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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 798 OF 1996

Cuttack, this the 8th day of July, 1999

Mrs. Alice Mathai and others 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)
VICE-CHAIRMAN
8.7.99

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(15)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 798 OF 1996
Cuttack, this the 8th day of July, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Mrs.Alice Mathai, w/o P.I.Mathai, working as P.A.(CO) HSG-II, Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
2. Kanhu Charan Parida, son of late Ranjan Parida, working as P.A.(CO), HSG-II, Office of the Chief Post Master General, Bhubaneswar, District-Khurda.
3. Anadi Charan Bhoi, son of Bandhu Bhoi, working as P.A.(CO) HSG-II, Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda....

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Applicants

Advocates for applicant - M/s Ganeswar Rath
Sradhananda Mishra
AKPanda
SR Mohanty

Vrs.

1. Union of India represented by its Secretary-cum-Director General of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.....

Respondents

Advocate for respondents - Mr.U.B.Mohapatra
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.Som.

In this Application the three petitioners who have been permitted to pursue this application jointly, have prayed for quashing the order dated 8.8.1995 at Annexure-4 and for a declaration that the order at Annexure-3 is absolute. The third prayer is for quashing

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the order of recovery of overpayment of pay due to wrong fixation in pursuance of Annexure-4. Factual aspects of the case of the three applicants will have to be mentioned separately.

2. Applicant no.1 joined the Postal Department on 16.3.1966 as RMS Sorter and came over to Circle Office as UDC. Her pay as on 25.6.1993 was Rs.1680/- in the scale of Rs.1200-2040/-. Applicant no.2 also joined the Department as RMS Sorter on 22.10.1966 and on 25.6.1993 he was working as LDC in the Circle Office and was getting salary of Rs.1500/- in the scale of Rs.950-1500/-. Applicant no.3 joined as Postal Assistant on 22.2.1967 and came over to the Circle Office as UDC on 26.4.1982 and on 25.6.1993 his pay was Rs.1680/- in the scale of Rs.1200-2040/-. Government of India introduced a scheme known as Time Bound One Promotion Scheme (TBOP Scheme) in letter dated 17.12.1983. The Scheme came into force from 30.11.1983. Under the Scheme all officials belonging to basic grades in Groups C and D to which there is direct recruitment from outside or by means of LDCE from lower cadre, who had completed 16 years of service in the grade, will be placed in the next higher grade. Subsequently in order dated 10.11.1991 (Annexure-2) another scheme known as Biennial Cadre Review Scheme (BCR Scheme) was introduced under which the employees who were entitled to get promoted under TBOP Scheme after 16 years of service were declared eligible for promotion to the next higher scale on completion of twenty-six years of service. This scheme came into force from 1.10.1991. Initially these two schemes were not applicable to clerical staff in the Circle Offices. Later on in circular dated 22.7.1993 these two promotion schemes were made applicable to Group-C staff of the Circle

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Offices with effect from 26.6.1993 subject to the conditions mentioned in the circular which is at Annexure-3. Applicant nos.1,2 and 3 having joined service on 16.3.1966, 22.10.1960 and 22.2.1967 had completed more than 26 years of service by 26.6.1993 when the two promotion schemes were made applicable for clerical staff of the Circle Offices. Under the circular at Annexure-3, LDCs and UDCs working in the Circle Offices could opt to remain in their earlier scales, but none of the applicants opted to retain their own scales. Accordingly, they were redesignated as Postal Assistants (Circle Office) and brought over to the new scale of Rs.975-1660/- and were given the first promotion in the higher scale of Rs.1400-2300/- under TBOP Scheme. After promotion to TBOP Scheme they were again considered for promotion to the next higher scale of Rs.1600-2660/- under BCR Scheme and all of them were promoted with effect from same date, i.e., 26.6.1993 under both the Schemes. In order dated 10.11.1993 at Annexure-5 these three applicants along with others were given promotion to the higher scale of Rs.1400-2300/- under TBOP Scheme with effect from 26.6.1993. On the same day, i.e., 10.11.1993 another order was issued in Annexure-6 in which these three applicants were promoted to the next higher scale of Rs.1600-2660/- under BCR Scheme with effect from the same date, i.e. 26.6.1993. Because of two orders of promotion issued on 10.11.1993 promoting the applicants to TBOP scale of Rs.1400-2300/- with effect from 26.6.1993 and again to BCR Scale of Rs.1600-2660/- with effect from the same date (26.6.1993), the pay of the applicants was fixed once in TBOP scale of Rs.1400-2300/- and once again in BCR Scale of Rs.1600-2660/-. The applicants have indicated in paragraph 4.8 of the OA as to how their pay was fixed first in PA(CO) scale of Rs.975-1660/- and then again in TBOP scale of

