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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 229 OF 2000

Cuttack, this the 14th day of August, 2001

Biharee Lal Patnaik Applicant

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not?

Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? **No**

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.8.2001

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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)

.....
Biharee Lal Patnaik, aged about 69 years,
son of late C.S.Pattanayak, At: M14, 209, IRC Village,
Nayapalli, Bhubaneswar Applicant

Advocate for applicant - M/s B.K.Mohanty
P.K.Khuntia



1. Vrs.
Union of India, represented through its Secretary,
Ministry of Personnel, Public Grievance and Pension
(Department of Personnel & Training), New Delhi.

2. State of Orissa, represented through its Chief
Secretary to Government of Orissa, Bhubaneswar.

3. Special Secretary to Government of Orissa, General
Administration Department, Government of Orissa,
Bhubaneswar, Orissa Respondents

Advocates for respondents - Mr.A.K.Bose, SR.CGSC
for R-1; &
Mr.K.C.Mohanty, Govt.
Advocate for Rs-2 & 3

ORDER

SOMNATH SOM , VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a
direction to the respondents to refix his pay at Rs.4700/-
on 1.1.1987, at Rs.4850/- on 1.1.1988 and at Rs.5000/- on
1.1.1989 and to recalculate his superannuation pension from

1.7.1989 accordingly and pay the arrear salary and arrear pension with interest at 24% per annum.

2. Union of India(respondent no.1) has filed counter opposing the prayers of the applicant. State Government (respondent nos.2 and 3) have also filed counter and additional counter, and the applicant has filed rejoinder. For the purpose of considering this petition, it is not necessary to refer to all the averments made by the parties in their pleadings. In any case, the facts necessary for determination of this O.A. are not at controversy. We have heard Shri B.K.Mohanty, the learned Senior Counsel, assisted by Shri P.K.Khuntia, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for Union of India and Shri K.C.Mohanty, the learned Government Advocate for respondent nos.2 and 3, State Government of Orissa. After conclusion of hearing, the learned Government Advocate was directed to file circulars dated 16.3.1993 and 24.12.1990. After several adjournments, the circular dated 24.12.1990 was produced on 1.8.2001. The other circular had been produced earlier. The learned counsel for the petitioner has relied on the following decisions:

JVM (i) Union of India v. E.S.Soundera Rajan, etc.
AIR 1980 SC 959;

(ii) Commissioner of Income-tax v. Smt.Godavaridevi Saraf,
113(1978) ITR 589, decided by Hon'ble High Court of Bombay;

(iii) Sk. Harun v. State of Orissa and others,
72(1991) CLT 4;

(iv) K.P.Varghese v. I.T.Officer, Ernakulam,
AIR 1981 SC 1922; and

(v) D.S.Nakara and others v. Union of India,
 (1983) 1 SCC 305.

We have perused these decisions.

3. The admitted position is that the applicant joined Government service as a member of Orissa Administrative Service and was promoted and appointed to Indian Administrative Service in order dated 18.8.1982. His year of allotment was fixed as 1978. He superannuated on 30.6.1989. After the Fourth Pay Commission recommendation came in, Government of India introduced a Junior Administrative Grade (Non-functional) for IAS officers with pay scale of Rs.3950-125-4700-150-5000/- on completion of nine years of service. As the applicant's year of allotment was 1978, he became eligible for JAG (Non-functional) from 1987 and was allowed the scale from 1.8.1987 and his pay was fixed at Rs.4700/- from 1.8.1987. He accordingly got one increment and his pay was fixed on 1.8.1988 at Rs.4850/- and in this scale he retired from service on 30.6.1989. The applicant's prayer is that he should have been allowed JAG (Non-functional) from 1.1.1987 instead of 1.8.1987 and accordingly his pay would have been fixed at Rs. 4700/- on 1.1.1987 instead of 1.8.1987. In that event he would have got another increment on 1.1.1988 raising his pay Rs.4850/- and still another on 1.1.1989 raising his pay to Rs.5000/- before his retirement on 30.6.89. It is necessary to note that prior to appointment to IAS by the Presidential order, dated 18.8.1982, the applicant had worked as Administrative Officer, Orissa Forest Corporation equivalent Ltd., a post which was declared in status and responsibility to the post of Deputy Secretary to Government in IAS with effect from 30.7.1982 in the order dated 30.7.1982 at Annexure-R-2/4. From the above facts it is clear that the



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sole point for consideration in this case is the date from which the applicant should have been allowed non-functional scale of JAG. On the point of effective date for granting non-functional scale of Junior Administrative Grade, Government of India have issued as many as six circulars from time to time. These circulars are dated 31.3.1987, 6.7.1987, 24.12.1990, 16.3.1993, 17.3.1994 and 22.6.1999. All these circulars have been enclosed by the parties and we have perused the same. As earlier noted, the Junior Administrative Grade non-functional scale came into force with effect from 1.1.1986 and the applicant was allowed this scale with effect from 1.8.1987. In the circular dated 31.3.1987 it has been mentioned that J.A.G. scale should be allowed on first July of the year in which the incumbent completes nine years of service. By way of example also it was mentioned that an officer whose year of allotment is 1978 (as in the case of the applicant) shall be allowed the JAG from 1.7.1987. Government of India in their counter in paragraph 3 have stated that they are not aware of the circumstances under which the applicant was allowed the Grade from 1.8.1987. The answer to this can be found from the circular dated 6.7.1987 in which it has been stated that an option may be given to the member of the Service concerned to count the period of nine years from the month following the month in which he was appointed to service or from the month following the month he started officiating continuously in a cadre post immediately preceding his appointment to the Service.

