

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 130 OF 1999

Cuttack, this the 20th day of December, 2000

Rabi Narayan Mallik

Applicant

Vrs.

Union of India and another ...

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*.

D.M.M.
20/12
(D.V.R.S.G.DATTATREYULU)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20/12/2000



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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI D.V.R.S.G.DATTATREYULU, MEMBER(JUDICIAL)

.....
Rabi Narayan Mallik, aged about 37 years, son of late Ganeswar Mallik, resident of At/PO-Tarabha, P.S-Sadar, Dist.Dhenkanal, at present Clerk, Office of the Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda

..... Applicant

Advocates for applicant-M/s A.K.Mohanty
R.K.Behera
S.Sahoo
R.C.Pradhan
J.K.Patnaik
M.R.Tripathy

Vrs.

1. Union of India, represented through Principal Accountant General, Orissa, Bhubaneswar, District-Khurda.
2. Deputy Accountant General (Admn.), Office of Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda..... Respondents

Advocate for respondents-Mr.B.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Jam
In this Application the petitioner has prayed for refixing his basic pay at the stage of Rs.1030/- in the pay scale of Rs.950-1500/- at the time of his joining the office of Accountant General (A&E), Orissa, Bhubaneswar. He has also claimed for payment of arrears with interest within a stipulated time. The respondents have filed counter opposing the prayers of the applicant,

and the applicant has filed rejoinder. For the purpose of considering the petition, it is not necessary to record all the averments made by the parties in their pleadings. The basic facts of this case relating to the present dispute are not at controversy.

2. The applicant has stated that he joined service under the Government of Orissa on 1.8.1990 in the pay scale of Rs.950-1500/- through the Staff Selection Commission he got appointment as a Clerk in the office of Accountant General (A&E), Orissa, Bhubaneswar, in the pay scale of Rs.950-1500/-. He has stated that he was relieved from the post he held under the State Government on 24.9.1994 and joined his present assignment on 26.9.1994. In order at Annexure-2 the applicant was allowed the benefit of past service for the period from 1.8.1990 to 24.9.1994 when he was working as Clerk under Government of Orissa, in the College of Teachers' Education, Angul. His resignation from the employment under the State Government was treated as technical resignation and the interruption of his service on 25.9.1994 and 26.9.1994 was condoned with the stipulation that the condoned period will not count towards qualifying service. It is the admitted position that on his joining as Clerk in Accountant General (A&E)'s office, his pay was fixed at the beginning of the scale of Rs.950-1500/-. The applicant has stated that at the time he left the service of the State Government he was at the stage of Rs.1030/- in the pay scale of Rs.950-1500/- and in the present petition his prayer is to protect his pay at Rs.1030/- on 26.9.1994 and to allow him the arrears with interest.



S. Jum.

3. This matter came up for hearing on 12.12.2000 when lawyers had stayed away from court without any intimation. The petitioner was present in person and he wanted to make submissions in person. Accordingly, we have heard the petitioner in person. The learned Additional Standing Counsel was absent and therefore we did not have the benefit of hearing him.

4. The petitioner has claimed that his pay drawn in the service under the State Government should have been protected at the time of fixation of his pay as Clerk in the office of Accountant General (A&E) because this is provided in circulars dated 30.7.1966 and 17.11.1975 as also the circular dated 3.1.1996. In paragraph 4.6 of his petition he has referred to Accountant General's circular dated 18.4.1996. This is a memorandum of the office of the Accountant General (A&E), Orissa, Bhubaneswar, in which the Department of Personnel & Training's circular dated 3.1.1996 (Annexure-5) has only been circulated. The applicant has not enclosed the circulars dated 30.7.1966 and 17.11.1975. But the gist of these two circulars has been printed at pages 52 and 53 of Swamy's Compilation of FRSR Part-I (14th Edition). In these two circulars it has been provided that

Within a State Government servant drawing pay in the revised scale after merging of dearness allowance under the State Government, is appointed to a post under the Central Government, and the post carries duties and responsibilities of greater importance than those attaching to the post held by him under the State Government, the initial pay of the official in the Central Government post should be fixed under FR 22-C with

reference to the basic pay only. The other provisions of these circulars need not concern us because from the above it is clear that fixation of pay under these two circulars can be claimed only when the post under the Central Government, which the erstwhile employee of the State Government joins, carries duties and responsibilities of greater importance. In the instant case the applicant was in the pay scale of Rs.950-1500/- under the State government and he joined as Clerk in the office of Accountant General (A&E) in the same scale of Rs.950-1500/-. Both the posts held by him in the State Government and on his joining the office of Accountant General (A&E) are posts of Clerk and it cannot be said that the post which he joined under the respondents is one carrying higher duties and responsibilities compared to the post he held under the State Government. In view of this, the circulars dated 30.7.1966 and 17.11.1975 are not applicable to him.

