

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACKORIGINAL APPLICATION NO. 52 OF 1996
Cuttack this the 14th day of February/2003

V.J. Rao & Another ... Applicants

VERSUS

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *VS*
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? *VS*


(M.R. MOHANTY)
MEMBER (JUDICIAL)
(B.N. SOMP)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 52 OF 1996
Cuttack this the 14th day of February/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI M.R. MOHANTY, MEMBER(JUDICIAL)

...

1. V.J.Rao-I
Asst.Audit Officer,
Office of the Accountant General(Audit)
Orissa, Bhubaneswar
2. M.B.K.Rao,
Asst.Audit Officer,
Office of the Accountant General(Audit)
Orissa, Bhubaneswar

... **Applicants**

By the Advocates

M/s.G.B. Jena
S.Das
Mrs.S. Jena

VERSUS

1. Union of India represented by the Secretary,
Ministry of Finance, New Delhi
2. Comptroller & Auditor General of India,
New Delhi
3. Accountant General (Audit), Orissa,
Bhubaneswar

... **Respondents**

By the Advocates

Mr.B.Dash
Addl.Standing Counsel
(Central)

O R D E R

MR.B.N. SOM, VICE-CHAIRMAN : This Original Application has been filed by S/Shri V.J.Rao and M.B.K.Rao, both Assistant Audit Officers, Office of the Accountant General, Orissa, against the action of the Respondents in fixing 1.4.1987 as the cut off date for refixation of pay, after taking into account the qualification pay

in case of Section Officers, those who have been promoted before 1.4.1987. They have, thus, challenged the order dated 11.2.1991 of Government of India, Ministry of Finance, Department of Expenditure at Annexure-3. They have, inter alia, stated that by fixing 1.4.1987 as the cut off date for treating qualification pay as part of pay for the purpose of pay fixation on promotion to the higher grade had resulted in anomaly and has acted against the interest of those officials who were in receipt of qualification pay prior to 1.4.1987 only at the stage of Section Officer. They, therefore, contend that the qualification pay between officials of the Respondents' Department, between those who got qualification pay earlier to 1.4.1987 and those on or after 1.4.1987 was an intelligible differentia and discriminatory being not rational. In this arrangement there was lack of equal treatment between the groups while fixing the cut off date as 1.4.1987.

2. We have heard Shri G.B. Jena, the learned counsel for the applicant and Shri B.Dash, learned Addl. Standing Counsel for the Respondents. We have also perused the records placed before us. During the course of argument, we had anxiously asked the learned Addl. Standing Counsel to clarify as to why the cut off date was fixed as 1.4.1987 for the purpose of reopening of cases for treating qualification pay as part of pay. The learned Addl. Standing Counsel has come up with detailed clarification in the matter. It has been averred by him

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that on the recommendation of the 4th Central Pay Commission regarding restructuring of Accounts cadre and granting higher pay scale and qualification pay after proper identification of number of posts and channel of promotion etc., the Government gave effect to the said recommendation with effect from 1.4.1987, and this is how the enhanced qualification pay at the rate of Rs.30/- was ordered to be treated as part of pay for the purpose of fixation of pay in higher grades with effect from 1.4.1987.

3. The learned Addl. Standing Counsel further drew our notice to the fact that the question relating to the rationale of the said cut off date was also the subject matter of consideration before the Hon'ble Supreme Court vide Civil Appeal (C) Nos. 1783-84/1990, along with many other Civil Appeals and the said question was decided on 4.2.1992, wherein the Hon'ble Apex Court observed as under.

"... The proposed scale of Rs.2000-3200 of Section Officer may also be treated as a functional grade.

... the scales of pay of Rs.1400 - 2000 and Rs.2000 - 3200 should be treated as functional (grades) requiring promotion as per normal procedure.

... Accordingly the government had to examine and decide the number of posts to be placed in these scales of pay and a

final decision was taken in the year 1987 and promotions were to be made as per the normal procedure. Therefore the Government issued Office Memo that the appointments to the extent of number of posts should be made with effect from April 1, 1987.

4. In the instant case the question is whether there was apparent reason to give different dates of implementation of the recommendations of the Pay Commission in respect of the members of the Accounts wing and whether such an implementation offends Articles 14 and 16 in any manner ? It is not in dispute that after the report of the Pay Commission the government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from January 1, 1986. It is clearly indicated in the report that in regard to recommendations in other matters the government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The second part of the recommendations relates to treatment requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the government will have to take specific decisions to give effect from a suitable date. The Government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay.

The government have to necessarily frame rules for appointment to these functional grades and the government decided that those who have passed the graduate examination and who have completed three years as Section Officer could be placed in the category of the persons entitled to the scale of pay of Rs.2000-3200 and the same post was redesignated as Assistant Accounts Officer which post was not there previously. A Circular dated 17, 1987 makes this aspect clear. It can be seen that the category of officers who have to be placed in the functional grade had to be decided by the government and accordingly the government took the decision in the year 1987. Therefore it is not correct to say that

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those officers who were subsequently placed in the functional grade belong to the same group who were entitled to the respective scales in their own right on January 1, 1986 itself.

... Paragraph 4 of the Office Memo dated June 12, 1987 deals with the later part of the recommendations and clearly provides for the identification of the posts carrying somewhat higher responsibilities and duties and for an exercise to be undertaken for fitting the seniority and suitable persons against these posts.

It is true that all of them before restructuring belonged to one department. But that by itself cannot be a ground for attracting Articles 14 and 16 of the Constitution.

... the second set of the recommendations could only be given effect to after identifying these posts.

... In this context it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade.

... It is evident that all this could have been done only in the year 1987 and in the said Organised Accounts Office higher scales of pay were given with effect from April 1, 1987 i.e. from the beginning of the Financial Year.

... It must be noted that the Pay Commission Report clearly indicated that after bifurcation certain posts in the Accounts wing should be declared to be brought into the functional grades and thereafter the higher scales of pay should be paid to the officers fitted in such grades.

... with regard to the posts that were to be identified and brought into the functional grades in future, the higher scales of pay cannot be made applicable retrospectively.

... There is no dispute that in the instant case the terms of reference of the Pay Commission applied to all the categories of government servants. But the question is as to from which date the other category referred to above namely Assistant Accounts Officer etc. should get the higher scales of pay. Identification of these posts and the upgradation cannot be treated as mere administrative difficulties. The implementation of the recommendations of the Pay

Commission according to the terms thereof itself involved this exercise of creation of posts after identification which naturally took some time. Therefore the above decisions relied upon by the learned counsel are of no help to the respondents".

4. In view of the fact that the question raised and the relief sought for by the applicant in this Original Application have already been decided by the Hon'ble Apex Court, we are inclined to dismiss this Original Application being devoid of merit. No costs.

Soorul
14.02.03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

W.B.
(B.N. SOM)
VICE-CHAIRMAN

By/