

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 343 OF 2000  
CUTTACK THIS THE 09<sup>th</sup> DAY OF December, 2005

BRAJAKISHORE MOHAPATRA ... APPLICANT

-VERSUS-


UNION OF INDIA & ORS. .... RESPONDENTS

FOR INSTRUCTIONS

11. Whether it be referred to reporters or not? *yes*

12. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

10  
**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.343 OF 2000**  
CUTTACK THIS THE 9<sup>th</sup> DAY OF December, 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND**

**THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

...

BRAJAKISHORE MOHAPATRA,  
44 years, S/o.Late Rankanath Mohapatras,  
at present serving as Inspector,  
Central Excise & Customs,  
BHUBANESWAR-1.

...Applicant

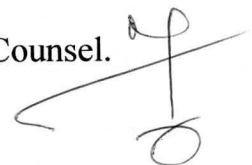
By the Advocates : M/s. A.K.Mishra,  
J.Sengupta,  
B.B.Acharya,  
D.K.Panda,  
P.R.J.Dash,  
C.Mohanty,  
G.Sinha,  
Advocates.

**-VERSUS-**

1. Union of India represented through its Secretasry, Ministry of Home Affairs, Rehabilitation Division, Jaismiler House, Mansingh Raod, New Delhi.
2. Union of India through its Secretary, Ministry of Finance, Department of Expenditure, New Delhi.
3. Commissioner of Central Excise and Customs, Bhubaneswar.

...Respondents

By the Advocates : Mr.U.B.Mohapatra, Sr.St.Counsel.



## O R D E R

### MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant was initially appointed as an Untrained Graduate Teacher (in the pay scale of Rs. 260-430/- which was subsequently revised to Rs. 330-430/-) on 30.11.1979 in MV 79 High School. The said High School was managed and controlled by the Dandakarnya Development Authority (in short 'D.D.A'). The Applicant, having been found surplus in D.D.A was redeployed as U.D.C. in the Central Excise and Customs Organisation of Bhubaneswar/Orissa where he joined on 21.11.1987. The grievance of the Applicant is that, although he had discharged the duties and responsibility of a post carrying higher scale of pay of Rs.425-640/- from 05.12.1979 to 31.12.1985 under the previous employer, he was not given the said scale of pay. It is the case of the Applicant that even after the directions of the Hon'ble Supreme Court and order dated 22.-5-2000 of the Ministry of Home Affairs in Rehabilitation Division, the salary for the (period during which the Applicant had worked as a middle school teacher) having not been paid he has sought intervention of this Tribunal by filing the present Original Application under section 19 of the Administrative Tribunals Act, 1985, for payment in the scale of Rs. 425-640/- from 05.12.1979 to 31.12.1985



and in the scale of Rs. 1400-2300/- from 01.01.1986 to 21.12.1987. The Applicant has further prayed to direct the Respondents to fix his pay for the subsequent period at a higher revised rate.

2. Respondents, by placing a counter on record, have stated that Applicant having been relieved from DNK/D.D.A Project, joined in the Central Excise Organisation as UDC on 23-12-1987 in the pay scale of Rs. 1200-2040/-. Subsequently he was promoted to the grade of Tax Assistant with the pay scale of Rs. 1350-2250/- and, thereafter, to the post of Inspector during the year 1994. The Respondents have stated that the Applicant is not covered by the principle decided by the Hon'ble Apex Court of India; as he was not recruited as a Primary School Teacher and he also did not work as a middle School teacher and that the Applicant was appointed initially as UGT in the High School and worked in the High School as a UGT till he was relieved from DNK/D.D.A Project. Therefore, the Respondents have opposed the prayers made in the O.A. by the Applicant.

3. During the course of hearing, learned counsel appearing for respective parties have reiterated their stands taken in the pleadings and it is not necessary to record all those arguments; as the entire matter can be decided on the basis of the judgments of the Hon'ble Apex Court of India and on the basis of the materials placed pertaining



4 7

-4-

to posting/working of the Applicant as a teacher in the middle school of DDA.

