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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.844 OF 1996

Cuttack, this the 4th day of January 1999

Sri Gadadhar Satpathy and others ....Applicants

Vrs.

Union of India and others .... Respondents

FOR INSTRUCTIONS

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

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(A.K.MISRA)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO.844 OF 1996

Cuttack, this the 9th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI A.K.MISRA, MEMBER(JUDICIAL)

.....

1. Sri Gadadhar Satpathy,  
Retired Sorting Asst. H.S.G-II,  
Vill/PO-Urali, P.S-Sadar,  
Dist.Cuttack.
2. Sri Subal Ch.Mallik,  
Retired Sorting Assistant, HSG-II,  
RMS "N" Division, Cuttack,  
At-Rajendra Nagar,  
P.S-Madhupatna,  
Dist.Cuttack.
3. Sri Budhadev Mallik,  
Retired Sorting Asst. HSG-II,  
RMS "N" Division, Cuttack,  
Vill-Kanpur,P.O-Bagul Sahi,  
Via-Niali,  
Dist.Cuttack.
4. Sri Gadadhar Parida,  
Retired Sorting Asst.H.S.G-II,  
RMS "N" Division, Cuttack,  
Near Chintamaniswar Temple,  
Old Bhubaneswar,  
Dist.Khurda.
5. Sri Binoy Kumar Paul,  
Sorting Assistant, HSG-II,  
Office of HRO, RMS "N" Division,  
Cuttack.
6. Sri Surendranath Mohanty-II,  
Sorting Assistant H.S.G-II,  
Office of SSRM "N" Division,  
Cuttack.
7. Sri Sudersan Acharya,  
Sorting Assistant HSG-II,  
RMS "N" Division, Cuttack,  
Office of SRO, Bhubaneswar,  
Dist.Khurda.
8. Sri Nrusingha Charan Mishra,  
Sorting Asst.HSG-II,  
RMS "N" Division, Cuttack,  
S.R.O.,Jajpur Road, RMS, Dist.Jajpur.

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9. Sri Rangadhar Rath,  
Sorting Asst. HSG-II,  
RMS "N" Division, Cuttack,  
Sub-Record Office, Bhubaneswar,  
Dist. Khurda.
10. Sri Kamal Kumar Mishra,  
Sorting Asst. H.S.G-II,  
R.M.S. "N" Division, Cuttack.
11. Sri Jagdish Chandra Tripathy,  
Sorting Assistant HSG-II  
RMS "N" Division, Cuttack.
12. Sri Banamali Behera,  
Sorting Assistant HSG-II,  
RMS "N" Division, Cuttack,  
Office of S.R.O., Puri.
13. Sri Bhupati Charan Das,  
Sorting Assistant HSG-II,  
Office of S.R.O.,  
Balasore.
14. Sri Purna Chandra Naik,  
Sorting Assistant HSG-II,  
Office of S.R.O., Baripada Stg.  
Baripada,  
Dist. Mayurbhanj.
15. Sri Chandramani Jena,  
LSG Sorting Asst.  
RMS "N" Division, Cuttack,  
Sub-Record Officer,  
Balasore .....

Applicants

By the Advocates - M/s G.K.Misra &  
G.N.Misra.

Vrs.

1. Union of India,  
represented through Director General of Posts,  
Dak Bhawan, New Delhi.
2. Chief Post Master General of Orissa,  
Bhubaneswar.
3. Senior Superintendent of RMS, "N" Division,  
Cuttack.
4. Head Record Officer, RMS "N" Division,  
Cuttack .....

Respondents.

By the Advocate - Mr. Akhaya Ku. Misra  
Addl. C.G.S.C.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the fifteen petitioners have prayed for quashing the order of recovery passed by Chief Post Master General, Bhubaneswar (respondent no.2) in his order dated 18.10.1996 (enclosure to Anexure-1). On the date of admission of this application, ad interim stay of recovery was allowed for fourteen days and after hearing the learned counsel for both sides, in order dated 12.12.1996, the interim stay of recovery was made absolute till the final disposal of the matter.

