

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 362 & 363 OF 2000
Cuttack, this the 64th day of August, 2001

Sri Debi Prasad Mohapatra and 10 others (OA No.362/2000)
Sri Pravat Chandra Pani and 18 others (OA 363/2000)

.....

....Applicants

Vrs.

Comtroller and Auditor General of India
and others 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)

Sonmathi, Son
(SONMATH SONI)
VICE-CHIEF JUDGE
6.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS. 362 & 363 OF 2000

Cuttack, this the 6th day of August, 2001

CORAM:

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

In OA 362/2000

1. Sri Debi Prasad Mohapatra, aged about 38 years, son of Sri Bansidhara Mohapatra, resident of village Apilo, Post Jhadeswapur, District-Cuttack and at present working as Senior Accountant.
2. Sri A.Jankiram, aged about 43 years, son of Sri A.Narasimha Rao, resident of village/post Golapalli Street, Berhampur, District-Ganjam, and at present working as Senior Accountant.
3. Sri Pramod Kumar Samal, aged about 41 years, son of Sri Raghunath Samal, resident of village/Post-Jarka, District-Jajpur and at present working as Senior Accountant.
4. Sri Pramod Kumar Rout, aged about 42 years, son of Sri Rajkishore Rout, resident of village/post Singapur, Nalakani, District-Jagatsinghpur, and at present working as Section Officer on ad hoc basis.
5. Sri Trilochan Biswal, aged about 43 years, son of Sri Krushna Chandra Biswal, village/post-Madhupur, District-Bhadrak and at present working as Section Officer on ad hoc basis.
6. Sri Uttam Charan Sahu, aged about 38 years, son of Sri Babaji Sahu, Village/Post Adheikul, District-Jagatsinghpur and at present working as Senior Accountant.
7. Sri Radheshyam Behera, aged about 40 years, son of late Baghirathi Behera, Village/Post New Police Lane, Shantinagar, Chhatrapur, District-Ganjam and at present working as Senior Accountant.
8. Sri Jagabandhu Behera, aged about 42 years, son of Sri Narahari Behera, village Talakarua, Post-Haripur, District-Balasore and at present working as Senior Accountant.
9. Sri Brundaban Behera, aged about 37 years, son of late Sanatan Behera, Village Srikrishnapur, Post/Via-avana, District-Basasore, and at present working as Senior Accountant.
10. Sri Ratnakar Behera, aged about 38 years, son of Sri Banchhanidhi Behera of village/post-Kaduria, Via-Mahimayadi, District-Dhenkanal and at present working as Senior Accountant.

11. Sri Prafulla Chandra Swain, aged about 43 years, son of late Ramachandra Swain, village/post balanga, District-puri and at present working as Senior Accountant.

(All above are the employees holding the posts as indicated above in the office of the Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda)

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.....Applicants

In O.A.No.363 of 2000

1. Sri Pravat Chandra Pani, aged about 42 years, son of Sri Sridhar Pani, resident of village Ostara, Post-Jadupur, District-Kendrapara and at present working as Senior Accountant.
2. Sri Tikeswar Lakra, aged about 40 years, son of late Bailas Lakra resident of village Pahartoli, Post Lanjiberna, District-Sundargarh and at present working as Senior Accountant.
3. Sri Prasanna Kumar Samantray, aged about 42 years, son of late Raghunath Samantray, resident of village Jariput, Post Gudum District-Khurda, and at present working as Senior Accountant.
4. Sri Khageswar Das, aged about 43 years, son of Sri Prahallad Das, resident of village Naraharipur, Post Aripada, Dist.Kendrapara and at present working as Senior Accountant.
5. Sri Sankar Sahoo, aged about 41 years, son of Sri Sadhu Charan Sahoo, resident of village/post Nahantara, District-Puri and at present working as Senior Accountant.
6. Sri Sarat Chandra Kundu, aged about 41 years, son of Sri Muralidhara Kundu, resident of village Vidyadharpur, Post Nuapara District-Jagatsinghpur and at present working as Senior Accountant.
7. Sri Prafulla Chandra Biswal, aged about 43 years, son of Sri Parikhita Biswal, resident of village Kantitara, Post Sanakuanla, Dist.Jajpur and at present working as Senior Accountant.
8. Sri Rabindra Nath Rout, aged about 41 years, son of Sri Basudev Rout, resident of village/Post-Singhapur, District-Jajpur and at present working as Senior Accountant.
9. Sri Nitya Ranjan Sahu, aged about 40 years, son of Sri Radhamohan Sahu, resident of Plot No.341/57, Barbari, Unit-20, Jagamara, Bhubaneswar and at present working as Senior Accountant.
10. Sri Natabara Panda, aged about 41 years, son of late Dhruba Charan Panda, resident of village/post Pahanga, P.S-Niali, District-Cuttack, and at present working as Section Officer on ad hoc basis.

