along with his juniors. In this case, even if a direction is issued to consider him for promotion to the posts of Superintendent and Assistant Collector from the dates his juniors got such promotions, his case cannot be considered by the Department in any reasonable way. The applicant was not in service because of the dismissal order which was declared illegal by the Hon'ble High Court at Calcutta. By the time the Appeal against the Hon'ble High Court's order passed in the suit was dismissed in 1987, he had already superannuated. Thus he never returned back to his service and there were no service records for him from the date he was illegally dismissed from service, on the basis of which his case can be considered now for notional promotions. It has been submitted by the learned

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lawyer for the applicant that along with his juniors the case of the applicant should have been considered for promotion and his name should have been put in the sealed cover when it was known to the departmental authorities that the order of dismissal had been challenged by the applicant in the Hon'ble High Court at Calcutta. This contention is without any merit because sealed cover procedure is adopted only in respect of persons who are in service and against whom departmental proceedings are pending. In such cases the suitability of such persons for promotion is adjudged irrespective of pendency of departmental proceedings and their names are put in the sealed cover to be considered after departmental proceedings are finalised. In this case, as the applicant had been already dismissed from service, the sealed cover procedure could not have been adopted. For the above reasons, I hold that his prayer for notional promotion and consequential differential salary is without any basis and is, therefore, rejected.

5. His second prayer is about payment of interest at 12% per annum on the total emoluments already paid and to be paid. As earlier noted, the Tribunal in their order dated 31.5.1993 in OA No.31 of 1993 have ordered payment of interest at 12% per annum on arrear pension. As regards the emoluments which have been already paid to him, interest at the rate of 6% per annum was ordered to be paid. The respondents have not paid interest at 6% per annum in spite of such a long delay. On the other hand, for the ~~same~~ salary for three years drawn and paid to the applicant without any fault or mistake on his part, he was ordered to pay interest at 12% per annum along with principal amount to be refunded. It has been submitted by the learned lawyer for the applicant at the

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time of hearing that the above amount paid to the applicant has already been refunded by him along with interest at 12%. The applicant has, therefore, a case in equity to get interest at higher rate when he himself has paid interest at 12% on the above amount received by him for no fault of his. Moreover, a word has to be stated about his retirement on 31.10.1976. The applicant was born on 22.11.1921. When he filed the original civil suit in the Hon'ble High Court at Calcutta in 1962, the age of retirement of Government servants of that cadre was 55 years. The age of retirement was, however, increased to 58 years by amending FR 56 in Ministry of Finance's order dated 21.7.1965. Thus when the judgment in his civil suit was delivered on 21.8.1974, the age of retirement had already been increased to 58 years. But the applicant apparently had not corrected the pleadings and the Hon'ble Judge of High Court at Calcutta, while deciding issue no.7, noted that it was an admitted fact that the date of retirement of the plaintiff (the present applicant) was 31.10.1976, i.e., at the age of 55 years. But in the meantime the age of retirement had been increased to 58 years. That is possibly the reason why the Department had initially paid him the salary also for the period from 1.11.1976 to 30.11.1979. But against the observation of the Hon'ble Judge that his date of retirement is 31.10.1976, he did not go on Cross Appeal to the Division Bench of the Hon'ble High Court at Calcutta when the respondents took the matter there. I have mentioned these facts to bring out the point that in the above background the applicant has returned the salary for the period from 1.11.1976 to 30.11.1979 with 12% interest. In consideration of this, it is ordered that the rate of interest to be paid by the respondents would stand increased to 12% per annum on expiry of thirty days from the date of receipt of the order by the respondents.

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In other words, if the interest is paid within a period of thirty days from the date of receipt of this order, then such interest should be paid at the rate of 6% per annum, and in case of any delay thereafter the rate of interest should be 12% per annum.

6. The third prayer is about cost of litigations. The applicant has asked for a sum of Rs.1,50,000/- as cost of litigations from 1967 to 1989. As regards his Original Suit No.1581 of 1962, the cost of that litigation has already been fixed by his Lordship of the Hon'ble High Court at Calcutta and the cost has been certified for two counsels. As regards the cost in Appeal No.25 of 1975 filed by the Department in the Hon'ble High Court at Calcutta, in my view, the prayer to give him cost in that Appeal as also the cost in O.A.No.31/93 filed before the Tribunal cannot be given by me because the applicant should have urged and got costs declared by the Courts which disposed of those cases. As regards the cost in the Original Suit, the respondents are right in their submission that the applicant has to make an application before the Taxing Officer of the Hon'ble High Court at Calcutta for determining the cost and the learned counsel for the respondents has submitted that as soon as the cost of the Original Suit is fixed by the Hon'ble High Court and the intimation sent to the respondents, they will make payment immediately. In that view of the matter, there is no case at all for declaring cost of Rs.1,50,000/- for the different litigations which the applicant was forced to fight all these years.

7. In the result, therefore, the application is allowed in part. There shall, however, be no order as to costs.

Somnath Singh
(S.SOM)
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