2. Facts of this case, according to the applicants, are that Post Master General, Orissa (respondent no.2) in his order dated 15.12.1984 published a corrected gradation list of all L.S.G. Sorting Assistants as on 1.1.1977. This corrected gradation list had been purportedly revised in accordance with the direction of the Hon'ble High Court of Orissa in several cases and in the light of the decision of the Hon'ble Supreme Court. In accordance with allotment of years of retrospective promotion in the gradation list, Senior Superintendent of R.M.S., Cuttack (respondent no.3) had passed three sets of orders granting consequential financial benefit according to the direction of the Hon'ble High Court of Orissa for fixation of pay of L.S.G. officials from their deemed date of promotion by stepping up of their pay equal to that of L.S.G. officials who were erroneously promoted. These orders were issued on 9.10.1986, 13.10.1986 and 14.10.1986. It is further submitted that these orders were issued so that Post Master General, Orissa Circle, would escape liability of contempt of Hon'ble High Court of Orissa in Original Criminal Misc. Case No.33/80, arising out of O.J.C.No.1397 of 1976. In accordance with the order dated

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13.10.1986 these applicants availed of the benefit of stepping up of pay and the amounts were drawn and paid to them on 2.12.1986. After more than seven years, following an audit report, the order of Senior Superintendent of R.M.S. was cancelled by the Circle Office and recovery of stepped up amounts was ordered in letters dated 15.6.1993 and 6.5.1994. Because of this, sixteen aggrieved Sorting Assistants including the applicants approached the Tribunal in O.A.No.34 of 1994 and some other O.As. These applications were disposed of by a common order dated 16.5.1995 in which the Tribunal quashed the order of recovery and directed that the departmental authorities shall be free to examine the facts and circumstances of these cases in detail in the light of the relevant rules and take a fair and judicious decision in the matter. Thereafter, the departmental authorities issued notice to the applicants to show cause against recovery. But ultimately, without examining the matter in depth as directed in order dated 16.5.1995 in O.A.No.34 of 1994 and other O.As. and without taking into account the observation of the Tribunal in O.A.No.86 of 1996, the impugned order of recovery dated 18.10.1996 (Annexure-1) has been passed. The applicants have stated that in their order dated 22.3.1996 disposing of O.A.No.86/96 the Tribunal had observed that where overpayment is the result of any administrative error or miscalculation on the part of the authorities and where amounts have thereby been disbursed a long time ago, it shall not be open or correct for them to rectify such error at a belated stage and/or to seek to recover the amounts so overpaid by their own mistake, after a long lapse of time. The applicants have stated that this observation of the Tribunal has been ignored by the departmental authorities while issuing the impugned notice of recovery dated 18.10.1996. In view of the above, the applicants have come up in this O.A. with the prayers referred to earlier.

28

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3. Respondents in their counter have stated that Senior Superintendent of R.M.S., "N" Division, issued three orders dated 9.10.1986, 13.10.1986 and 14.10.1986 by which pay fixation was ordered for 35 officials in the scale of Rs.425-640/- by stepping of of their pay. The purported, reason for stepping up of the pay of these thirty-five officials was stated to be that three other officials S/Shri K.C.Bhoi, R.C.Sethi and G.N.Behera, who belong to reserved community and got L.S.G. promotion in 20% reservation quota of posts with effect from 1.6.1978, 17.7.1978 and 26.4.1980 were junior to these thirty-five officials who represented for pay equalisation with their junior officials which was allowed. This stepping up was not in accordance with rules and undue benefit was given to these thirty-five officials. This was pointed out by audit while carrying out the internal check of the R. M.S. "N" Division during the period from 22.6.1992 to 27.6.1992. On the basis of the audit objection, orders were passed for recovery of the amounts wrongly paid to these applicants. The applicants approached the Tribunal in a batch of applications in O.A.No.34/94 and others which were disposed of in order dated 16.5.1995 and also in O.A.No.86/96 disposed of in order dated 22.3.1996. The Tribunal quashed the order of recovery and gave liberty to the departmental authorities to issue notice to these officials who had approached the Tribunal and after hearing their side and examining the matter in depth, particularly with regard to application of FR 22-C and FR 27 and then to pass a fair and judicious order. The respondents have stated that in accordance with the above order of the Tribunal, showcause notices were issued and after considering the reply of the applicants, the impugned order at Annexure-1 was passed. The respondents have stated that the impugned order has been passed strictly in accordance with the rules and instructions and keeping in mind the observation of