4. In this connection it is profitable to quote the orders passed by Hon'ble Apex Court of India (dated 13th August, 1997) rendered in Civil Appeal No. 7268 of 1996 in the case of PRATIMA PAL AND OTHERS Vrs. UNION OF INDIA AND ANOTHER; which reads as under:-

“ O R D E R

The appellants, aggrieved by an order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated 10<sup>th</sup> February, 1993 in O.A. No. 1475 of 1990 have preferred this appeal.

The main grievance of the appellants seems to be that one Ms. Vidya Gupta, similarly placed like appellants, was given the benefit of the salary meant for the middle school teacher though he was appointed as Assistant Teacher but the work of middle school teacher was extracted from her. The Tribunal while disposing of the petition as a matter of fact has observed that in the case of Ms. Vidya Gupta she was given a specific order to work in the middle school and, therefore, that was distinguishable from the cases of the applicant. Factually that observation was not correct. Therefore, the appellants moved the Tribunal by way of review petition which was also dismissed holding that the Bench may have erred, however, every error committed by a Court can not be reviewed.

After hearing learned counsel for the parties, we find that the appellants are entitled to the same benefit, as was given to Ms. Vidya Gupta in her case (T.A.NO. 360 of 1986 ) by the Jabalpur Bench of the Central Administrative Tribunal.

J

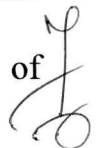
The result would be that the appellants will be entitled to the salary of middle school teachers during the period for which they worked as Middle School Teachers even though their appointment orders were for Primary School Teachers. We make it clear that the appellants are not entitled to the pay scales of Middle School Teachers, namely Rs. 425-640 but they will be paid the salary of middle school teachers so long they worked as the teachers in the middle school. The appeal is disposed of accordingly. No costs. The difference between the salary will be paid within three months from the date of receipt of this order”.

As revealed from record, after the above orders of the

Hon’ble Supreme Court of India, the Ministry of Home Affairs issued an order. on 22-05-2000 which reads as under:-

“In pursuance of Hon’ble Supreme Court’s order dated 13th August, 1997 in Civil Appeal No. 7268 of 1996 by Pratima Pal and others and in continuation of this Ministry’s order of even number dated 27.04.1998 and corrigendum dated 1.5.1998, sanction of the competent authority is hereby conveyed for extension of benefit of difference in salary to Primary school Teachers/Assistant Teachers/Untrained Graduate Teacher of Dandakaranya Project for the period they served in the Middle Schools as teacher. These categories of Teachers will not be entitled to the pay scale of middle school teachers, namely Rs. 425-640/- but they will be paid the salary of middle school teachers so long they worked as the teachers in the middle school. They will be entitled to the salary of middle school teachers during the period for which they worked as Middle School Teachers even though their appointment orders were for primary school teachers.”

5. On going through the orders of the Hon’ble Supreme Court of India, referred to above, and on going through the letter of



9

-6-

the Ministry of Home Affairs (supra) we are of the view that those can cover the case of the Applicant.

6. Now, therefore, it is to be determined as to whether the Applicant had ever worked as a Teacher of the Middle School of DNK/DDA Project. In this connection our attention has been drawn, by the learned counsel appearing for the Applicant, to the Office Order dated 23.01.1981 (under Annexure-15) passed by the DNK/DDA Project authorities transferring and posting the Applicant from Damsite ME School to MV-73 ME School. From the said document/letter it is clear that the Applicant had worked for certain period in the ME School.

7. Resultantly, as per the views expressed by the Hon'ble Apex Court of India, the Applicant will be entitled to the salary in the pay scale meant for middle school teaches (for the period he worked as Middle School Teacher) even though his appointment was a Primary School Teacher. The differential amount of salary should, therefore, be calculated and paid to the Applicant within three months from the date of receipt of this order. This Original Application accordingly stands allowed. No costs.

(B.N. SOM-)  
VICE-CHAIRMAN

09/12/05  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)