11. Sri Kirtan Dash, aged about 40 years, son of late Satyabadi Dash, resident of village Sudasailo, Post-Sailobarabil, District-Cuttack and at present working as Section officer on ad hoc basis.
12. Sri Prasanta Kumar Rout, aged about 39 years, son of Sri Uttam Charan Rout, resident of village/post Kantara District-Jagatsinghpur, and at present working as Senior Accountant.
13. Sri Santosh Kumar Mallick, aged about 38 years, son of late Sadhucharan Mallick, resident of village/Post Kaptipada, District-Mayurbhanj and at present working as Senior Accountant.
14. Sri Paramananda Samal, aged about 41 years, son of late Sriram Samal, resident of Oukhanda, Post Kurjanga, District-Kendrapara, and at present working as Section Officer on ad hoc basis.
15. Sri Harihar Chand, aged about 38 years, son of Sri Madan Mohan Chand, resident of village/Post Badahala, District-Keonjhar and at present working as Senior Accountant.
16. Sri Prabir Kumar Samal, aged about 39 years, son of Sri Khageswar Samal, Village Kharimunda, Post-Bimahakalapara, District-Jajpur and at present working as Section Officer on ad hoc basis.
17. Sri Basanta Kumar Parida, aged about 39 years, son of Sri Bidyadhar Parida, resident of village Patanpur, Post Kotana District-Kendrapara and at present working as Section Officer on ad hoc basis.
18. Sri Manoranjan Panigrahi, aged about 36 years, son of Sri Sanatan Panigrahi, resident of village Golapalli Street, Berhampur-1 and at present working as Section Officer on ad hoc basis.
19. Sri H.K.Burma, aged about 39 years, son of Sri Batakrushna Samal, resident of village/post Mauda, District-Cuttack and at present working as Section Officer on ad hoc basis
(All above are the employees holding the posts as indicated above in the office of the Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda)

..... Respondents

Advocates for applicants - M/s K.C.Kanungo
S.Behera
R.N.Singh

Vrs.

1. Comptroller & Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi-110 002.
2. Secretary to Government of India, Ministry of Finance, New Delhi-110 001.
3. Secretary to Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel & Training, New Delhi-110 001.
4. Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda.

5. Bidyadhar Mallick, Senior Accountant, Office of the Principal Accountant General (A&E), Orissa, Bhubaneswar, District-Khurda

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Respondents

Advocate for respondents - Mr.B.Dash
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two applications have been heard separately. But as the facts are identical and the point for determination is the same and the pleadings of the parties have been more or less on similar lines, one order will cover both these cases. The facts of the two O.A.s. are however set out separately.

