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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 795 OF 1995
Cuttack, this the 7th day of August, 2000

Manavanjan Hota

Applicant

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.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
7.8.2000

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 795 OF 1995

Cuttack, this the 7th day of August, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Manavanjan Hota,
aged about 58 years
son of late Siva Kumar Hota,
Vill/PO/PS-Athmallik,
Dist.Dhenkanal,
at present residing at
PO/Dist.Sambalpur

.....Applicant

Advocate for applicant- Mr.D.K.Mishra

Vrs.

1. Union of India,
represented by the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.

2. Director General, All India Radio,
Akashvani Bhawan,
New Delhi-110 001.

3. Station Director,
All India Radio,
At/PO/Dist.Sambalpur ...

Respondents

Advocate for respondents-Mr.Akhaya Ku.
Mishra, ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to fix the

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pension of the applicant after taking into consideration his past period of service as Staff Artist on monthly contract basis and after giving him nominal increment and fee as per the recommendation contained in the letter dated 31.3.1989 at Annexure-1. He has also prayed for a direction to the respondents for payment of differential salary from 25.1.1978 till 30.10.1995.

2. Facts of this case are that the applicant was appointed under Station Director, All India Radio, Sambalpur, on long term monthly contract basis, as Staff Artist (Compere) with the pay of Rs.133/- plus allowances as admissible to regular Staff Artist. This original appointment was on 15.7.1968 and he worked continuously without any break till 24.1.1978. On the date of appointment of the applicant on monthly contract basis on 15.7.1968 the scale of pay of regular Staff Artist was the same as what he was drawing. In 1971 the scale was enhanced from Rs.133/- to Rs.170/- for regular Staff Artist. But in spite of his representations claiming the same pay as the regular Staff Artist on the ground that he was performing the same duty and having the same qualification, his representations were not allowed. He worked continuously on monthly contract basis till 24.1.1978 and was regularly appointed as Staff Artist Announcer (Compere) on 25.1.1978. After his regular appointment he made several representations for counting his past service and for fixing his salary taking into consideration the past contract service and to pay him arrear of the differential salary. His representations were continuously recommended by Station Director, All India Radio, Sambalpur (respondent no.3). One such recommendation dated 31.3.1989 is at Annexure-1. As his representations were not looked into, the applicant filed OA No. 219 of 1991 which was disposed of in order dated 19.7.1995. The

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Tribunal noted that the applicant claims parity with one Nisith Ranjan Nayak on the ground that facts of his case are exactly identical to the case of Nisith Ranjan Nayak. The Tribunal further noted that no specific response is available on this point on behalf of the respondents and the Tribunal was, therefore, unable to determine the identicality, if any, of these two cases. In view of this, OA No.219/91 was disposed of with a direction to the applicant to submit a fresh representation on this point to Director General, All India Radio (respondent no.2) within two weeks. It was further ordered that Director General, All India Radio, shall dispose of the representation on merits within four weeks from its receipt. It was also ordered that comments and recommendations of the Station Director, All India Radio, Sambalpur, in his letter dated 31.3.1989, which was Annexure-3 in that OA and is at Annexure-1 of the present O.A. may be kept in view by Director General, All India Radio, while disposing of the representation of the applicant. Accordingly, the applicant submitted a representation, and Director General, All India Radio (respondent no.2) disposed of the representation in order dated 13.10.1995 (Annexure-3). In this order, approval of competent authority has been granted to count the monthly contract service rendered by the applicant with effect from 15.7.1968 to 24.1.1978 for the purpose of pensionary benefits. This order of Director-General, All India Radio, at Annexure-3, was communicated to the applicant in respondent no.3's letter dated 25.10.1995 at Annexure-4. The applicant retired from service on 30.10.1995 and his pension has been fixed taking into consideration the past years of service but without giving the nominal increment and his fee even though the same was recommended by the Station Director, All India Radio (respondent no.3) in his letter dated 31.3.1989 at

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Annexure-1. In view of this, the applicant has come up in this OA with the prayers referred to earlier.