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the Tribunal and therefore, they have opposed the prayer of the applicants to quash the impugned order at Annexure-1.

4. The applicants have filed a rejoinder in which they have stated that giving of notional promotion to the applicants according to their eligibility and seniority and allowing them the arrears by extension of financial benefits was pleaded by respondent no.2 in Original Criminal Misc.Case No.33 of 1980, arising out of O.J.C.No.1397 of 1976. But later on such benefits have been withdrawn claiming that these have been detected to be irregular by the audit in 1993. The applicants have stated that the assertion in the counter that Senior Superintendent of R.M.S. is not the competent authority to sanction advance increment under FR 27 is not correct. It is stated that LSG cadre was divisionalised in order dated 16.1.1986 (Annexure-7) vesting powers of promotion, confirmation, etc., on Senior Superintendent of R.M.S. Secondly, it has been pointed out by the applicants that in paragraph 4.6 of the O.A, it has been asserted that the revised gradation list recasting the order of seniority of LSG officials with reference to their due year of promotion/eligibility has remained unaffected and has also been made the basis for further promotion to HSG II cadre and subsequent gradation list in the cadre. In the gradation lists issued on 1.7.1982, 1.7.1986 and 1.7.1990 both in LSG and HSG II cadres the applicants have been ranked senior to the three persons K.C.Bhoi, R.C.Sethi and G.N.Bhera and this assertion has not been controvered by the respondents in their counter. The applicants have also pointed out that no financial benefit other than stepping up of pay in the three orders dated 9.10.1986, 13.10.1986 and 14.10.1986 has been allowed to them and in view of this, they have contested the assertion of the respondents in paragraph 14 of the counter that the pay of the applicants was notionally fixed in the LSG cadre from the date of promotion and arrears of pay were

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confined to them for the period they actually worked in the LSG cadre in orders dated 10.11.1982 and 30.11.1984 (Annexures R/2 and R/3) which were much prior to the issue of the order of stepping up of pay. The applicants have also pointed out that in letter dated 27.3.1985 (Annexure-R/7) of the Circle Office addressed to Divisional Office retrospective promotions of the applicants have been confirmed along with decision of payment of LSG pay and allowances to the officials from 1.6.1974. The applicants have stated that in view of this, the assertion of the respondents in their counter that while issuing the three orders of stepping up of pay, Senior Superintendent of R.M.S. has quoted a wrong authority letter of the Circle Office is not correct. The applicants have also stated that neither in the counter nor in the impugned order the precise nature of objection of the Audit has been considered and discussed. The applicants have further stated in the rejoinder that arrear financial benefits along with retrospective promotion have been allowed to a large number of other officials whose names have been mentioned in paragraph 12 of the rejoinder. It is stated that no recovery has been made from these officials and all of them have retired. But similar treatment has been denied to the present applicants. The applicants have also questioned the assertion of the respondents in paragraph 12 of the counter that respondent no.2 issued the gradation list of LSG officials in his letter dated 15.12.1984. In this letter, there was no mention that they were to be given retrospective promotion in LSG cadre declaring them eligible to get LSG scale of pay retrospectively. The applicants have pointed out that this assertion is contrary to the letter dated 27.3.1985 at Annexure-R/7. This letter speaks of a demand raised by the Union regarding correct drawal of LSG gradation list from 1974 to 1983 and payment of LSG pay and allowances to the officials

of 1974 with effect from 1.6.1974. According to the applicants, in this letter payment of LSG pay and allowances according to the seniority list has been authorised. In view of this, the applicants in their rejoinder have reiterated their prayer.