2. The eleven applicants in OA No. 362 of 2000 substantively hold the post of Senior Accountant under the departmental respondents. Two of them are working as Section Officer on ad hoc basis. Their prayer in the OA is to quash the order dated 16.6.2000 (Annexure-2) rejecting their representation to step up their pay equal to that of Bidyadhar Mallick, Senior Accountant (respondent no.5). They have further prayed for a direction to the respondents to relax FR 22(I)(a)(1) and to treat the fact of their getting less pay than respondent as an anomaly. They have also prayed for a direction to the departmental respondents to allow the applicants the benefit of Rs.150/- per month and other allowances with effect from 1.4.1996 with arrear and consequential benefits. The case of the applicants is that they along with respondent no.5 were Senior Accountants in the pay scale of Rs.1400-2600/-. All of them took the Incentive Examination for Senior Accountant and while the applicants passed the Examination in April 1995, respondent no.5 failed to clear the Examination. On

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clearing the Examination, the applicants got advance increment of Rs.40/- raising their pay from Rs.1520/- to Rs.1560/-. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no.5 was fixed at Rs.5300/- in the scale of Rs.5000-8000/- from 1.1.1996. Respondent no.5, who is admittedly junior to the applicants, cleared the Incentive Examination in April 1996 and got one advance increment. In the new pay scale of Rs.5000-8000/- the increment was Rs.150/- and therefore, the pay of respondent no.5 was fixed at Rs.5450/- from 1.4.1996 on his clearing the examination whereas the applicants continued to get Rs. 5300/-. In the context of the above, they have come up with the prayers referred to earlier.

3. In OA No.363 of 2000 the 1^o applicants have made similar prayers. All the applicants substantively hold the post of Senior Accountant. Seven of them are working as Section Officer on ad hoc basis. The applicants took the Incentive Examination for Senior Accountant in April 1994 and came out successful in the first chance. Accordingly, in the scale of pay of Rs.1400-2600/-, which they were holding at that time as Senior Accountant, their pay was raised from Rs.1480/- to Rs.1520/- with effect from 1.4.1994. With the coming into force of the Fifth Pay Commission pay scale, the pay of the applicants and respondent no. 5 was fixed at Rs. 5300/- in the pay scale of Rs.5000-8000/-. Respondent no.5, who had failed to clear the Incentive Examinations of 1994 and 1995, cleared the Examination in 1996 and got the advance increment which in the new scale was Rs.150/-. Therefore, from 1.4.1996 his pay was fixed at Rs.5450/- whereas the applicants were getting Rs.5300/-. In the context of the

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above facts these applicants have made prayer similar to the applicants in OA No. 362 of 2000.

4. Departmental respondents have filed identical counters in both the cases. It is not necessary to refer to the averments made in the counters as these will be referred to while considering the submissions made by the learned counsel of both sides. Private respondent no.5 was issued with notice but he did not appear or file any counter.

5. We have heard Shri K.C.Kanungo, the learned counsel for the petitioners and Shri B.Dash, the learned Additional Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioners has filed circulars dated 14.3.1984 and 28.2.1984 which have been taken note of along with the written note of argument submitted by him. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Prakash Amichand Shah v. State of Gujarat and others, AIR 1986 SC 468, and the case of Union of India and another v. R.Swaminathan, AIR 1997 SC 3554. We have gone through these decisions.

6. It has been submitted by the learned counsel for the petitioners that the applicants in both these cases are admittedly senior to respondent no.5. They have admittedly cleared the Incentive Examination earlier than respondent no.5 and got an advance increment in the scale then enjoyed by them. Respondent no.5 failed to clear the examination along with the applicants and cleared the examination only in 1996. By that time the Fifth Pay Commission pay scale having come into force, he was allowed one advance increment as per rules which amounted to

