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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH;CUTTACK.

O.A.NO. 610 OF 1998

Cuttack, this the 27th day of April, 2001

Sri Hemanta Kumar Dutta 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
(SOMNATH SOM)
VICE-CHAIRMAN
27.4.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 610 OF 1998

Cuttack, this the 27th day of April, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM , MEMBER(JUDICIAL)

.....

Sri Hemanta Kumar Dutta, aged about 35 years,
son of Sri Chintamani Dutta,
At-Amalapara, P.O/ Dist.Dhenkanal
At present Asst. Registrar, Railway Claims Tribunal,
Bhubaneswar

..... Applicant

Advocates for applicant - M/s H.K.Mohanty
D.K.Tripathy
D.K.Pradhan

Vrs.

1. Union of India, represented through the Secretary,
Ministry of Railways, Central Secretariat,
New Delhi.
2. Chief Personnel Officer, South Eastern Railways,
Garden Reach, Calcutta-43.
3. Chief Personnel Officer (Projects),
East Coast Railways, Chandrasekharapur,
Bhubaneswar (Orissa).
4. Divisional Railway Manager (Personnel),
South Eastern Railway, Khurda Road (Jatni),
District-Khurda

.... Respondents

Advocates for respondents - M/s D.N.Mishra
S.K.Panda.

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O R D E RSOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 2.7.1997 at Annexure-9 rejecting his prayer for pay protection. The other prayer is for a direction to the respondents to fix his pay as per Establishment Serial No.23 of 1992 and to make payment of all arrears with interest at 18%. The respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed. For the purpose of considering this petition it is not necessary to go into too many facts of this case.

2. The admitted position is that the applicant was directly recruited as a Grade-B Officer in Reserve Bank of India where he worked from 4.8.1986 to 4.3.1989. He took the Civil Service Examination in 1987 and was recruited to Railway Traffic Service which he joined on 6.3.1989 as probationer. On appointment his pay was fixed in Railway Traffic Service at the entry level of Rs.2200/- along with D.A. At the time of leaving Reserve Bank of India he was getting basic pay of Rs.3000/- and D.A. of Rs.1072.50. The applicant has stated that according to the Department of Personnel's letter dated 7.8.1989, which was circulated as Establishment Serial No.23/92 of the Railway Board, his pay in the Reserve Bank of India should have been protected on his appointment in Railway Traffic Service and even though this was done by the departmental authorities in their letter dated 23.6.1997, by the impugned order dated 2.7.1997 the pay protection given

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was withdrawn only after eight days. He has stated that another officer, Shri P.K.Sahoo, who joined the Railways along with him on the same day on 6.3.1989, has been given the benefit of pay protection. In the context of the above he has come up with the prayers referred to earlier.

3. It is not necessary to record all the averments made by the respondents as these will be referred to at the time of considering the submissions made by the learned counsel of both sides. It is necessary to note at this stage that the respondents in their counter have admitted that such pay protection was allowed to Shri P.K.Sahoo who joined the Railways on the same day as the applicant. But on re-examination it was found that pay protection was wrongly allowed to Shri P.K.Sahoo and order dated 2.8.1997 at Annexure-R/2 has been issued correcting the mistake and directing recovery of the amount wrongly paid to Shri Sahoo.

4. We have heard Shri H.K.Mohanty, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have perused the record. The learned counsel for the petitioner has filed written note of submissions which has also been taken note of. In support of his contentions the learned counsel for the petitioner has relied on the following decisions:

- (1) Pradeep v. Union of India, AIR 1984 SC 1420;
- (ii) Smt. Krishnabai v. Nivrutti, AIR 1983 SC 1213;

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- (iii) U.K. Katna, v. Union of India, 1988(8) ATC 199;
- (iv) N.C.Saxena (dr) v. Union of India, (1993) 23 ATC 268;
- (v) T.N.Electricity Board v. R.Veerasingh & ors,
(1993) 3 SCC 414; and
- (vi) Union of India and others v. M.V. Valliappan & ors,
(1999) 6 SCC 259.

We have gone through these decisions. At the time of hearing, the learned counsel for the petitioner has filed an affidavit stating that similar pay protection has been allowed to one R.K.Meena who got selected in the same Civil Service Examination in 1987 and was appointed to Group-B Railway Board Secretariat Service. Before joining the post, Shri Meena was working in State Bank of Bikaner and Jaipur and on joining the Railway service in December 1989 his pay was protected on the basis of Establishment Serial No.23/92. The learned counsel for the petitioner has also relied on the Railway Board's circulars dated 21.9.1978 and 21.5.1981 filed by him in which reference has been made to Rule 2018A(1) of Indian Railways Establishment Manual, Vol.II. The learned Standing Counsel was given ^{several} adjournments at his instance to file a memo enclosing a copy of the above rule of Indian Railways Establishment Manual as also with regard to the factual submissions in respect of Sri R.K.Meena. In order dated 26.3.2001 it was noted that the learned Standing Counsel submitted that he would file the same within a week after serving copy on the other side and would file the receipt. But no such memo/document or receipt of service of such memo on the other side was filed. In view of this, further time could not be allowed to the respondents

to file the documents and in its absence we have to go by the pleadings of the parties.

