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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 584 OF 1999
Cuttack, this the 15th day of March, 2001

Parimal Bose and another Applicants

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.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Soni
(SOMNATH SONI)
VICE-CHAIRMAN
15.3.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

1. Parimal Bose, aged 62 years, son of late Mihir Kumar Bose, At-Bhaskar Ganja, District-Balasore.
2. Prabodh Chandra Mahapatra, aged 61 years, son of late Kasinath Mohapatra, At-Sunaht, Balasore....Applicants

Advocates for applicants-M/s K.C.Sahoo
B.K.Sahoo

Vrs.

1. Union of India, represented by Director General, Research & Development, Defence Research and Development Organisation, Ministry of Defence, Sena Bhawan, New Delhi-110 001.
2. The Director & Commandant, Proof & Experimental Establishment, Chandipur, Balasore.....Respondents

Advocates for respondents-Mr.S.B.Jena
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application, the two petitioners have prayed for quashing the orders at Annexure-7 and Annexure-7/1 increasing their special pay from Rs.70/- to Rs.140/- per month with effect from 1.1.1996. The second prayer is for a direction to the respondents to fix their pay in the Fifth Pay Commission revised scale of Rs.5000-8000/- with effect from 1.1.1996.

2. The respondents have filed counter opposing the prayers of the applicants, and the applicants have filed rejoinder reiterating their prayers. We have heard Shri B.K.Sahoo, the learned counsel for the applicants and Shri S.B.Jena, the learned Additional

Standing Counsel for the respondents. At the time of hearing, the learned Additional Standing Counsel was directed to file certain documents particularly the Civilians in Defence Services (Revised Pay) Rules, 1997. Accordingly, these documents have been filed and we have perused the pleadings of the parties and the documents filed.

3. Essential facts of this case are not in controversy. The admitted position is that the two applicants were Upper Division Clerk (UDC) in the pay scale of Rs.1200-2040/- and they were in receipt of special pay of Rs.70/- per month. Their grievance is that their pay should have been fixed with effect from 1.1.1996 in the scale of Rs.5000-8000/- and the special pay should have been discontinued. Instead of that the departmental authorities have given them the revised scale of Rs.4000-6000/- and the special pay has been enhanced from Rs.70/- to Rs.140/- per month over and above the scale of Rs.4000-6000/-. It is necessary to note at this stage that the applicants retired from service on superannuation on 31.8.1996 and 31.3.1997. The Fifth Pay Commission recommendations were brought into force for the general class of Central Government employees through Central Civil Services (Revised Pay) Rules, 1997. Rule 2 of these Rules specifically provides that these rules are applicable to persons appointed to civil services and posts in connection with the affairs of Union whose pay is debitable to Civil Estimates. For persons including civilian employees who are working under the Ministry of Defence and whose pay is debitable to Defence Estimates,

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the Ministry of Defence had brought out Civilians in Defence Services (Revised Pay) Rules, 1997 which was promulgated on 9.10.1997 and were deemed to have come into force with effect from 1.1.1996. It is on the basis of these Rules that the applicants have made their prayers. In Part-B of these Rules, against Serial No.I(g) it has been mentioned that UDCs in the scale of Rs.1200-2040/- with special pay of Rs.70/- per month would have the replacement scale of Rs.5000-8000/- without special pay. In this paragraph, reference is also given to Paragraph 46.17 of the Report of the Fifth Pay Commission. In this paragraph the Pay Commission had noted that in subordinate offices having no clerical grade above the level of UDCs, special pay is granted to 10% of the UDCs at the rate of Rs.70/- per month. They have further noted that a demand has been made to enhance this amount and to remove the anomaly caused in fixation of pay, when a junior UDC in receipt of special pay is promoted and his pay is fixed at a higher stage than a senior. Taking into consideration this demand, the Pay Commission in paragraph 46.17 have stated that they have separately recommended, as a general policy, that special pay should not be given unless this is absolutely essential. In the present case, since 10% of the UDCs are involved in complex duties, they recommended that 10% of UDC in such organisations be upgraded to the level of Assistant. They also noted that this will also remove the anomaly that arises in fixation of pay. The applicants have stated that as this recommendation has been accepted by the Government and scale of Rs.5000-8000/- without special pay has been recommended by way of replacement of scale of

Rs.1200-2040/- of those UDCs who were in receipt of special pay of Rs.70/- per month, they should have been given the scale of Rs. 5000-8000/- without any special pay and the action of the respondents in fixing their pay in the scale of Rs.4000-6000/- and increasing the special pay from Rs.70/- to Rs.140/- per month is not in accordance with the Rules. So far as increasing their special pay is concerned, the Fifth Pay Commission in paragraph 109.4 of their report have dealt with the question of quantum of special pay. They have recommended that pending completion of review suggested by them, special pay already admissible may be doubled in those cases where the same was sanctioned at the current rates between January 1986 and December 31,1990 and enhanced by 50% in those cases where this was sanctioned only after 31.12.1990. They have also removed the ceiling on the quantum of special pay. It has been also clarified by them in this paragraph that only those cases in respect of which the Commission have not made specific recommendation will be covered by this dispensation. This recommendation has been accepted by the Government and accordingly the special pay had been increased from Rs.70/- to Rs.140/- per month. In view of this, it cannot be said that increase in the special pay of the applicant from Rs.70/- to Rs.140/- per month is unauthorised and therefore, the prayer of the applicants for quashing the two orders at Annexures 7 and 7/1 increasing their special pay from Rs.70/- to Rs.140/- per month with effect from 1.1.1996 is held to be without any merit and is rejected.

