

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 364 OF 1996
Cuttack, this the 10th day of March, 2003.

KHAGESWAR SAMAL. APPLICANT.
VRS.
UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no*

10/03/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO. 364 OF 1996.
Cuttack, this the 10th day of March, 2003.

C O R A M:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER(J).

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Sri Khageswar Samal, Aged about 53 years,
S/o. Sri Pranakrishna Samal, Vill. Keltania,
Po; Penthpal, PS; Pattamundi, Dist; Kendrapara,
At present Assistant Postmaster, Accounts,
Kendrapara Head Post Office, Dist. Kendrapara.

.... APPLICANT.

By legal practitioner: M/s. Sarat Kumar Mohanty,
Shanti Pr. Mohanty,
Advocates.

;Versus;

1. Union of India represented by its Secretary,
Department of Posts, New Delhi.
2. Chief postmaster General, Orissa Circle,
Bhubaneswar.
3. Director, Postal Services, Headquarters,
Bhubaneswar Office of Chief Postmaster
General, Orissa Circle, Bhubaneswar.
4. Superintendent of post Offices,
Cuttack North division, Cuttack-1.
5. Sri Bibhusan Mohanty, A. F. M., Accounts,
Jaleswar Head Post Office,
Dist. Balasore.

.... RESPONDENTS.

By legal practitioner: Mr. A. K. Bose,
Senior Standing Counsel
(Central).

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O R D E R

MR. B. N. SOM, VICE-CHAIRMAN :-

This Original Application under section 19 of the Administrative Tribunals Act, 1985 has been filed by Shri Khageswar Samal, Assistant Postmaster, Accounts of Kendrapara Head Post Office praying for stepping up of his pay to bring it at par with his junior Shri Bibhusan Mohanty (Res.No.5) in the cadre of APM(Accounts).

2. The facts of this case are that the Applicant vide order dated 23-7-1982 was promoted on adhoc basis to the cadre of APM Accounts and posted to the Keonjhar-
garh Head Post Office whereas Shri Bibhusan Mohanty, Res. No.5 was promoted to the said cadre w.e.f. 9.5.1983 and posted to Rairangpur Head Post Office, under Balasore Division. The Applicant is all along senior to Respondent No.5 in the gradation list, circulated by the Department, from time to time. In the ~~Time Scale of Accountant~~ grade, the Applicant was drawing higher salary than Respondent No.5. However, the Applicant had his regular promotion to the grade of APM(Accounts) on 30-09-1982 and his pay was fixed at Rs. 500/- in the scale of pay of Rs. 425-640/- (pre-revised); whereas the pay of Respondent No.5 was fixed at Rs. 515/- in the said post on 09-05-1983 with date of increment on 01-05-1984. The date of next increment of the Applicant was 01-09-1983. As a result, the Applicant

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was getting Rs. 500/- on 9.5.1983 and Respondent No.5 was getting Rs. 515/- on that day. The disparity in the matter of pay occurred first on the introduction of the revised pay scale w.e.f. 1-1-1986 on the recommendation of the fourth pay Commission and, thereafter, on their placement to the pay scale of Rs. 1600-2600/- under BCR scheme. With the revision of pay scale of APM (Accounts) to Rs. 1400-2300/-, the applicant's pay was fixed at Rs. 1850/- whereas the pay of Respondent No.5 was fixed at Rs. 1900/-. On up-gradation to BCR, the applicant's pay was fixed at Rs. 2150/- (1-9-1995) and the pay of Respondent No.5 was fixed at Rs. 2200/- (01-05-1995). The Applicant has stated that he had made number of representations to the Dept. but of no consequence, and, that Respondent No.4 vide letter dated 28.2.1996 had informed the Applicant that the Director of Postal Services had gone through the case of the Applicant and had observed that the junior of the Applicant, Shri B. Mohanty, had drawn higher pay than the applicant, from time to time, by virtue of grant of advance increment as he was granted Ad-hoc promotion to the higher post.

3. Respondents in their counter have controverted the claim of the Applicant for stepping up of his pay stating that the same was/is not tenable. They have stated that the grievance of the Applicant is not justified in view of the fact that his junior has earned advance increment due to his earlier officiation in the LSG cadre and, that as per FR 22

this does not constitute an anomaly for stepping up pay.

4. We have heard Mr. S. R. Mohanty, Learned Counsel appearing for the Applicant and Mr. Anup Kumar Bose, Learned Senior Standing Counsel appearing for the Respondents and have also perused the records, placed before us.

5. On perusal of records, it appears that Res.No.5 was allowed officiating promotion to the post of APM(Accts.) Jaleswar Head Office w.e.f. 02-09-1981 to 06-09-1983 on Adhoc basis. Later on he got his regular promotion as APM (Accounts) and was posted to the same place. On the other hand, the Applicant was posted as APM (Accounts), Keonjhar Head Post Office w.e.f. 30.9.1982 fixing his pay at Rs. 500/-. Respondents, in their counter have sought to argue that the Applicant ^{should} shall not be allowed, at this belated stage to challenge that the Respondent No.5 was illegally allowed to officiate on local arrangement for more than 90 days. The crux of the problem is whether the action of the Respondents was legally valid in allowing the Respondent No.5 to hold the post of APM(Accounts) on adhoc basis/on local arrangement basis for two years ^{in preference to} ~~ever and above~~ the applicant. It is an admitted fact that in the gradation list of Accountant/APM (Accounts), the Applicant is senior to Respondent No.5. It is also a fact that the post of APM(Accounts) is a Circle cadre and all officiating arrangement for long term vacancies are to be made from the feeder cadre of P.O. and RMS Accountants on Circle Seniority basis. It is also a fact that even for adhoc arrangement, the Appointing Authority shall have to strictly

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follow the seniority position of the officers to be promoted on adhoc basis. From the facts of this case, it is clear that the Circle Office did not ~~make any~~ ^{make any} arrangement for filling up of the post of APM(Accounts) on a long term basis. Nowhere in the counter nor during oral argument, the Respondents could satisfy us that they had obtained the option of the Senior officers to be posted on adhoc basis as APM Accounts, Rairangpur Head Post Office; because had the senior i. e. Applicant, refused to move from Cuttack to Rairangpur he would have been denied all benefits of stepping up of his pay in future. As per the Government Order at Annexure-R/2 only when a senior foregoes/refuses promotion leading to his junior being promoted/appointment to the higher post earlier, junior draws higher pay than the senior. In this case, the Respondents have failed to prove that they had and made an offer of promotion to the Senior i. e. the Applicant/ that the senior had refused promotion which could alone have a ground to deny him the benefits of stepping up of his pay. That being not the case, we see no reason not to allow this Original Application to succeed. We order accordingly and direct the Respondents to step up of the pay of the Applicant to bring him at par with that of his junior, Shri B. Mohanty, Respondent No.5 in the cadre of APM, Accounts and BCR w. e. f. the date Shri Mohanty is getting the higher pay than his senior i. e. Applicant, with all other consequential benefits. This exercise shall be completed within a period of ninety days from the date of receipt of a copy of this order.

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6. In the result, therefore, this Original Application is allowed. No costs.

10/03/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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