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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 782 OF 1996
Cuttack this the 8th day of December, 2003

Chittaranjan Mohanty ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 73
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? w

(B.N. SOM)
VICE-CHAIRMAN

(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 782 OF 1996
Cuttack, this the 8th day of December, 2003.

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

...

Chitta Ranjan Mohanty, aged about 52 years,
S/o. Late Niranjan Mohanty, working as Asst.
Director, Office of the Director of Census
Operation (Tech.), Orissa, At/Po: Bhubaneswar,
Dist. Khurda.

....

.... APPLICANT.

By the Advocate: Mr. H. P. Rath, Advocate.

:Versus:

1. Union of India represented by Registrar General
of India, 2/A, Mansingh Road, New Delhi-110 011.

2. Director of Census Operation, Orissa,
At/Po: Bhubaneswar, Dist. Khurda.

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RESPONDENTS.

By the Advocates : Mr. A. K. Bose, Sr. Standing Counsel.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Calling in question the validity of order dated
06.11.1995 (Annexure-13), Applicant, who is an Assistant
Director in Orissa Directorate of Census Operations, has
approached this Tribunal under Sec. 19 of the A.T. Act, 1985
praying for the following reliefs:

- (a) to quash the impugned order at Annexure-13
- (b) to direct the Respondents to fix the
increment in the revised pay rules w.e.f.
1.6.1986 and subsequent consequential
increments.

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- (c) to re-fix the pay of the Applicant w.e.f. 1.6.1986 accordingly and pay the arrear benefits till date with interest @ 12% per annum.

2. Briefly stated the facts of the case are that the Applicant is aggrieved with the order passed by the Respondents in withdrawing the ante-dated increment/stepping up pay at par with his junior, viz., Shri M.K. Mukherjee based on the recommendations of the 4th Central Pay Commission. It is not in dispute that the Applicant is senior to Shri Mukherjee in all respect. It is also not in dispute that, on the recommendations of the 4th Central Pay Commission, the pay scale of both Shri Mukherjee and the Applicant was fixed in the same grade i.e. B.2200-75-2800-EB-1000-4000/- w.e.f. 1.1.1986 in the basic pay of B.2900/-. But while the next date of increment of the Applicant was fixed to 1.12.1986; the date of next increment of Shri Mukherjee (junior to the Applicant) was fixed to 1.6.1986 and, thereby the Applicant was subjected to draw less pay than his junior. It is also not in dispute that this anomaly (in fixing the next date of increment) was set at rest by the Respondents to the Applicant's satisfaction. But for the reason of Audit Report, the position of the Applicant's date of next increment was reviewed and was unilaterally restored to 1.12.1986. Hence this O.A. with the aforesaid prayers.

3. The Departmental Respondents have filed their counter giving details of all the facts and circumstances exhaustively

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and unambiguously. But they have concentrated themselves to one point basing on which they have issued the impugned order under Annexure-13 dated 06.11.1995, which reads as under:-

".... It is stated the case was referred to DOP&T, Est. (Pay-I) Section for their consideration and approval. They have rejected the proposal for ante-dating the date of increment of Shri C.R. Mohanty, ADCO(T) on the ground that since both the senior and junior officers were holding the post of Assistant Director(T) on Ad-hoc basis as on 1.1.1986 and facility of antedating the date of next increment of Sr. is not available under the second proviso to Rule-8 of CCS(RP) Rules, 1986".

4. It is in the fitness of things, the second provision to Rule-8 of CCS(RP) Rules, 1986 is quoted hereunder:-

"...Provided that in cases where the pay of a Government servant is stepped up in terms of Note 3 or Note 4 or Note-7 to sub-rule(1) of Rule-7, the next increment shall be granted on the completion of qualifying service of twelve months from the date of the stepping up of the pay in the revised scale".

5. This provision to Rule-8 of CCS(RP) Rules, 1986 makes it amply clear that what would have been the duration to earn next increment had pay of an employee been fixed/stepped up in terms of Note-3 or Note 4 or Note-7, as the case may be. It does not throw any light on the question of ante-dating the date of increment; even conceding that both senior and junior employees are on adhoc basis. Viewed from this angle, the stand taken by the Respondents (in rejecting the claim of the Applicant) must fall flat.

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6. In the above context, we would like to quote the third proviso to Rule-3 of CCS(RP) Rules, 1986 which reads thus:

".... provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1986, at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than him in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier".

7. Having regard to the third proviso (quoted above), we are of the view that, on the face of this proviso, the claim of the Applicant cannot be set apart as this has the fullest application in the case of the Applicant.

8. Though not submitted nor advanced during the oral argument by the learned counsel for the Applicant Shri H.P. Rath that in the instant case the Respondents, before issuing the impugned order (to the prejudice of the Applicant) have not complied with the principles of natural justice, but the Tribunal cannot lose sight of this vital aspect of the matter. It is also not the case of the Departmental Respondents that they ever have in the instant case, complied with the principles of natural justice. Therefore, we are of the view that on this ground alone the impugned order under Annexure-13 is liable to be set aside.



9. Before coming to conclusion, we would like to say that by the efflux of time the Applicant might have received the relief, as sought for in this O.A., from the hands of the Respondents as would be evident from Annexure-7 dated 30/31.3.1992, Respondent No.1 has indicated as under:-

... They have also advised that Shri Mohanty, Assistant Director of Census Operations has to wait for ante-dating of his date of increment with reference to his junior, Shri Mukherjee, till Shri Mukherjee is appointed on substantive basis as Assistant Director of Census Operations.

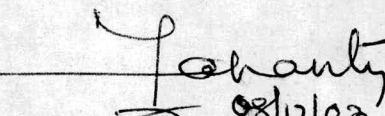
10. Since it is more than a decade Annexure-7 has been issued holding out a commitment to the Applicant, as quoted above. Learned Counsel for both the sides are not in a position to give us the exact position where the matter now stands. However, since we have come to definite conclusion, as referred to above, we have no hesitation but to quash the impugned order dated 6.11.1995 (Annexure-13) and direct the Departmental Respondents to provide the Applicant with ante-dated incremental benefits at par with his junior Shri M.K. Mukherjee, with effect from 1.6.¹⁹⁸⁶1996 (if the same has not yet been extended in view of Annexure-7 dated 30/31.3.1992) within a period of three months from the date of receipt of copies of this order. *klr 7*

Order accordingly. 7

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

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(B.N.SOM)
VICE-CHAIRMAN


08/12/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

* The same is connected as per order dt. 22.01.04.