4. The sole remaining question for consideration is whether the applicants should have been fitted in the replacement scale of Rs.4000-6000/- with enhanced special pay of Rs.140/- per month, as has been done by the departemental authorities or in the scale of Rs.5000-8000/- without special pay as is claimed by the applicants. The Civilians in Defence Services (Revised Pay) Rules, 1997 are accompanied with different schedules and explanatory memorandums. Part B of the First Schedule of the above Rules provides as follows:

"PART B

REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

The revised scales of pay mentioned in column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter alia to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades, etc. Therefore, in those cases where conditions such as changes in recruitment rules, etc., which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministry of Defence to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts, etc., it will be necessary for the Ministry of Defence to not only accept these pre-conditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily

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have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then."

Moreover, in Part-A of the First Schedule under Serial No.7 against the scale of Rs.1200-2040/- replacement scale has been shown as Rs.4000-6000/- which has been granted to the applicants. In the details of the scales in Part-B under serial No. I(g), Rs.5000-8000/- has been shown as the replacement scale for UDCs in the scale of Rs.1200-2040/- who were getting the special pay of Rs.70/- per month. Besides the note in Part-B of the First Schedule, which has been fully quoted by us, it is to be noted that under Rule 4 of the Civilians in Defence Services (Revised Pay) Rules, 1997 it is provided that the scale of pay of every post/grade specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof. Along with this Rules, an explanatory memorandum has also been enclosed. In this explanatory memorandum it has been mentioned, while explaining Rule 4, that where the recommendation is for upgradation of pay scales for individual categories of posts in a Department or cadre otherwise than by rationalisation of pay scales, for the present the normal replacement pay scales for the existing scales of pay as shown in Part A of the First Schedule shall be allowed and separate orders in such cases will be issued subsequently. We have earlier noted that in Part-B of the Revised Pay Rules it has been mentioned that in cases where the Pay Commission have recommended higher scales subject to certain conditions prescribed by them as pre-requisite for granting of these scales, it will be necessary for the Ministry of Defence

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not only to accept these preconditions but also to implement them before the scales are applied to those posts. In Part-B of the First Schedule it has been further mentioned that it would therefore be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then. The respondents have pointed out that the Ministry of Finance issued order dated 19.3.1999 regarding grant of upgraded pay scales to 10% of the posts of UDC in non-Secretariat Administrative offices. Modalities of implementing the recommendation were laid down in this circular dated 19.3.1999. This has been enclosed at Annexure-R/4 to the counter. In this circular it is provided that UDCs posted against 10% identified posts may initially be placed in the scale of Rs.4000-6000/- and allowed special pay of Rs.140/- per month with effect from 1.1.1996. Thereafter a sanction may be issued to create additional posts of Assistants in the scale of Rs.5000-8000/- equal to a number of 10% identified posts of UDCs carrying special pay of Rs.70/- per month and against the additional posts of Assistants so created, UDCs may be considered for promotion on the basis of seniority -cum-fitness and with effect from the date of creation and filling up of the additional posts of Assistants, the special pay may be abolished. It is stated that the existing orders on the subject stand modified to the extent mentioned as above. Apparently, therefore, even prior to issuing of this circular dated 19.3.1999, there were other circulars with regard to modalities of fixing pay of 10% of the identified posts of UDC in receipt of special pay of Rs.70/-, but these have not been filed by

either side. The respondents have pointed out that following the above procedure, in order dated 25.3.1998 filed by the respondents, 94 posts of UDCs representing 10% of the total authorised strength of 943, carrying special pay of Rs.70/- were upgraded to the grade of Assistants in the scale of Rs.5000-8000/- and this order was given effect to with effect from 15.4.1998. In the annexure to this letter, against Balasore where the applicants were serving three posts of UDC carrying special pay of Rs.70/- per month were upgraded as Assistants in the scale of Rs.5000-8000/- against the total 31 posts of UDC. The respondents have filed a memo stating that for filling up these three posts of Assistant, three persons were considered by the DPC and they were given promotion to the post of Assistant from 15.4.1998. Thus, it is clear that the Civilian in Defence Services (Revised Pay) Rules, 1997 provide that where upgradation of post is necessary, as in the case of UDCs carrying special pay of Rs.70/-, the incumbents have to be given the normal replacement scale of Rs.4000-6000/- and their special pay will stand increased from Rs.70/- to Rs.140/- and only after creation of the post of Assistant, the post should be filled up by way of promotion from UDCs through DPC on the basis of merit-cum-seniority. Such upgraded posts of Assistant were created with effect from 15.4.1998 and were filled up and the UDCs promoted to the grade of Assistant got the scale of Rs.5000-8000/-. The two applicants unfortunately having retired before this date, they have not been considered. The respondents have not committed any illegality either in fixing the pay of the applicants in the normal replacement scale of

Rs.4000-6000/- and by increasing their special pay from Rs.70/- to Rs.140/- per month along with the replacement scale. None of the persons promoted to the grade of Assistant has been given promotion with effect from any date prior to retirement of these two applicants and therefore, they have also not been discriminated against in any way. In support of his contention, the learned counsel for the petitioners has relied on the decision in the case of Patheja Brothers Forging and Stamping & another v. ICICI, 2000(6) SCC 545. This decision deals with the question of maintainability of a suit against the guarantor of loan and this has no application to the facts of this case.

5. In view of our above discussions, we hold that the application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.3.2001
VICE-CHAIRMAN

15th March, 2001/AN/PS