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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 201 OF 2000
Cuttack this the 1st day of March/2001

Dipak Ch. Das

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(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 ?


(SOMNATH SOM)
VICE-CHAIRMAN

L. 1.3.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO. 201 OF 2000
Cuttack this the 1st day of March/2001

CORAM:

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

...

Dipak Chandra Das, aged about 58 years,
S/o. Haralal Das, PO/PS - Keonjhar
All India Radio Station, Dist-Keonjhar (Orissa)

...

By the Advocates

Applicant
M/s. A.K. Biswal
Ashok Kr. Mishra

-VERSUS-

1. The Chief Administrator-cum-Joint Secretary
to the Govt. of India, Ministry of Home Affairs,
Department of Internal Security (Rehabilitation
Division) Dandakaranya Sub-Cell, Jaisalmar House
Mansingh Road, New Delhi

...

By the Advocates

Respondent
Mr. U. B. Mohapatra
Addl. Standing Counsel
(Central)

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): Applicant, who served as
Divisional Accountant under Dandakaranya Development Project
on being promoted from 10.3.1976 to 8.11.1993 and thereafter
on re-deployment serving under All India Radio, files this
Original Application for the following reliefs:

- 1) The pay scale of the applicant may be revised
from 650-1200/- from 10.3.76 and Rs.2000/- to
350/- from 1.1.86 and Rs.8000 to 13,500/- from
1.1.96 as per the 5th Pay Commission Report.
That the applicant further prayed that he may
be provided financial benefit which is accrued
to his post and salary from the date of his
joining as Divisional Accountant till date;
- 11) Any other relief(s) as this Hon'ble Tribunal
may deems fit and proper in interest of
justice may be allowed to this application".

2. Facts are not in dispute. Earlier he preferred
Original Application 351 of 1992 before this Bench for

enhancement of pay scale of Divisional Accountants to Rs.2000-3200/- with effect from 1.1.1986 on the ground that Senior Accountants of the p Project, who are inferior to the Divisional Accountants and who form feeder cadre for promotion to the cadre of Divisional Accountants got the benefit of service in their scales, i.e. Rs.500-900 from 1.1.1973 and Rs.1640-2900/- from 1.1.1986 by the directions of this Bench in Original Application Nos 182/86, 164/90 and 165/90. In judgment dated 24.6.1994, this Bench held that Divisional Accountants are higher in cadre ^{than} from Senior Accountants and directed to give them scale of Rs.2000-3200/- with effect from 1.1.1986 (Annexure-R/2).

The Department challenged this before the Apex Court, who upholding the findings of this Bench set aside the direction of this Bench in fixing a pay scale and directed the Government to fix appropriate pay scale (Annexure-R/1). Government in order at Annexure-R/4 in 1999 sanctioned the pay scale of Rs.2000-60-3200/- with effect from 1.1.1986 (revised to Rs.5500-200-10,500/- with effect from 1.1.1996) till 8.11.1993, i.e., before his redeployment in All India Radio.

3. The grievance of the applicant is that during the pendency of the earlier Original Application he filed additional rejoinder (Annexure-5), requesting that he should be allowed pay scale from Rs.650/- to 1200/- (pre-revised) from 10.3.1976 and Rs.2000-4500/- from 1.1.1986 onwards. Judgment being silent in this regard he filed Review Application 4/95. on the ground that the Divisional Accountant being a higher post than Senior Accountant, whose pay has been directed to be raised to Rs.500-900, pay of Divisional Accountant should carry higher scale of Rs.650-1200/- with effect from the date his joining as

Divisional Accountant till 1.1.1986.

4. The sole Respondent vehemently opposed this prayer on the ground of maintainability and other grounds to be discussed later. No rejoinder filed.

5. We have heard Shri A.K.Biswal, learned counsel for the applicant and Shri U.B.Mohapatra, the learned Addl.Standing Counsel appearing for the Respondents Department. Besides notes of arguments submitted by the applicant, we have also perused the records of O.A.251/92 and connected Review Application.

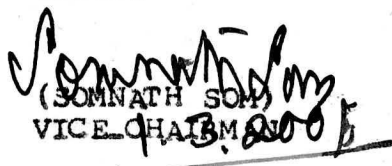
6. In the earlier O.A.251/92, there was prayer for enhancement of pay scale only with effect from 1.1.1986. This Bench as well as the Apex Court also gave direction for pay fixation from 1.1.1986 only. Filing of additional rejoinder construing a revised prayer without amendment of the Original Application will not serve any purpose. The fact remains the earlier Original Application was not amended to include any additional prayer. The review petition was dismissed on 15.2.1996 and did not even contain prayer for the scale of pay of Rs.2000-3500/-.

7. Thus it comes to this that conferment of pay scale Rs.650-1200/- from 10.3.1976 and Rs.2000-3500/- from 1.1.1986 though ^{W.D.} could not have ^{W.D.} been made in the earlier Original Application at the time it was filed and ^{though could have been made} through subsequent amendment, had not been made. This means the applicant abandoned this part of the claim which according to him accrued to him by then. Having abandoned this claim in the earlier O.A. it is not open for the applicant to agitate the same in this Original Application under Order - 2 Rule - 2 C.P.C. Accordingly this part of the prayer is not maintainable.

8. In regard to his claim for fixation of pay scale of Rs.8000-13,500/- from 1.1.1996, the applicant relies on Annexure-7 a xerox copy of part of V Pay Commission Report. But this, as rightly pointed out in the counter relates to Secretariat Security Force whose duties and responsibilities are entirely different. His pay has been correctly fixed at Rs.6500-10,500/- with effect from 1.1.1996.

9. Decisions in Mahesh Narasayya Clintal case reported in 1994 SCC 255 and Karam Chand's case of Punjab & Haryana High Court reported in 1994(5) SLR 473 relied on by the applicant are not relevant as these do not deal with the issue of maintainability as discussed above.

10. In the result there is no merit in this application which is accordingly dismissed, but without any order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

14.3.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)