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Rs.1400-2300/- and in BCR scale of Rs.1600-2660/-. The applicants have stated that Director General of Posts (respondent no.1) in his letter dated 8.8.1995 at Annexure-4 had issued clarification inter alia indicating that those LDCs and UDCs who do not opt to remain in their old scales of LDC and UDCs, should be redesignated as PA(CO) and thereafter depending length of service their pay should be fixed directly in the scale to which they are entitled. Pay of those PAs (CO) who have not completed 16 years of service should be fixed in the scale of Rs.975-1660/-. Pay of those who have completed 16 years of service and have not completed 26 years of service should be fixed in the scale of Rs.1400-2300/- and those who have completed 26 years of service should be fitted in the scale of Rs.1600-2660/-. This clarification was circulated in letter dated 17.10.1995 of Chief Post Master General, Bhubaneswar, for fixing the pay of the applicants along with others, with one direct pay fixation in the entitled scale depending upon the length of service instead of first bringing them in PA(CO) scale and then fixing the pay of those who have completed 26 years of service by 26.6.1993 once in the scale of Rs.1400-2300/- and again in the scale of Rs.1600-2660/-. In this process, pay of the applicants was fixed in the BCR scheme as on 26.6.1993 and the pay so fixed is lower than the pay which was fixed earlier and which they were drawing till September 1996 before receipt of the clarification dated 8.8.1995. The applicants have stated that because of fixation as was originally done, they were getting Rs.1800/-, Rs.1650/- and Rs.1800/- respectively as on 1.6.1996. But as per one time fixation in pursuance of Annexure-4 their pay became Rs.1750/-, Rs.1600/- and Rs.1750/- respectively. It is further

submitted that such reduction of pay has been made without affording the applicants any reasonable opportunity of showing cause. No order of recovery of the excess amount has also been communicated to them. They have also not been asked to show cause against the order of recovery. The applicants have stated that from their pay an amount of Rs.6002/-, Rs.8238/- and Rs.6002/-respectively has been ordered to be recovered. In the context of the above facts, the applicants have come up in this petition with the prayers referred to earlier.

3. By way of interim relief it was claimed that till the disposal of the OA, operation of the order under Annexure-4 should be stayed and the respondents should be directed not to recover money which has been allegedly overpaid to them. In order dated 22.11.1996 by way of interim relief it was directed that there shall be no recovery as per Annexure-4 until final disposal of the OA.

4. The respondents in their counter have mentioned about the initial appointment of the applicants from 16.3.1966, 22.10.1960 and 22.2.1967 in different posts and the dates of their coming over to the Circle Office and the dates of their joining as UDC. They have also mentioned about introduction of TBOP and BCR Schemes in order dated 22.7.1993 at Annexure-3. The respondents have indicated the salient features of the Schemes at Annexure-3 and have stated how the pay of the three applicants was initially fixed. Applicant no.1 was getting Rs.1680/- in UDC scale of Rs.1200-2040/-. On her becoming PA(CO) her pay was fixed at Rs.1660/- at the maximum of PA(CO) scale of Rs.975-1660/- with the date of next increment on 1.6.1994. Thereafter her pay was fixed in the TBOP Scale of Rs.1400-2300/- with

effect from 26.6.1993 at Rs.1720/- and her pay was again fixed in BCR scale of Rs.1600-2660/- with effect from 26.6.1993 at the level of Rs.1800/-. Applicant no.2 was getting Rs.1500/- as UDC in the scale of Rs.1200-2040/-. He was brought over to PA(CO) scale of Rs.975-1660/- and his pay was fixed at Rs.1510/- with the date of next increment on 1.6.1994. His pay was then fixed in TBOP scale of Rs.1400-2300/- at Rs.1560/- with date of next increment on 1.6.1994. Again with effect from 26.6.1993 his pay was fixed in BCR Scale of Rs.1600-2660/- at the stage of Rs.1650/- with the date of next increment on 1.6.1994.