5. We have heard Shri G.K.Misra, the learned counsel for the petitioners and Shri Akhaya Kumar Misra, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

6. It has been urged by the learned counsel for the petitioners that the revised gradation list was drawn up and consequential financial benefits were allowed according to the position of these applicants in the revised gradation list in accordance with the judgment of the Hon'ble High Court of Orissa. In contempt petition, Original Criminal Misc.Case No. 33 of 1980 arising out of O.J.C.No.1397 of 1976 the departmental authorities pleaded that the revised gradation list has been circulated and consequential financial benefits after revision of seniority requiring stepping up of pay have also been given to the applicants in that case. On that basis, the learned Senior Standing Counsel before the Hon'ble High Court was advised in the letter dated 18.8.1988 at Annexure-2 to move the Hon'ble High Court for dropping the charge of contempt. It has been submitted that after paying the financial benefits and getting out of the contempt charge by pleading the same, the respondents cannot be permitted now to resile from their stand and order recovery of those arrear financial benefits, as has been done in the impugned order dated 18.10.1996 circulated in memo dated 5.11.1996 (Annexure-1). The respondents, on the other hand, have stated in page 5 of their counter that the averment made by the applicants regarding stepping up of pay as per direction of the Hon'ble High Court of Orissa is not correct. As per the

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23

direction of the Hon'ble High Court in OJC No. 1395/76 (Annexure-R/1) revised gradation list has been drawn up and published. It has been further stated in this page that pay of the applicants was notionally fixed in LSG cadre from the date of their promotion and arrears of pay were confined to them for the period they actually worked in LSG cadre. Accordingly, consequential benefits were given to all the applicants and report was submitted by respondent no.3 to respondent no.2 in his letter dated 30.11.1984 (Annexure-R/3). The order dated 22.8.1979 of the Hon'ble High Court in OJC No.1 395/76 has been filed by the applicants at Annexure-8 of their rejoinder. From this, it is clear that the Hon'ble High Court quashed the impugned gradation list and directed that a fresh gradation list be drawn up on the principles indicated in two of their earlier decisions within six months and consequential benefits available to the petitioner , if any, by such redrawing of gradation list be given to him immediately thereafter. From the above it is clear that the direction of the Hon'ble High Court was not only for preparation of revised gradation list but also for giving consequential financial benefits. Respondents have stated that initially their pay was notionally fixed on the basis of their deemed date of promotion and accordingly their pay was notionally stepped up with effect from their notional due date of promotion but payment of arrears was originally confined only from the subsequent date when they were actually promoted to LSG cadre at higher rate from that day. Learned counsel for the petitioner has urged that the petitioners were entitled to get the higher pay from the date of their notional promotion because the fact that they were not given promotion from the due date was not because of their fault and because of this, they were not able to work in LSG posts from the due date of promotion. Therefore, for that period also the arrears

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should be allowed. In support of his contention, the learned counsel for the petitioners has relied on the decision of Calcutta Bench of the Tribunal in the case of Deb Kumar Gupta v. Union of India and others, ATR 1992 (2) CAT 573, where a Division Bench of the Tribunal had relied on the decision of the Hon'ble Supreme Court in the case of Union of India vs. K.V.Janakiraman, AIR 1992 SC 173, laying down that normal rule of "no work no pay" is not applicable to cases such where the employee although he is willing to work is kept away from work by the authorities for no fault of his. In this case, obviously the date of notional promotion was the date on which the applicants were entitled to be promoted had the correct gradation list been drawn up initially and as such in case the stepping up of pay was correctly done (a point which has also been questioned by the respondents and which will be dealt with later) the applicants should be entitled to arrear pay for that period. This contention of the learned counsel for the petitioners must, therefore, succeed.