3. Respondents in their counter have submitted that the applicant was engaged on monthly contract on casual basis with effect from 15.7.1968 at a remuneration of Rs.133/- which was admissible to regular Staff Artist (Compere). In 1971 fee scale of the Staff Artists was rationalised. But as the applicant was working on casual contract basis and not as regular Staff Artist (Compere) he was not entitled to the rationalised scale of Rs.170/-. As such he continued to be paid fixed fee of Rs.133/-. This was in accordance with the circular dated 12.5.1972 of Director General, All India Radio (Annexure-R/1). The respondents have further stated that the question of fixation of pay of the applicant on his regular appointment does not arise because earlier he was engaged on casual monthly contract basis. Respondent no.3 had recommended his case for counting monthly contract service for pensionary benefits and for other purposes, but it was not possible to accept the same under the Rules. The applicant retired on 30.11.1995 and his pension was calculated as per provisions of Rule 17 of Central Civil Services (Pension) Rules, 1972 after counting his past monthly contract service with effect from 15.7.1968. The recommendation of the Station Director, All India Radio, Sambalpur, in his letter dated 31.3.1989 to give him nominal increment and fee was not according to rules and hence could not be allowed. It is further stated that benefit of seniority/nominal increment with effect from 15.7.1968 would have been admissible to the applicant, had he been appointed as Announcer, Grade IV with effect from that date. But he was not appointed to that post from 15.7.1968. In view of his rendering service on monthly casual contract basis for a long period, his case was considered as a special case and he was

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regularised with effect from 25.1.1978 as Announcer (Compere) in relaxation of Recruitment Rules. The period from 15.7.1968 to 24.1.1978 was counted for pensionary benefit only and not for nominal increment and fee. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has stated that even though in pursuance of the order dated 19.7.1995 of the Tribunal in OA No. 219/91 his contract service from 15.7.1968 to 24.1.1978 was counted for pensionary benefits, but the last salary drawn by the applicant has not been notionally fixed taking into account his past service. It is stated that the applicant claimed parity with Shri Nisith Ranjan Nayak who was also working on casual contract basis. A certificate dated 8.9.1993 issued by Station Director, All India Radio, Cuttack, would go to show that in Nisith Ranjan Nayak's case the period of service on casual contract basis from 1.9.1964 has been counted and on that basis his seniority has been fixed and his salary, etc., has also been fixed. On analogy with the case of Shri Nisith Ranjan Nayak, the applicant claims that he is entitled to arrear salary and his pension should be fixed taking into consideration his past service and necessary increments during the contract period. It is further submitted that one L.D.Sahu, whose case was similar to that of the applicant, got all service benefits and financial benefits after his period of monthly contract service was taken into consideration. According to the applicant, Shri L.D.Sahu was on monthly contract service from 1.12.1966 to 28.2.1967 and continued on such monthly contract basis till he was regularised. In his case the period of monthly contract service starting from 1.12.1966 has been taken into account for the purpose of seniority and other benefits and accordingly he has been given his due position

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in the seniority list. The applicant further states that there is no difference between the case of the applicant and that of Nisith Ranjan Nayak and L.D.Sahu, and he has been discriminated against without any reason. Because of this, the applicant in his rejoinder has reiterated the prayer made in the OA.

5. We have heard the learned counsels for both sides and have also perused the records.

6. At the time of hearing, the learned counsel for the petitioner submitted that the petitioner does not claim his arrear increments and differential salary from 15.7.1968 to 24.1.1978 at par with the pay/increment of regular Staff Artists. He also does not claim differential salary for the period from 25.1.1978 to 30.10.1995. His prayer is confined only to notional fixation of his pay from 15.7.1968 and allowing of his increments notionally and for refixing his pay accordingly at the time of his superannuation on 30.10.1995 and recalculation of his pension accordingly. At the time of hearing, the learned counsel for the petitioner has submitted a series of documents indicating that he was continuously engaged as a Casual Artist on monthly contract basis from 15.7.1968 to 24.1.1978. It is not necessary to consider these documents because it has been averred by the respondents in their counter that the applicant was engaged as a Casual Artist on monthly contract basis from 15.7.1968 to 24.1.1978 and he was appointed as regular Staff Artist with effect from 25.1.1978.