As regards applicant no.3, he was getting Rs.1680/- in the UDC scale of Rs.1200-2040/-. His pay was fixed in PA (CO) scale of Rs.975-1660/- at the level of Rs.1660/- which is the maximum with the date of next increment on 1.6.1994. Thereafter his pay was fixed in TBOP Scale of Rs.1400-2300/- at the stage of Rs.1720/- with the date of next increment on 1.6.1994. Again with effect from the same date (26.6.1993) his pay was fixed in the BCR scale of Rs.1600-2660/- at the stage of Rs.1800/- with date of next increment on 1.6.1994. Respondents have pointed out that while implementing the TBOP and BCR Schemes different field offices raised many doubts which were clarified by Director General of Posts in his letter dated 8.8.1995 which is at Annexure-4 of the OA. As per the clarification once an LDC/UDC in the Circle Office does not opt to remain in his old scale of LDC/UDC then his pay has to be fixed directly in the scale to which he is entitled to on the basis of his length of service. In other words, if he has completed less than 16 years of service as on 26.6.1993, his pay has to be fixed in PA(CO) scale of Rs.975-1660/- as his post is redesignated as PA(CO). If he has completed 16 years of service and not 26 years of service on 26.6.1993, then he has to be fitted in TBOP scale of Rs.1400-2300/-

and if he has completed 26 years of service by the relevant date of 26.6.1993 then his pay has to be directly fixed in the BCR scale of Rs.1600-2660/-. It has been clarified that there should not be multiple fixations of pay with effect from the same date and there would be only one time fixation of pay depending upon the length of service. It is further stated by the respondents that on the basis of this circular the pay of the three applicants has to be re-fixed and this was done. The pay of applicant no.1 was fixed in the BCR scale on 26.6.1993 at Rs.1750/- and her pay became Rs.1800/- , Rs.1850/- and Rs.1900/- as on 1.6.1994, 1.6.1995 and 1.6.1996. Applicant no.2 had originally opted for promotion under BCR Scheme with effect from 26.6.1993, but subsequently he opted in his letter dated 8.7.1994 for fixation of his pay as on 30.9.1993. Accordingly his pay was fixed at Rs.1600/- in BCR scale as on 30.9.1993 and his pay became Rs.1650/-, Rs.1700/- and Rs.1750/- on 1.9.1994, 1.9.1995 and 1.9.1996 respectively. Applicant no.3 had give his option for BCR scale with effect from 26.6.1993 and accordingly his pay was fixed in BCR scale at Rs.1750/- as on 26.6.1993 and his pay became Rs.1800/-, Rs.1850/- and Rs.1900/- as on 1.6.1994, 1.6.1995 and 1.6.1996 respectively. The respondents have pointed out that correct fixation of pay has already been given effect to from October 1996. It is also stated that the amount of excess payment made to the applicants is to be recovered under the law and there is nothing illegal in this. The respondents have further stated that any reference by the applicants to the schemes at Annexures 1 and 2 by which TBOP and BCR Schemes were introduced for Groups C and D staff in operative offices is misconceived because by circular at Annexure-3 these two schemes have been made applicable for Group-C staff in Circle Offices. The respondents have

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pointed out that the Scheme under which the Circle Office staff are covered is different in certain principles from the schemes applicable to staff in the operative offices. By way of example, they have pointed out that the two schemes applicable to the staff in operative offices cover not only Group C staff but also certain categories of Group-D staff. But for the Circle Offices the scheme at Annexure-3 is only applicable to Group-C staff. It has also been pointed out that there are other differences like provision of surrender of certain percentage of existing posts. Therefore, it has been submitted that the reference to the schemes applicable to operative offices is not relevant. On the question of not giving any showcause notice to the applicants before refixing their pay in accordance with the clarification dated 8.8.1995 the respondents have stated that the applicants are fully aware of the clarification dated 8.8.1995. Applicant no.2 in his letter dated 8.7.1994 has given option for refixation of his pay as on 30.9.1993 in the BCR Scheme directly. This option is at Annexure-R/3. Applicant in her representation dated 7.12.1995 at Annexure-R/5 has referred to the circular dated 8.8.1995. From this it is clear that they were aware of this circular. For correct fixation of pay it is not necessary to give any showcause notice to the concerned employee and therefore the respondents have stated that there has not been any violation of the principles of natural justice. On the above grounds, the respondents have opposed the prayers of the applicants.