5. In the OA the petitioner has prayed for benefit of pay protection in terms of Indian Railways Establishment Serial No.23/92 (Annexure-3). In this Establishment Serial, the circular dated 7.8.1989 of the Department of personnel & Training has been circulated. So basically the applicant is claiming for pay protection in terms of the Department of Personnel & Training's circular dated 7.8.1989. Paragraph 4 of this circular clearly states that this circular comes into force with effect from 1.8.1989. The circular provides that earlier pay protection was granted to candidates who were appointed by recruitment through Union Public Service Commission if such candidates were earlier in Government service. No such pay protection was granted to candidates who before joining Government service through Union Public Service Commission were earlier working in Public Sector Undertakings, Universities, Semi-Government institutions or Autonomous Bodies. Government have felt that because of this decision it has not been possible for Government to draw upon the talent that is available in non-Government organisations, as mentioned above. In view of this, in the circular it has been decided that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government institutions or autonomous bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their

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initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA as admissible in the Government will protect the pay plus D.A. already being drawn by them in their parent organisations. The point to be noted in this connection is that this circular granting pay protection in such cases came into force with effect from 1.8.1989 and the applicant joined the Railways service prior to that date, i.e., on 6.3.1989. Therefore, on the face of it, he is not entitled to the benefit of this circular. The learned counsel for the petitioner has submitted that the fixation of the date 1.8.1989 is arbitrary. He has also stated that as the circular dated 7.8.1989 does not speak of date of joining, at least the pay protection should be available to the applicant from 1.8.1989, if not from 6.3.1989, the date of his joining the Railways Traffic Service. We have considered these submissions carefully. All executive orders are prospective in nature unless expressly or by necessary implication they are given retrospective effect. It is no doubt true that the circular has been issued on 7.8.1989 and has been given a limited retrospective effect by stating that it will come into force from 1.8.1989, i.e., the beginning of the month. But there is no reason to hold that this circular will be given retrospective effect without any limit. That will lead to reopening of all old cases where persons had joined Government service after rendering service in Public Sector Undertakings, Semi-Government organisations, Universities and autonomous bodies, etc. Moreover, while giving a particular benefit, it is always

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open for the Government to fix a date from which such benefit will be given. There is no arbitrariness involved in this. In view of this, it must be held that the circular dated 7.8.1989 has operation only from 1.8.1989 and the applicant having joined prior to that date cannot have the benefit of this circular.

6. The second argument of the applicant is that granting that the circular will have effect from 1.8.1989, the applicant should be given pay protection from 1.8.1989 as the circular does not mention anything about date of joining. This contention is without any merit because the pay of the applicant has to be fixed on his joining the Railways Traffic Service on 6.3.1989 and once such pay has been fixed, he cannot claim under the rules that his pay should again be refixed from 1.8.1989 by giving him the benefit of the circular. This contention is accordingly rejected. *J.M.*

J.M. 7. The learned counsel for the petitioner has relied on the case of Mr.R.K.Meena who also qualified for another Railway Service in the same Civil Services Examination of 1987. As earlier noted, in spite of several opportunities, the learned Standing Counsel (Railways) for the respondents did not file any memo indicating the case of Mr.Meena. But in any case, the case of Mr.R.K.Meena does not go to support the case of the applicant even if it is accepted, as contended by the learned counsel for the petitioner, that pay protection was given to Mr.Meena. This is because according to the applicant's affidavit

dated 9.11.2000, R.K.Meena joined Railway Service in December 1989, i.e., after coming into force of the circular dated 7.8.1989. It has been submitted by the learned counsel for the petitioner that R.K.Meena qualified in the same Civil Services Examination and joined in December 1989. By giving him pay protection, while denying the same to the applicant, the applicant has been discriminated against. There is no merit in this contention because law is well settled that mere classification does not result in discrimination. Under the law it is permitted to treat a class of people differently if such classification has an intelligible differentia with the object sought to be achieved. The object sought to be achieved in the circular dated 7.8.1989 is to draw talent available in Public Sector Undertakings, Semi-Government organisations, Universities and Autonomous Bodies into Government service and it is always open for the Government to give effect to this from a particular date, i.e., 1.8.1989 and by this no discriminatory treatment has been meted out to those persons who have joined Government service prior to 1.8.1989 by treating them differently from those who have joined after 1.8.1989 even though both were similarly situated by having worked in Public Sector Undertakings, etc., prior to joining Government service. In this connection, the learned counsel for the petitioner has relied on the

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decisions in the cases of Pradeep v. Union of India, AIR 1984 SC 1420, Smt. Krishnabai v. Nivrutti, AIR 1983 SC 1213, U.K. Katna v. Union of India, 1988(8) ATC 199, N.C. Saxena (Dr.) v. Union of India, (1993) 23 ATC 268, T.N. Electricity Board v. R. Veerasamy and others, (1993) 3 SCC 414, and Union of India and others v. M.V. Valliappan and others, (1999) 6 SCC 259. In any case, the decisions of the Hon'ble Supreme Court in R. Veerasamy's case (supra) and M.V. Valliappan's case (supra) do not provide any support whatsoever to the case of the applicant. On the contrary, in both these cases, fixing of a cut-off date was upheld.

8. Lastly, the learned counsel for the petitioner has relied on the circulars dated 21.9.1978 and 21.5.1981. We have gone through these two circulars. The circular dated 21.5.1981 merely provides that the circular dated 21.9.1978 is effective from that date only and by virtue of the circular dated 21.9.1978 past cases cannot be reopened. Therefore, the only point for consideration is the circular dated 21.9.1978. This circular on the face of it deals with case of pay protection in case of persons who before joining Railways service had worked in earlier/Government service. There is no mention in this circular about the service under the Public Sector Undertakings, Semi-Government organisations, Universities and Autonomous Bodies. The first sentence of the circular dated 7.8.1989 also mentions that as per extant rules such pay protection is available when previous service was under Government. This circular only provides for the

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same and does not cover the case of the applicant. The applicant in his OA has claimed pay protection under Establishment Serial No.23/92 and not under this circular dated 21.9.1978.

9. In view of our discussions above, we hold that the applicant is not entitled to the reliefs claimed by him in this Original Application which is accordingly rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.4.2001.

CAT/CB/ 27th April, 2001/AN/PS