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The petitioner has claimed that in cases of two other persons, Nisith Ranjan Nayak and L.D.Sahu, who were like him Casual Artists on monthly contract basis and who were later on inducted as regular Staff Artists, their past service on casual contract basis was taken into account and

they were allowed increments and accordingly their pay was fixed on their regular appointment, taking into account their past service as Casual Artist on monthly contract basis. The applicant has further stated that in this matter he has been unfairly discriminated against. It is seen that in OA No.219/91 the applicant had also claimed parity with Nisith Ranjan Nayak. But the respondents in their counter did not specifically reply to this point and the Tribunal had noted, as we have mentioned earlier, that because of absence of averment of the respondents on this point, the Tribunal is unable to determine the identicity, if any, of these two cases. Notwithstanding this observation of the Tribunal in their order dated 19.7.1995 in OA No.219/91 in the counter filed by the respondents in this O.A. the respondents have not made any averment with regard to the case of Nisith Ranjan Nayak. This is possibly because in the OA the applicant has not mentioned the case of Nisith Ranjan Nayak. But in view of the earlier observation of the Tribunal, at the conclusion of the hearing, we had directed the learned Additional Standing Counsel to produce the concerned file of the Department. Accordingly, File No. PF3/962/80 of the office of Director General, All India Radio, has been produced before us. This is the personal file of the applicant. We find from the file that after the order dated 19.7.1995 of the Tribunal in OA No.219/91 the applicant filed another representation dated 29.7.1995 and this representation is at page 301 of the file. This was forwarded by the Station Director, All India Radio, Sambalpur, to Director General, All India Radio, in his letter No.7420 dated 31.7.1995, which is at page 302/C of this file. This letter was dealt with at page 30 of the notesheets in which the dealing assistant had noted that while forwarding the representation, the Station had not furnished their comments and these are necessary for examining the representation. It was, therefore, suggested

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that Station Director, All India Radio, Sambalpur, should be asked to furnish his comments. Accordingly, in letter dated 21.8.1995 at page 303 of the Correspondence side the Station Director, All India Radio, Sambalpur, was addressed to furnish his comments. These comments were sent along with supporting documents in Station Director, All India Radio, Sambalpur's letter dated 5.10.1995, which is at page 359 of the file. This letter was dealt with at page 31 of the notesheets. The dealing assistant had indicated that at the first instance Station Director, AIR, Sambalpur, should be asked to forward all documents and papers in connection with the case like Artist Ledger Book, Cash Book, Contingent Register, etc. The dealing assistant also suggested that at the same time Station Director, AIR, Cuttack, may be asked whether casual contract service of Shri Nisith Ranjan Nayak was counted for pensionary benefits and if so, whether approval of the Directorate in that case was obtained. This point has been mentioned by the dealing assistant because the applicant in his representation dated 29.7.1995 filed in pursuance of the order of the Tribunal in OA No.219/91 had mentioned in paragraph 4 the case of Nisith Ranjan Nayak and has submitted that discriminatory treatment has been meted out to him compared to the benefit allowed to Nisith Ranjan Nayak. But the above suggestion of the dealing assistant to check up the case of Nisith Ranjan Nayak was not considered by the higher authorities and only further documents in support of engagement of the applicant from 15.7.1968 were called for. After these documents were received, the dealing assistant in his note at page 32 of the notesheets pointed out that from the documents received it was clear that the applicant was given monthly contract from 15.7.1968 to 24.1.1978 and he was appointed on regular basis with effect from 25.1.1978 and therefore, his services from 15.7.1968 to 24.1.1978 may be counted under

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Rule 17 of Central Civil Services (Pension) Rules. This was apparently approved at page 33 of the notesheets after clearance of Internal Finance and the order dated 13.10.1995 at Annexure-3 was issued.