7. The second point urged by the learned counsel for the petitioners is that even though the Tribunal in their order dated 16.5.1995 in OA No.34 of 1994 and other O.As. directed the respondents to examine the matter afresh in the light of the relevant rules and take a fair and judicious decision, the respondents in the impugned speaking order dated 18.10.1996 have not dealt with the matter in depth. Besides, it has been mentioned that the observation of the Tribunal in OA No. 86 of 1996 has not been taken into account. More particularly it has been urged that the applicability of FR 27 in respect of the three orders of stepping up has not been considered. Besides, it has been submitted that the precise nature of the objectin by the Audit and the question of its validity have not been considered in the impugned order dated 18.10.1996. The respondents have in reply averred that all

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aspects of the matter have been gone into in detail and depth in the impugned order. The representations filed by the applicants have been taken note of. The applicability of FR 27 has also been considered and on these grounds the respondents have contested the above submission of the applicants. From the order dated 18.10.1996 it is seen that respondent no.2 has considered the applicability of FR 27 and has found that FR 27 is not applicable to this case. The contending submissions of the parties with regard to applicability of FR 27 have to be considered at this stage. The applicants have stated in their rejoinder that in the order dated 16.1.1986 (Annexure-7) the LSG cadre was divisionalised vesting powers of promotion, confirmation, etc., on Senior Superintendent of RMS. On that ground, it has been urged by the applicants that Senior Superintendent of RMS had the power to grant advance increments under FR 27. On a reference to FR 27, this contention must be rejected because this rule lays down that subject to any special or general order that may be made by the President in this behalf, an authority may grant premature increment to a Government servant on a time scale of pay if it has power to create a post in the same cadre on the same scale of pay. It is not the case of the petitioners that Senior Superintendent of RMS, "N" Division, Cuttack, had the power to create posts in LSG cadre and therefore, FR 27 is not applicable in this case.

8. As regards the general point that in the order dated 18.10.1996 the matter has not been examined in detail and depth, we note that respondent no.2 has passed a detailed seven-page order in which all the facts have been considered and therefore, it is not possible to hold that respondent no.2 has not applied his mind while passing the order dated 18.10.1996. It is no doubt true that in the order dated 18.10.1996 the nature of the objection of the Audit has not been specifically referred to, but that would not amount

to non-application of mind because the grounds onwhich the original three orders of stepping up of pay have been held irregular have been elaborately discussed. This contention of the learned counsel for the petitioners must, therefore, fail.

9. The third point which requires to be considered is whether stepping up of pay was rightly done in the three orders in the facts and circumstance of this case. An incidental question linked to the above is whether Senior Superintendent of RMS was the competent authority to issue the order of stepping up of pay even if it is taken for granted that stepping up of pay was required to be done under the rules in this case. The second point can be answered first. Under the rules where stepping up has to be done, such order of stepping up has to be issued as an order under FR 27. This has been mentioned in page 98 of **Swamy's Compilation of Fundamental Rules and Supplementary Rules (9th Edition)**. In this case, we have already held that Senior Superintendent of RMS was not the competent authority to issue orders under FR 27 and therefore, even if it is held that stepping was required to be done in this case, Senior Superintendent of RMS, "N" Division, Cuttack, was not the competent authority to issue the three orders stepping up the pay of the applicants. The main question is whether stepping up was required to be done under the rules in this case. It appears that pay of these fifteen applicants was stepped up to be at par with the pay of K.C.Bhoi, Rushi Charan Sethi and Gopinath Behera. The applicants' case is that some of them were senior to K.C.Bhoi, some senior to Rushi Charan Sethi and some senior to Gopinath Behera. They were given notional promotion and in order to bring their pay at par with the above three persons, their pay was rightly stepped up in the three orders bringing it at par with that of K.C.Bhoi, Rushi Charan Sethi and Gopinath Behera from different dates. The respondents, on the other hand, have stated in page 5 of their counter that K.C.Bhoi, Rushi Charan