S. S. J. S. M.
5. The third circular relied upon by the applicant is circular dated 3.1.1996 (Annexure-5). The gist of this circular has also been printed in pages 53 and 54 of Swamy's Compilation of FRSR Part I(14th Edition). In the first paragraph of this circular reference has been made to the earlier circulars dated 30.7.1966 and 17.11.1975. In this circular how pay protection has to be given to cases which are covered by the circulars dated 30.7.1966 and 17.11.1975 has been clarified. This circular is also not applicable to the case of the applicant.

6. In support of his contention the applicant has relied on the decision of the Hon'ble Supreme Court in the case of K.Gopinathan v.Union of

India, 1993 SCC (L&S) 46. The facts of that case are widely different. The appellant therein was working as Assistant Sub-Inspector of Police under the State from where he went on deputation to Central Bureau of Investigation and got absorbed in Central Bureau of Investigation. After absorption while fixing his pay, his basic pay in Central Bureau of Investigation was reduced and this was held to be incorrect by the Principal Bench and their view was upheld by the Hon'ble Supreme Court in the above case. From the above recital of facts in K.Gopinathan's case(supra) it is clear that the law as laid down by the Hon'ble Supreme Court in the above case provides no support to the claim of the petitioner.

7. The respondents have mentioned in their counter that the case of the applicant was referred to Auditor General who clarified in his letter dated 12.3.1999 that pay of the applicant has been rightly fixed. At our instance the learned Additional Standing Counsel for the respondents had filed the letter dated 4.2.1999 in which the case of the applicant was referred to Comptroller & Auditor General of India by the office of Principal Accountant General (A&E) and the instruction issued in letter dated 12.3.1999 by the office of Auditor General. It has been clarified by the Auditor General that benefit of pay protection is not available to cases of technical resignation of a State Government employee who joined the Central Government. A word by way of clarification is necessary on this point. Government of India's circular dated 17.6.1965, gist of which has been printed at page 46 of Swamy's Compilation of FRSR Part-I

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 (14th Edition) provided that when an employee resigns his post before taking up appointment in the new post in the same or another Department, then notwithstanding technical resignation benefit of past service, if otherwise admissible under the rules, should be given for the purpose of fixation of pay. In a further circular dated 22.1.1993, which has been printed at pages 46 and 47 of Swamy's Compilation of FRSR Part-I (14th Edition), the conditions which have to be satisfied before such past service in the original Department can be counted for the purpose of fixation of pay in the new Department have been laid down. These two circulars apply only in case of technical resignation given by an employee for the purpose of leaving one Department to join a new post in the same or another Department under the Central Government. So far as the State Government employee joining Central Government is concerned, the three circulars referred to by the applicant govern the field and the case of the applicant does not come within the benefit of these three circulars as he did not join a post in the Central Government which carries higher duties and responsibilities.

S. Venugopalam
 8. The last point urged by the applicant is that similar pay protection has been given to one S.Venugopalam. At Annexure-3 of the OA the petitioner has enclosed the pay fixation order dated 30.7.1998 who joined as Clerk under the respondents on 24.5.1994 and from this it appears that pay protection was allowed to him. Respondents in paragraphs 10 and 15 of the counter have mentioned that pay fixation in respect of S.Venugopalam was done by Deputy Accountant General(Works

Accounts), Puri, who was empowered to do such pay fixation. The respondents have stated that records have been called for to examine that case and if it is found incorrect the pay of Sri Venugopalam will be fixed as per rules. They have also mentioned that the benefit allowed to other colleague is unintentional and the same is under examination and suitable action will be taken in the matter. In view of the above averment of the respondents in their counter, we direct that they should take a view in the matter of fixation of pay of Shri Venugopalam within a period of 90(ninety) days from the date of receipt of copy of this order and if the case of the applicant is on all fours with the case of Shri Venugopalam, then the applicant will be entitled to have the same benefit as is ultimately allowed to Shri Venugopalam.

9. With the above observation and direction, the Original Application is disposed of. No costs.

20.12.2000
(D.V.R.S.G.DATTATREYULU)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.12.2000
VICE-CHAIRMAN

December 20, 2000/AN/PS