7. From the perusal of the file of the Directorate produced by the respondents, no view can be taken if the case of Nisith Ranjan Nayak was similar to the case of the applicant. Along with the file, the learned Additional Standing Counsel has produced a certificate dated 8.9.1993 issued by Station Director, All India Radio, Cuttack, in which it has been certified that casual contract service of Nisith Ranjan Nayak, Selection Grade Announcer, All India Radio, is counted with effect from 1.9.1964 as per Directorate General, All India Radio, New Delhi's order No.12/6/83-S.VII, dated 11/30.8.88. From this also it is not clear whether in the case of Nisith Ranjan Nayak his period of contract service was counted as pensionable service only or if in the case of Nisith Ranjan Nayak, on regularisation his pay was notionally fixed at a higher stage taking into account the period of his contract service. The Tribunal had directed in their order in OA No.219/91 the Director General, All India Radio to consider the representation of the applicant. In his representation filed in pursuance of the above direction of the Tribunal, the applicant has mentioned the case of Nisith Ranjan Nayak. The dealing assistant had suggested checking up of the case of Nisith Ranjan Nayak. But unfortunately this suggestion was ignored at higher level and this aspect was not considered. The suggestion of the dealing assistant to check up the matter with Station Director, All India Radio, Cuttack, where Shri Nisith Ranjan Nayak was regularised was not followed up. From the certificate dated 8.9.1993 filed by the learned Additional Standing Counsel it appears that

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casual service of Nisith Ranjan Nayak was counted with effect from 1.9.1964 as per Directorate General, All India Radio, New Delhi order No.12/6/83-S.VII dated 11/30.8.1988 referred to by us earlier. It will, therefore, not be difficult for the respondents to locate the case of Nisith Ranjan Nayak in the Directorate itself now that the number and date of the order of the Directorate are available. In view of this, we direct that respondent no.2 should check up the case of Nisith Ranjan Nayak and in case pay of Nisith Ranjan Nayak, on his regularisation, was fixed at a higher stage taking into account his service on monthly contract basis, then the same benefit should be allowed to the applicant ^{notionally} subject to a second more important consideration. This consideration is whether the cases of Nisith Ranjan Nayak and the applicant are exactly identical. From the letter dated 31.3.1989 of Station Director, All India Radio, Sambalpur, we note that a post of Compere for All India Radio, Sambalpur, was created in Directorate's letter dated 3.8.1968. The applicant was booked against that post. The post was advertised and recruitment was made, but the selected candidate did not join the post. It is further mentioned that two persons were issued offer of appointment, one after another, but none of them joined. Under these circumstances the applicant continued to be booked on monthly contract basis without any break till he was regularised with effect from 25.1.1978. It also appears that the applicant was regularised after relaxation of the Recruitment Rules. Thus, the circumstances may not be the same as in the case of Nisith Ranjan Nayak. We are unable to take any view on this primarily because in this O.A. the petitioner has not made any averment with regard to the case of Nisith Ranjan Nayak and therefore, the respondents were not in a position

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to give any reply. In spite of this, the above direction is being issued because the Tribunal in their order in OA No.219 of 1991 had mentioned the case of Nisith Ranjan Nayak and about identicality of these two cases. The applicant has also mentioned the case of one L.D.Sahu. But his case has been mentioned by the applicant only in the rejoinder and therefore, no direction is being issued for comparing the case of the applicant with that of Shri L.D.Sahu. The above direction of ours regarding checking up of the case of Nisith Ranjan Nayak to determine if his case was exactly identical to that of the applicant and to allow the applicant the same benefit as had been allowed to Nisith Ranjan Nayak only with regard to notional fixation of pay, should be complied with within a period of 60 (sixty) days from the date of receipt of copy of this order.

8. With the above observation and direction, the Original Application is disposed of. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN

August 7, 2000/AN/PS