Sethi and Gopinath Behera all belong to reserved community and they were originally given promotion in 20% LSG cadre in reserved quota from 1.6.1974, 17.7.1978 and 24.6.1980 respectively. As these three officials got promotion earlier on the roster point basis by virtue of their belonging to reserved community, the applicants could not have claimed stepping up of their pay to be at par with the pay of these three officials. The basic requirement in a stepping up of pay case is that the person whose pay is to be stepped up must be senior in the lower grade to the person vis-a-vis whom the senior person's pay is to be stepped up. The second requirement is that both of them should have been promoted to the higher grade, and the third requirement is that the senior person would have been promoted first before the junior person. The fourth requirement is that the less pay of the senior in the grade to which he has been promoted must be a direct result of application of FR 22-C or any other rule <sup>pay on</sup> fixing promotion. By way of explanation, it can be stated that if the pay of the junior was higher than the pay of the senior in the lower scale because of grant of any advance increment to him in the lower scale, then on promotion of both in the higher scale, even according to their seniority, the pay of the senior would not be stepped up if the junior is getting higher pay in the grade to which they have both been promoted. In the instant case, K.C.Bhoi, R.C.Sethi and G.N.Behera belong to reserved community and they got promotion earlier than the applicants as per the roster point because of their reserved status. The learned counsel for the petitioners has relied on the decision of the Hyderabad Bench of the Tribunal in the case of N.Lalitha(smt.) and others v. Union of India and others, (1992) 19 ATC 569. In that case, the applicant, a senior claimed stepping up of her pay on par with the juniors

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who had earned increment during their ad hoc promotion to the higher scale on the basis of local seniority. It was held by the Tribunal in that case that the senior in such case would be entitled to stepping up of pay. From the above it would be clear that this case relates to ad hoc promotion of the juniors on local seniority basis. It is not the case here that K.C.Bhoi, R.C.Sethi and G.N.Bhera were given ad hoc promotion from an earlier date. As such this decision is not relevant for the present purpose. The second decision relied upon by the learned counsel for the petitioners is the case of N.H.Dave v. Union of India, (1992) 19 ATC 835, where it was held that while the applicant was on deputation, his junior got ad hoc officiation in the higher cadre and thereby got more pay while the senior could not be promoted by virtue of his being on deputation. In that event, the Tribunal held that the senior on his promotion after repatriation is entitled to ante-dating of his increment and consequent stepping up of his pay. Facts of this case are also quite different from the present case and this decision is also not applicable to the facts of the instant case. In view of the above, we hold that the applicants were not entitled to stepping up of their pay vis-a-vis K.C.Bhoi, R.C.Sethi and G.N.Bhera. This contention of the learned Additional Standing Counsel for the respondents is, therefore, upheld.

10. The last question which falls for consideration is whether in the facts and circumstances of this case, the respondents were entitled to recover the amounts paid to the applicants by virtue of the three orders issued by Senior Superintendent of RMS. We have noted earlier that when the original order of recovery was passed, the persons affected thereby came before the Tribunal in OA No.34 of 1994 and several other O.As., and the Tribunal in their order dated 16.5.1995 quashed the order of recovery and

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39

directed the departmental authorities to look into the matter afresh after giving the applicants an opportunity of showing cause against the proposed order of recovery. Thereafter when notices were issued to the applicants for showing cause against the proposed recovery, these fifteen applicants came up before the Tribunal in OA No.86/96 praying for quashing the notice to show cause. The Tribunal in their order dated 22.3.1996 declined to interfere in the matter on the ground that such action would be premature or unwarranted. While disposing of O.A.No.86/96, the Tribunal observed that the respondents shall be well advised to take note of the fact that where an overpayment is the result of any administrative error or miscalculation on the part of the authorities and where amounts have thereby been disbursed a long time ago, it shall not be open or correct for them to rectify such error at a belated stage and to seek to recover the amounts so overpaid by their own mistake after a long lapse of time. The Tribunal further observed that this is the settled position of law that courts including the Tribunal have held that any such attempted action is incorrect and impermissible. Learned counsel for the petitioners has urged that in the impugned order dated 18.10.1996 the above observation of the Tribunal has not been considered. In support of his contention that such amounts are not legally recoverable, the learned counsel for the petitioners has relied on the case of Smt.Pushpa Bhide vs. Union of India and others, ATR 1989(1) CAT 397. In that case, the applicant <sup>an</sup> was/ Assistant Teacher. According to the respondents, certain errors took place owing to oversight in giving higher seniority to her. The Tribunal noted that it was not the case of the respondents that the initial appointment of the applicant was fortuitous or her promotion as Selection Grade Teacher in the cadre of Assistant Teacher was ad hoc or temporary. Therefore, it was held that the

