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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.291 OF 1999
Cuttack this the 12th day of July 2000

Gadadhar Satpathy & Ors.

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Applicants

- VERSUS -

Union of India & Ors.

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Respondents

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.7.2000

J.S.Dhaliwal
(J.S.DHALIWAL)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.291 OF 1999
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI J.S. DHALIWAL MEMBER (JUDICIAL)

1. Gadadhar Satpathy
S/o. Late Narayan Satpathy
Vill - Urali, PS: Sadar,
Dist: Cuttack, Ex-HSG-II
RMS-N-Divn., Cuttack
2. Binoy Kumar Paul, S/o.Sudhansu Paul,
At: Shivaji Nagar, PS: Bidanasi,
Cuttack, Ex-HSG-II, R.M.S.-N-Divn.,
Cuttack
3. Badhadev Mallick, S/o. Late Narendranath
Mallick, Vill-Kanpur, PS: Niali, Dist:Cuttack
Ex-H.S.G.-II, R.M.S.-N-Division, Cuttack
4. Sudarsan Acharya, S/o.
Vill-Brahmansailo, PS: Niali,
Dist: Cuttack, Ex-HSG-I, R.M.S.-N-
Divn. Cuttack
5. Subal Chandra Mallick, S/o. Late Dinabandhu
Mallick, Aurobindanagar, PS: Madhupatna
Dist: Cuttack, Ex-HSG-II, RMS-N-Divin.,
Cuttack
6. Gadadhar Parida, S/o. Late Bhagaban Parida
Plot No.34, Chintamaniswar Colony
Bhubaneswar, Ex-HSG-II, RMS-N-Division
Cuttack
7. Surendranath Mohanty, S/o. Nilamani Mohanty
Vill-Madhu Sasan, PS: Patkura
Dist: Kendrapara, Ex-HSG-II, RMS-N-Divn.,
Cuttack
8. Kamal Kumar Mishra, S/o. Late Laxmikanta
Mishra, Bidyadarpur, PS: Chauliaganj,
Dist: Cuttack, at present H.R.O.,
R.M.S. 'K' Division, Jharsuguda
9. Banamali Behera, S/o.
At present H.R.O., RMS 'N' Division
Puri

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10. Bhupati Charan Das,
 S/o. Late Bankim Chandra Das,
 At: Nayabazar, PS/Dist: Balasore
 at present H.S.G-II(SCR) HSA
 Cuttack RMS/2B

11. Jagdish Chandra Tripathy,
 S/o. Late Ganeswar Tripathy
 Vill-Pandara, PS: Tritol,
 Dist: Jagatsinghpur, at present
 HRO, RMS 'N' Division, Cuttack

12. Nrusingha Charan Mishra
 S/o. Late Brundaban Mishra
 Vill-Bhubanpur, PS: Dharmasala,
 Dist: Jajpur, at present S.R.O.
 R.M.S. 'N' Division, Jajpur Road

13. Rangadhar Rath
 S/o. Ram Chandra Rath
 Vill-Chatrapara, PS: Dharmasala
 Dist: Jajpur, at present HSG-I,
 R.M.S. 'N' Division, Bhubaneswar

14. Purna Chandra Naik
 at present H.S.G.-II, R.M.S. 'N'
 Division, Bhubaneswar

15. Chandramani Jena,
 at present LSG, R.M.S. 'N' Division
 Balasore, HSG-III? SRO, RMS-N-Division
 Balasore

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Applicants

By the Advocates

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M/s.G.K.Mishra
 G.N.Mishra
 S.Biswal
 A.K.Das

-VERSUS-

1. Chief Post Master General
 Orissa Circle, Bhubaneswar

2. Senior Superintendent of Railway Mails
 R.M.S. 'N' Division, Buxibazar
 Cuttack

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Respondents

By the Advocates

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Mr.A.K.Bose
 Sr.Standing Counsel
 (Central)