5. We have heard Shri Ganeswar Rath, the learned Counsel for the petitioners and Shri U.B. Mohapatra, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

6. It has been submitted by the learned counsel for the petitioners that in paragraph 3.6 of the

scheme at Annexure-3 it has been specifically provided that the existing Group-C officials in the Circle Offices who do not opt for old scales would be considered for grant of first promotion in the TBOP scale of Rs.1400-2300/- if they had completed 16 years of service and then for the second promotion in the next higher scale under BCR Scheme of Rs.1600-2660/- after completion of 26 years of service. It has been submitted by the learned counsel for the petitioners that from this paragraph it is clear that there has to be two fixations in the two scales and therefore in the guise of clarification dated 8.8.1995 providing that there will be only one time pay fixation, a benefit which has been given in the Scheme at Annexure-3 is sought to be taken away in the clarificatory letter dated 8.8.1995. This according to the learned counsel for the petitioners is impermissible. We have considered the submissions of the learned counsel for the petitioners carefully and we are unable to read the above meaning as suggested by the learned counsel for the petitioners in paragraph 3.6 of the Scheme. On a plain reading of paragraph 3.6 of the Scheme it is seen that it is provided that those who have completed 16 years of service on the effective date should be brought over to the TBOP Scale of Rs.1400-2300/- and after they have completed the required number of years of service for BCR scale, i.e., 26 years of service they should again be brought over to the BCR scale of Rs.1600-2660/-. Paragraph 3.6 nowhere provides that those who have completed 26 years of service by the relevant date i.e., 26.6.1993 would be brought over to the TBOP scale of Rs.1400-2300/- with effect from the relevant date and again from the same date they should be given a second promotion to the next BCR scale of Rs.1600-2660/-. It is quite obvious that if there are two promotions to the two

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successive higher scales with effect from the same date and two fixations of pay in two promotional scales with effect from the same date, then the concerned employee would gain by way of final pay fixation in the BCR scale at a higher level. This will be a benefit to the employee. Any benefit to be given under a Scheme cannot be implied and read into the scheme when it is not provided in clear and so many words. As we have earlier noted paragraph 3.6 does not specifically provide for simultaneous fixation and therefore it cannot be said that by way of clarification the letter dated 8.8.1995 seeks to take away a benefit sought to be given under the original scheme at Annexure-3. This contention of the learned counsel for the petitioner is therefore rejected. Consequently, the prayer of the applicants for quashing Annexure-4 is also rejected. It is necessary to note here that in Annexure-4 a large number of clarifications have been issued with respect to various points of doubt raised by the field offices and in the present case we are concerned only with the clarification issued with regard to one time pay fixation and therefore, the prayer of the applicants to quash the clarification dated 8.8.1995 must be understood as the prayer to quash the clarification issued with regard to one time pay fixation only and not about the other points in the letter dated 8.8.1995. We have already held that the clarification relating to one time pay fixation does not run counter to the original scheme at Annexure-3. It is in tune with the original scheme and therefore the prayer for quashing Annexure-4 is held to be without any merit and is rejected.

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7. The second contention of the learned counsel for the petitioners is that the scheme by its very nature envisages two fixations of pay in the TBOP scale of

Rs.1400-2300/- and BCR scale of Rs.1600-2660/- even for those who had completed 26 years of service by 26.6.1993 when these two schemes came into force for Group-C staff of Circle Offices. It is submitted that if there is one time fixation of pay as has been mentioned in the letter dated 8.8.1995 then the senior may get less pay than juniors who would not have completed 26 years of service by the relevant date and would be completing it within a year or two of the relevant date of 26.6.1993. An example will make this argument clear. The pay of applicant no.1 has been directly fixed in the scale of Rs.1600-2660/- with effect from 26.6.1993 because by that date she had completed 26 years of service as LDC/UDC and had qualified for the above BCR scale. In case there is another officer (junior to applicant no.1) who had by the relevant date of 26.6.1993 had completed only 25 years of service, then his pay has to be fixed initially on 26.6.1993 in TBOP scale of Rs.1400-2300/-. Thereafter after one year when he completes 26 years of service his pay has to be fixed in BCR scale of Rs.1600-2660/-. In that way that junior person would get his pay fixed at a higher level than applicant no.1. We are unable to accept this argument because it is conjectural in nature and it has not been shown that actually such an effect will ensue. Within that one year taken by the junior man in the above example to complete 26 years of service applicant no.1 of the above example would also complete one more year and would be entitled to one more increment in BCR scale of Rs.1600-2660/-. Moreover, the applicants have not specifically pleaded that after one time fixation of pay done by the departmental authorities of the applicants, in the BCR scale any of their juniors, who has got the benefit of two fixations by not completing 26 years of service by the relevant date and by completing it

