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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 41 OF 2000.
Cuttack, this the 13th day of March, 2001.

Dr. Baishnab Charan Mahapatra. Applicant.

- V e r s u s -

Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the ND -
Central Administrative Tribunal or not?

13.3.2001.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 41 OF 2000.
Cuttack, this the 13th day of March, 2001.

C O R A M:

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

DR. BAISHNAB CHARAN MOHAPATRA,
Son of late Indramani Mohapatra,
At/Po: Rajabagicha, PS: Purighat,
Town&Dist: Cuttack, Applicant.

By legal practitioner: IN PERSON.

-Versus-

1. Secretary, Government of India,
Ministry of Communication, Deptt. of
Posts, Sansad Bhawan, 20, Ashok Marg,
NEW DELHI.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar. ... Respondents.

By legal practitioner: Mr. J. K. Nayak,
Addl. Standing Counsel.

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant's wife Dr. Baishnab Charan Mohapatra died on 03-07-1988 while serving as Lady Medical Officer, P&T Dispensary, Cuttack. On her death, Family pension was paid to the applicant. Earlier, Original Application No. 339/1991 filed in this connection was disposed of on February 27, 1992. There is no grievance in regard to the compliance of the directions made in that Original Application.

2. Grievance of applicant is that with effect from 1-1-1996 non-practising allowance has not been included in computing the family pension. According to the applicant, under Government of India Memo dated 15-4-1998 (Annexure-2), Non-

practising allowance shall have to be treated as 'Pay' for all service matters and for calculation of retirement benefits. Without taking into account this non-practising allowance, 30% of the minimum pay of Rs.10,000/- under 5th Pay Commission i.e. Rs.3,000/- is being paid towards family pension. According to him, non-practising allowance which is 25% of the pay i.e. Rs.2,500/- should be added to Rs.10,000/- and the family pension should be calculated at Rs.12,500/- per month. His representation to the Secretary, Department of Posts dated 22-9-99 did not yield any result because in Memo dated 29-10-1999 (Annexure-3) of the Government, it was decided that non-practising allowance should not be added to the minimum revised scale of pay though in the earlier Original Application, this Tribunal held that postgraduate allowance should be treated as pay for all service matters. However, as per the direction of the Secretary of the Department, he furnished a xerox copy of that order in letter dated 26-11-1999 but without any response. Hence this Original Application.

3. The Department in their counter take the stand that as per the Office Memorandum dated 29.10.1999 Non-practising allowance is ^{not} to be added to the minimum of the revised scale of pay as on 1.1.1996 in cases where consolidated family pension is to be stepped up to 30% in terms of OM dated 17.12.1998. In this case, the enhanced family pension was sanctioned at the rate of Rs.1470/- per month with effect from 3-7-1988 to 2-7-1995 and thereafter Rs.735/- p.m. was authorised under letter dated 13.9.1999. As per the recommendation of the 5th Pay Commission, the consolidated pension of Rs.2706/- per month was stepped up to Rs.3000/- p.m. as 30% of the minimum

of the revised scale of pay as on 1.1.1996 i.e. Rs.10,000-15,200/- to be paid w.e.f. 1.1.1996. As this family pension is of pre-1996 period the non-practising allowance is not added to the minimum of the revised scale of pay as on 1.1.96, in terms of OM dated 17-12-1993 and 29-10-1999 issued by the Ministry of Personnel, Public Grievances, Pension, Department of Pension and Pensioner's Welfare. Post graduate allowance towards calculation of family pension as submitted by applicant according to the Department is not correct because pursuant to judgment dated 27.2.1992 in OA No.339/91, the post graduate allowance was taken into account for the purpose of determination of DCRG and accordingly, the differential amount of Rs.2000/- towards DCRG was paid to the legal heir.

4. In the rejoinder, the applicant submits that the interpretation of the Department for non-inclusion of non-practising allowance in the family pension is not correct. This has been countered in reply filed to the rejoinder by the Department.

5. Heard counsel on record and perused the records.

6. The only point for determination is whether the Non-practising allowance is to be taken into account while calculating the minimum family pension w.e.f. 1.1.1996 once the family pension has been stepped up to Rs.3000/- p.m. being 30% of the minimum pay scale. Recently a Division Bench of the CAT, Principal Bench in O.A.Nos.621,624,625 and 626 of 2000 disposed of through a common order dated 14.12.2000 (Xerox copy at Annexure-p/1) had occasioned to deal with this point and ultimately disallowed similar contention raised by applicants.

I have carefully gone through this elaborate judgment passed by a Division Bench and do not see any reason to differ from that view reached by that Bench. Even otherwise the judgment being of a Division Bench is binding on me.

7. In the result, in view of the legal position clarified by the Principal Bench, I am not inclined to allow the prayer of applicant. The Original Application fails and is accordingly dismissed. No costs.

L. A. 13. 3. 2001.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.