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ORDER

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MR .J .S .DHALIWAL, MEMBER (JUDICIAL) : 15 applicants have joined in this Original Application pleading that they were all Sorting Assistants under the respondents having joined service a long time back. Applicant Nos. 1 to 7 have already retired on superannuation (now said to be 10) while the remaining are about to retire. They claim that a judgment was delivered by this Bench of the Tribunal in Original Application No.844/96 on 4.1.1999. In the name of implementation of the said judgment respondents have reduced their basic pay with retrospective effect and consequently their retirement benefits including D.C.R.G. and monthly pension, monthly pay and allowances have been reduced. As a sample, letter received by applicant No.1 dated 21.4.1999 has been annexed as Annexures-1 and 1/1. They plead that this refixation of pay is by error committed by respondents in interpreting judgment of this Tribunal mentioned above and judgment in O.A. Nos.785/94 and 774/94 (Annexures-2, 3 and 4). They plead that the order of recovery on the basis of refixation of their pay reducing their basic pay with retrospective effect was quashed to the extent it sought recovery or had made recovery from them. Quoting from judgment (Annexure-2) they plead that they were allowed promotions on different dates from 1976 to 1982 and that the cut off date forming the basis of refixation of pay has been arbitrarily fixed on the basis of audit reports and consequent administrative orders dated 15.6.1993 and 6.5.1994 which have been set aside by the Tribunal in its judgment dated 16.5.1995 in O.A.34/94.

Reduction of pay is also violative of principles of natural justice, it has the effect of refixation amounting to withdrawal

of benefits given to them in the post in the name of rectification of mistakes and such action ~~is~~ is barred by Law of Estoppel and that the basic fixation of pay in 1996 on promotion to higher posts in which they continued to draw salary till 1999 was irreversible fact. They have thus prayed for a direction to respondents to ~~restore~~ restore their basic pay to the stage before the refixation done by the respondents in the name of implementation of the judgment (Annexure-2) and as such arrears of salary be paid to them with their monthly dues and monthly pensions and retiral dues arising out of such erroneous refixation/reduction within a stipulated time. They have also prayed for equitably compensating them the losses caused by the error of respondents.

2. Respondents contest the claim of the applicants pleading that the whole pleas in the Original Application are contrary to the decision of the Tribunal in O.A.844/96. Pay fixation was ordered in the case of 35 officials under 'N' Division, Cuttack and the dates of their promotion with the stage at which pay ^{their} was fixed have been mentioned. This fixation was given in/favour for the reason that they claimed one S/Shri K.C.Bhoi and R.C. Sethy and G.N.Behera had been given promotions to L.S.G. in 20% reserved quota w.e.f. 1.6.1974, 17.7.1978 and 26.4.1980 on the basis that they belong to reserved category. In 1986, S.S.R.M. agreed to the request of the applicants and all those 35 officials and they were given the benefits of such promotions w.e.f. the date these were given to S/Shri K.C.Bhoi, R.C.Sethy and G.N.Behera. This irregularity was pointed out by the audit in the year 1992 and thereafter recovery of the amount wrongly paid to these 35 officials was commenced. 16 out of ~~those~~ 35 persons came to the Tribunal through various Original

Applications bearing Nos. 34, 284, 22, 417, 338, 415, 416, 25, 24 and 23 of 1994. Through a common judgment dated 16.5.1995 these were disposed of with the observation that the benefits given to the said officials could not be abruptly withdrawn without prior notice to them and on this ground the Tribunal set aside the order. The Tribunal held that question as to whether F.R. 22(c) is applicable to these applicants justifying the stepping up of pay and whether F.R. 27 is applicable had not been examined in the case and these were required to be done. It was held that respondents shall be free to examine the facts and circumstances of the case in the light of the relevant rules of the Department and take a fair and judicious decision in the matter. Show cause notices were issued to those persons. Since show cause notices were found to be not proper, fresh show cause notices were issued cancelling the earlier notices to those officials for giving them reasonable opportunity to put forth their views. After examining their replies and the case individually, the C.P.M.G. came to the conclusion that stepping up of pay of those officials was irregular and passed orders of recovery through Memo dated 18.10.1996 of the full amount paid to them wrongly. This order was challenged in O.A. 844/96. Four officials had retired between 1986-1991, prior to the order of reduction and thus they were not covered under any orders and no recovery had been made from them. In the judgment dated 4.1.1999, the Tribunal held that stepping up of pay of those officials was wrongly done, though it was ordered that respondents should not recover the amounts received by the applicants in that O.A. and in case some amount has been recovered, the same need not be refunded to them. Now