Rs.150/-.. It is stated that in the process respondent no.5 is getting more pay than the applicants in these two cases even though he is junior and therefore, this must be treated as an anomaly. It is further stated that in the past at the time of introduction of the Third Pay Commission pay scales, similar stepping up was allowed, which is borne out by the two circulars produced by him. It is not necessary to refer to these two circulars because the departmental respondents have indicated that in the past stepping up of pay was allowed in similar circumstances. This has been mentioned in the letter dated 6.6.2000 from the office of Auditor General of India, enclosed at Annexure-R/4 by the respondents along with their counter to OA No.362/2000. In this letter it has been mentioned that after the judgment of the Hon'ble Supreme Court in R.Swaminathan's case(supra) such benefit of stepping up of pay has not been allowed. The learned counsel for the petitioners strongly urged that this point did not comeup for consideration in R.Swaminathan's case (supra) and the decision in R.Swaminathan's case(supra) should not be expanded to cover a situation which was not before the Hon'ble Supreme Court in that case. In support of the above contention the learned counsel for the petitioners has relied on Prakash Amichand Shah's case(supra) in which Hon'ble Supreme Court in paragraph 26 of the judgment considered what the duty of the Court is while applying the law laid down in a precedent case. In that case the Hon'ble Supreme Court observed that a decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for

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decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. In view of the above position of law laid down by the Hon'ble Supreme Court in **Prakash Amrichand Shah's case (supra)** it has been argued by the learned counsel for the petitioners that the decision of the Hon'ble Supreme Court in **R.Swaminathan's case (supra)** is not applicable in the two OAs before us. It is no doubt true that in **R.Swaminathan's case (supra)** the Hon'ble Supreme Court was called upon to consider the eligibility of stepping up of pay of a senior where the junior gets the higher pay due to ad hoc officiating/regular service rendered in higher post for periods earlier than the senior. In that case the question of junior getting higher pay because of passing Incentive Examination was not considered. But in **R.Swaminathan's case (supra)** the Hon'ble Supreme Court considered the question of stepping up of pay to remove anomaly and held that in the given instance before their Lordship no anomaly was involved and stepping up of pay was not warranted. The departmental respondents have referred to decisions of Ernakulam Bench and Mumbai Bench dealing with the question of stepping up of pay. It is not necessary to refer to those decisions. For stepping up of pay as a result of application of FR 22-C earlier and now FR 22(I)(a)(1), circulars have been issued from time to time. Stepping up can be done only in terms of these circulars. After introduction of the Fifth Pay Commission

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pay scales such stepping up is also allowed as a result of application of FR 22(I)(a)(1) in the revised scales under CCS(RP)Rules,1997. The applicants and respondent no.5 in both these cases got the Fifth Pay Commission pay scale from 1.1.1996. On 1.1.1996 the pay of the applicants and respondent no.5 was fixed at Rs.5300/-. This is not a case of promotion and application of FR 22(I)(a)(i). The fact that respondent no.5 is getting more pay than the applicants from 1.4.1996 is not because of application of FR 22(I)(a)(1) but because he got incentive increment after clearing the Incentive Examination for Senior Accountant in April 1996. This increment happened to be Rs.150/- in the new pay scale of Rs.5000-8000/-. The applicants had cleared this examination while they were in the pre-revised pay scale of Rs.1400-2600/- and thereby got an incentive increment the quantum of which was Rs.40/- in the pre-revised pay scale. Therefore, the fact that respondent no.5 is getting more pay than the applicants as on 1.4.1996 is not because of application of FR 22(I)(a)(1) as there was no question of promotion of the applicants and respondent no.5 to any higher post. In view of the above, it is clear that the claim of the applicants in these two OAs does not come within the four corners of the circulars dealing with stepping up of pay. In R.Swaminathan's case (*supra*) the Hon'ble Supreme Court have held that stepping up of pay is permissible only when the anomaly is attributable to application of FR 22(I)(a)(1). Therefore, the departmental respondents are right in not treating this as an anomaly due to application of FR 22(I)(a)(1). In view of this, there is no case for stepping up the pay of the applicants to the level of Rs.5450/- from 1.4.1996. The other prayer being consequential in nature also fails.

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7. In the result, therefore, the Original Applications are held to be without any merit and the same are rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

S. Sonnath Som
(SONNATH SOM)

VICE-CHAIRMAN 6th August 2001

CAT/CB/ 6th August, 2001/AN/PS