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subsequently, has got his pay fixed at a higher level than the applicants in the BCR scale of Rs.1600-2660/-. In the absence of any such pleading, it is not possible to accept this contention of the learned counsel for the petitioners and the same is therefore rejected.

8. Lastly it has been contended by the learned counsel for the petitioners that because of one time fixation of pay, an amount of Rs.6002/-, Rs.8238/- and Rs.6002/- has been ordered to be recovered from applicant nos.1,2 and 3 respectively. It is stated that copy of the order of recovery has not been served on the applicants. It is also stated that before ordering recovery of the above amount no showcause notice has been issued to the applicants and therefore the order of order is bad in law. In support of his contention the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of K.I.Shephard and others v. Union of India and others, AIR 1988 SC 686. In this decision the Hon'ble Supreme Court have reiterated the view taken by them in earlier decisions in the case of State of Orissa v. Dr.(Miss.)Binapani Dei, AIR 1967 SC 1269, and the case of A.K.Kraipak v. Union of India, AIR 1970SC 150, laying down that even when a State agency acts administratively rules of natural justice would apply. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position to make representation. Hon'ble Supreme Court have also observed that natural justice has various facets and acting fairly is one of them. As in this case no notice of one time fixation of pay of the applicants in the BCR scale of Rs.1600-2660/- and no notice regarding order of recovery

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have been given to the applicants, the order of one time pay fixation and the order of recovery are illegal. In the instant case we have held that one time pay fixation in the relevant scale is meant in the scheme itself. Paragraph 3.6 of the Scheme has been discussed by us earlier in this connection. In view of this, for fixation of pay correctly in accordance with the Scheme no notice can be said to be required to be given to the applicants. As a matter of fact for many other employees such fixations have been made. It is not required that in case of pay fixation a notice is to be given to these employees before their pay is fixed in the promotional scale. As regards notice regarding order of recovery, as the pay was initially fixed incorrectly and subsequently the pay has been correctly fixed and the amount of excess pay drawn by the applicants is to be recovered, it cannot be said that even for this recovery a notice has to be given to the applicants. The order of recovery follows automatically from the manner of pay fixation laid down in the original scheme as clarified in the circular dated 8.8.1995 and therefore a further notice to the applicants cannot be said to be necessary. This contention of the learned counsel for the petitioners is also held to be without any merit and is rejected. It is also to be noted that from the documents provided by the respondents along with the counter it is seen that at least two of the applicants in their letters to the Department have shown that they were aware of the circular dated 8.8.1995. It cannot therefore be said that the subsequent pay fixation has been done behind their back.

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9. Apart from anything else the plain fact of the case is that all the three applicants had completed 26 years of service by 26.6.1993, the relevant date and

therefore they were entitled to go into the BCR scale of Rs.1600-2660/- with effect from that date which has been done in their case in the subsequent pay fixation. It is by mistake that earlier they were given notional promotion to TBOP scale of Rs.1400-2300/- on 26.6.1993 and again on the same day they were given a further promotion to BCR scale of Rs.1600-2660/- with effect from 26.6.1993. This is clearly against the conditions laid down in the Scheme at Annexure-3 and therefore, the respondents' action cannot be faulted on this ground and the amount paid in excess to the three applicants is due to be recoverable from them. The prayer for quashing the order of recovery is, therefore, held to be without any merit and is rejected.

10. In the result, the Original Application is held to be without any merit and is dismissed but without any order as to costs. The stay granted in order dated 22.11.1996 stands vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Singh
(SOMNATH SOM)
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VICE-CHAIRMAN