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the applicants are claiming that refixation of pay has been wrongly done.

3. Applicants have filed a rejoinder claiming that the matter had been taken to the Hon'ble High Court where it was held in various Writ Petitions that Shri K.C.Bhoi and others did not get promotion under the reservation quota on roster based points. It quashed the L.S.G. Gradation List and a direction was issued to recast the same and to pay the consequential financial benefits. Respondents in a Criminal M.C.33/80 had stated that the directions in the judgment of the Hon'ble High Court had ~~not~~ been complied with and thus the C.P.M.G. has not kept the liability of contempt. They claim that present action amounts to contempt of the Hon'ble High Court.

4. We have heard learned counsel for the parties and examined the materials on the file.

5. We find that this litigation has been going on for ^{very} ~~a~~ long time. We need not repeat all the facts as the judgments at Annexure-2 to 4 have dealt with the aspects involved in the present case in detail. Reading of the judgments shows two things distinctly; that the order of respondents had two effects on the rights of the applicants by correcting the mistake and the stepping up pay given to the applicants.

- (a) that their basic pay and consequential allowances stood revised and refixed w.e.f. a retrospective date (possibly w.e.f. 1986) on different dates and thus affected their monthly pay and allowances and in case of some of these applicants their pensionary/retiral benefits
- (b) that the amounts paid in excess to them as per corrected refixation were ordered to be recovered

All these applicants initially had challenged such orders which came to be decided in the year 1995 in a number of OAs through a common judgment. The impugned orders in those cases

were quashed on the ground that these had been passed in violation of principles of natural justice and liberty was given to respondents to consider refixation of pay of the applicants taking into account relevant rules/instructions of the Department after issuing show cause notices to them. Such notices were actually issued to the present applicants and after their reply, case of each one of them was examined resulting in a further order. This order was challenged in O.A.844/96. For this reason we have examined the judgment at Annexure-2 carefully.

All the questions raised in the present O.A. have been meticulously dealt with in this judgment by a Division of the C.A.T., Cuttack. We find that application of F.R.27 which was not gone into the 1995 judgment was considered in Para-7 to conclude that this F.R. 27 is not applicable in the case. Regarding the allegation that in order dated 18.10.1986 the matter had not been examined in detail and depth the Bench observed that the order was a detailed 7 pages order in which all the facts have been considered and the order was with application of mind. In Para-9, the Court dealt with the point as to whether stepping up ^{of} pay in favour of the present applicants was rightly done in the three orders in the facts and circumstances of the O.A. before the Court including the question as to whether the S.S.P., RMS was competent to issue the order of stepping up pay. The Court answered that the SSP, R.M.S. (N) Division, Cuttack was not competent authority to issue those orders of stepping up pay of the applicants. Regarding correctness of stepping up pay in case of the applicants vis-a-vis K.C.Bhoi, R.C.Sethy and G.N.Bhera, whom the applicants had claimed to be juniors to them and who were getting higher pay in the grade,

the Bench held that they (K.C.Bhoi & Ors.) had got their pay fixed by way of promotions on the roster point belonging to reserved community and the applicants could not have claimed ^{up} stepping of their pay at par with them. The pay of senior would not be stepped up if the junior is getting higher pay in the grade to which those persons, viz. K.C.Bhoi, R.C.Sethi and G.N. Behera who were alleged to be belonging to reserved community. The Court held in Para-9 "in view of the above, we hold that ^{not} the applicants were/entitled to stepping up of their pay at par with Shri K.C.Bhoi, R.C.Sethi and G.N.Bhera. This contention of the learned Addl. Standing Counsel for respondents is, therefore, upheld". The other part of the judgment deals with question of propriety of making recovery from the applicants which has been discussed above.