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respondents are estopped after several years from correcting what they claim to be mistake committed by the respondents themselves and withdrawing the benefits given in the past to the applicant retrospectively at the expense of the applicant. It was further held that the orders modifying seniority of the applicant and withdrawing the Selection Grade awarded to her cannot be upheld and are quashed. While taking the above view in Smt. Pushpa Bhide's case (supra), Jabalpur Bench of the Tribunal relied on an earlier decision in the case of Y.K. Verma vs. Union of India and others, (1987) 4 ATC 157, where a similar view was taken. It was also noted that Principal Bench of the Tribunal in the case of C.S. Bedi v. Union of India and others, ATR 1988(2) CAT 510, held that certain payments which were received by the applicant in that case on the basis of fixation of pay in 1981 on promotion to a higher post in which he continued to draw salary till 1986 when the mistake was detected after several years were irreversible and recovery of any excess payment after long lapse of time would be unjust, illegal and inequitable. A similar view has also been taken by the Principal Bench in the case of Chander Bhan v. Union of India, (1987) 3 ATC 432, relied on by Jabalpur Bench of the Tribunal in Smt. Pushpa Bhide's case (supra). In the instant case, we find that originally in the three orders issued in October 1986 these applicants were allowed promotion on different dates from 1976 to 1982 mentioned in the impugned order dated 18.10.1996. After more than seven years, the Audit raised objection in 1993 and in the impugned order by which the amounts are sought to be recovered has been issued in 1996, i.e., ten years after allowing the financial benefits. It is not the case of the records that for giving these benefits, the applicants were in any way responsible. It is stated that the mistake was committed by the departmental authorities. A decade has passed in the meantime. Some of the applicants have already retired and some are on the verge of retirement. There is, therefore,

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a *prima facie* case for an order not to recover the amounts. Respondent no.2 in the impugned order has noted that in case of another 12 officials full recovery of similar amounts has already taken place and recovery is going on instalment basis in two cases, and it has been urged that it would be inequitous to order non-recovery when recovery has been done from similarly placed individuals. The applicants in the rejoinder have stated that there were another nineteen persons who had also got similar financial benefits. In their case no recovery has been made and all of them have retired in the meantime. This contention of the applicants in their rejoinder has not been contested by the respondents by filing any memo or during hearing by the learned Additional Standing Counsel. Thus, the position is that there were a large number of similarly placed officials who got arrear financial benefits. Of these full recovery has been made in respect of 12 officials and in two cases recovery is continuing and on the other hand there were 19 other officials who similarly got arrear financial benefits but from whom no recovery was made. In view of this, recovery of similar amounts from fourteen officials as mentioned in the order dated 18.10.1996 cannot be a ground for upholding recovery in the case of these applicants. In view of the above, while upholding the order dated 18.10.1996 holding that stepping up of pay in the cases of the applicants was wrongly done, we direct that the respondents should not recover the amounts received by the applicants by way of arrear financial benefits for the reasons stated above. We, however, make it clear that in case any amount has already been recovered from these applicants, then the same need not be refunded to the applicants.

*S. J. M.*

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11. In the result, therefore, the Original Application is allowed in terms of the observation and direction given in paragraph 10 of this order, but, under the circumstances, without any order as to costs.

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(A.K.MISRA)  
MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
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