The applicant was appointed to IAS in the order dated 18.8.1982, but he started officiating in a post which was declared equivalent to a cadre post in the order dated 30.7.1982 and with effect from that date and therefore the State Government have allowed him JAG non-functional scale from 1.8.1987, taking his date of continuous officiation in the IAS from 30.7.1982. The petitioner has based his claim on the circular dated 16.3.1993 which has been filed by the learned Government Advocate on our direction. This circular provided that on completion of nine years of service reckoned from the year of allotment, the officers may be allowed JAG non-functional scale from 1st January of the year in which they complete nine years of service. Thus, the applicant effectively wants that in pursuance of this circular he should be allowed JAG from 1.1.1987.

Government of India have in order dated 17.3.1994 stated that doubts have been expressed regarding applicability of their circular dated 16.3.1993. It has been clarified in this circular dated 17.3.1994 that all financial sanctions have only prospective effect unless specified otherwise and as it has not been specifically provided in the circular dated 16.3.1993 that it will have retrospective effect, this benefit of giving JAG from 1st January of the year would only have prospective effect and would not cover past cases. This has been further clarified in letter dated 22.6.1999 by Government of India addressed to the Chief Secretary to Government of Orissa when State Government consulted Government of India on this point.

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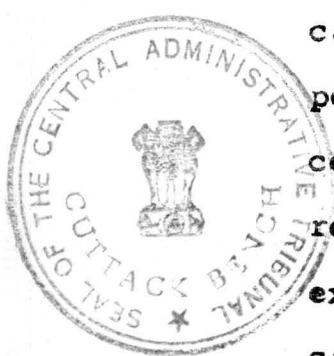
4. It has been submitted by the learned Senior Counsel for the applicant that as in paragraph 5 of the circular dated 16.3.1993 it has been mentioned that instructions contained in circulars dated 31.3.1987 and 6.7.1987 may be deemed to have been superseded to the extent indicated above, the circular dated 16.3.1993 must be deemed to have been given retrospective effect. We are unable to accept the above contention because supersession of a circular can be made prospectively as also with retrospective effect. Generally where a circular is superseded with retrospective effect, in the new circular it is provided that the later circular is given effect to in place of the earlier circular, or it is specifically provided that the later circular will have retrospective effect. As in this case, the circular dated 16.3.93 did not provide that it would have retrospective effect and it merely stated that the two earlier circulars mentioned above are deemed to have been superseded to the extent mentioned in this circular dated 16.3.1993, we hold that the circular dated 16.3.1993 cannot be taken to have been given retrospective effect.

On
5. The decision of the Hon'ble Supreme Court
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in E.S.Soundara Rajan's case (supra) the correctness of the decision of the Hon'ble High Court of Bombay in the matter of pay scale and emoluments of Commercial Clerk and Assistant Station Master/Station Master was considered. The Hon'ble Supreme Court directed that while the result of the decision of the Hon'ble Andhra Pradesh High Court will prevail, the law laid down by the said decision stands set aside. This decision has no application to the case of the petitioner. In Smt.Godavaridevi Saraf's case (supra) the Hon'ble High

Court of Bombay held that even though before the Income-tax Appellate Tribunal, validity of any provision of Income-tax Act cannot be questioned, the Appellate Tribunal was right in taking note of a decision of the Hon'ble High Court of Madras striking down a particular provision. This decision is also of no help to the applicant. Sk. Harun's case (supra) deals with fixation of interse seniority amongst Lecturers and Readers and the issue of condonation of minimum academic qualification of Second Class Master's Degree. This case also does not provide any support to the case of the petitioner. K.P. Varghese's case (supra) deals with certain provisions of Income-tax Act, and the question of retrospective operation of the circular issued by the executive authorities was not an issue considered in that case. Hon'ble Supreme Court took note of the well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. In this case, no provision of any statute is under consideration and administrative orders are always of prospective operation unless these are specifically or by necessary implication given retrospective operation. In view of this, we hold that the circular dated 16.3.1993 cannot be given retrospective operation and therefore, the petitioner is not entitled to have his pay fixed from 1.1.1987 in JAG Non-functional scale.

6. In the result, therefore, the Original



Application is held to be without any merit and the same
is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
14.8.2001



CAT/Cutt.Bench/ 14th August, 2001/AN/PS