In the present case the applicants have tried to reopen the matters which have been duly considered, first; under the directions of this Court by the Respondents and 2nd; it has been examined under the rules by the Division Bench of this Tribunal in its judgment dated 4.1.1999 in O.A.844/96. It has been, in no uncertain terms, held that the present applicants were given the stepping up of their pay on a wrong basis and that they were not entitled to stepping up of their pay. It was thus held that withdrawal of order of stepping up pay in L.S.G. 20% was correct. If respondents have passed the present orders, which not only amounts to rectification of the mistakes, but the consequential orders of refixation of their pay, the said cannot be held to be illegal. The natural consequence would be that the persons who are in service would definitely start receiving pay and allowances lower than what they were receiving before refixation. In the facts and circumstances

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of the present case no further show cause notice was required to be given to them as these reasons had been gone through and detailed orders have been passed validity of which has been examined by this Tribunal and the same have been upheld. The contention based on the aspect that principles of natural justice have not been adhered to in the present case is to be rejected. Not only in Annexure-2 but we find that Annexure-4 is a case filed by one of the applicants in the present O.A. Shri Gadadhar Satpathy wherein all the present issues which were earlier also adjudicated upon and are raised in the present O.A. were raised by him. He had also challenged the orders dated 3.3.1986 mentioning that he was promoted to the rank of H.S.G. II and had retired on 30.6.1994 and had claimed the deemed date of his promotion to be 13.3.1981. This O.A. came to be dismissed by judgment dated 4.1.1999. We have examined the facts and other issues raised. Simply on the basis that the present applicants have claimed that the present orders passed by Respondents in the name of implementing directions/observations made by the Division Bench of this Tribunal in O.A.844/96 are based on misinterpretation of the directions and that the judgment has been mis-implemented, we are of the opinion that the pleas taken are all void and baseless. There is neither misinterpretation of the judgment nor anything has been done by the respondents which may be against the points adjudicated in the judgment dated 4.1.1999, as aforesaid. We thus find no merit in the present O.A.

Before parting, the learned counsel for the applicants made a plea that assuming that stepping up of pay in case of the applicants in 20% Grade of L.S.G. vis-a-vis K.C.Bhoi and so on was illegal, all these applicants at least were entitled to

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stepping up of their pay in their own rights without any comparison with K.C.Bhoi and others at least from some subsequent dates. Their grievance is that respondents have, while passing orders of refixation in their cases have not considered this aspect at all. We are not inclined to go into this question as to from which date each one of the applicants is entitled to be placed in the Higher Grade in L.S.G. 20% and thereafter in HSG while detaching such rights in them from the case of K.C.Bhoi and others as it is not the case pleaded in the present O.A. If the applicants were entitled to be placed in L.S.G. and thereafter in H.S.G. as per their quota w.e.f. someother dates after taking up their fixation in the higher grade in comparison with K.C.Bhoi and others, they could have filed representations to the respondents or could have filed a separate case on this basis alone. The present case filed by the applicants is with regard to refixation of pay in the light of the observation made by this Bench of the Tribunal, which they claim has been wrongly done by the respondents. If there are any rights vested with the applicants for grant of L.S.G and H.S.G. w.e.f. someother dates, they will be at liberty to take recourse to the available remedies separately before the appropriate forum, provided the law permits the same.

With the above observation the present O.A. is dismissed leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

Jaswinder Singh
(J.S.DHALIWAL)
MEMBER (JUDICIAL)