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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 469 OF 2000
Cuttack, this the 20th day of July, 2001

Sri Benudhar Patra

Applicant

Vrs.

Director Generasl, Council of
Scientific & Industrial Research
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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Sirc
(SOMNATH SIRC)
VICE-CHAIRMAN
20.7.2001

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)

Sri Benudhar Patra,
aged about 52 years,
son of late Digambar Patra
at present Assistant (G), Regional
Research Laboratory,
Bhubaneswar-751 013...

..... Applicant

Advocates for applicant - M/s P.V.Ramdas
P.V.Balakrishna

Vrs.

1. Director General, Council of Scientific & Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi-110 001.
2. Controller of Administration, Regional Research Laboratory, Bhubaneswar-751 013
3. Director, Regional Research Laboratory, Bhubaneswar-751 013

..... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

SOMNATH SOM, VICE-CHAIRMAN O R D E R

In this O.A. the petitioner has prayed for quashing the order dated 5.11.1999 (Annexure-4) downgrading his pay scale and the order dated 27.4.2000 (Annexure-7) directing recovery of Rs.54.542/- . By way of interim order it was prayed that the order of recovery and order of downgrading of pay scale (Annexure-4) should be stayed. In the order dated 24.10.2000 the order of recovery was stayed till 6.11.2000. This interim order has continued till date. Before proceeding further it is to be noted that in the impugned order of pay

fixation at Annexure-4 it has been mentioned that while examining the representation dated 19.2.1998 of one R.K.Das, Assistant Grade-I for stepping up his pay at par with his junior, the present applicant, it was found that the pay fixation of the applicant was wrongly done. R.K.Das filed an intervention petition which was numbered as M.A.No.155 of 2001 and in the order dated 22.3.2001 it was held that Sri Das is not a necessary party in this case and the intervention petition was rejected.

2. The case of the applicant is that he joined Regional Research Laboratory on 12.12.1967 as Laboratory Attendant and on 20.9.1977 as Lower Division Clerk. He was promoted to the post of Upper Division Clerk on 17.2.1983. In office order dated 8.5.1987 (Annexure-1) the applicant, who was working as UDC at that time, was given ad hoc appointment to the post of Assistant (Finance & Accounts). In this order it was mentioned that ad hoc appointment is temporary and without prejudice to the claim of his seniors. After completion of ad hoc service for more than three years and two months as Assistant (F&A) without any break, the applicant was promoted on regular basis to the post of Assistant (General) with effect from 28.6.1990. This was a regular promotion on the recommendation of the Departmental Promotion Committee. While fixing his pay in the rank of Assistant (G) in the scale of Rs.1400-2600/- his previous ad hoc service in the post of Assistant (F&A) from 7.4.1987 to 27.6.1990 was taken into account and his pay was fixed at Rs.1820/-. It is necessary to note that the scales of pay of Assistant (G) and Assistant F(&A) are the same at Rs.1400-2600/-. The applicant has stated that after nine years, in the order dated 5.11.1999 it was held that the pay

fixation has been wrongly done and his pay was fixed as Assistant (G) on 28.6.1990 at Rs.1640/- taking into account his pay in the rank of UDC and the notional increments in that scale for the period he had worked as Assistant (F&A). It is also necessary to note that the scale of pay of Rs1400-2600/- has been subsequently revised to Rs.1640-2900/- and the applicant's pay has been fixed at the minimum of this scale at Rs.1640/-. Against such revised pay fixation the applicant filed representation which was rejected in the order dated 24.11.1999(Annexure-5). Subsequently, in the order at Annexure-7 he has been informed that an amount of Rs.54,542/- is due to be recovered from him. He was asked to deposit the amount or in the alternative intimate the number of instalments for payment of the same. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder and we have perused the same.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. On our direction the learned Senior Standing Counsel has produced the Service Book of the application and the pay fixation statement. The learned counsel for the petitioner has relied on the following decisions:

(1) S.Radha v. Union of India, May 1995
Swamysnews 424 (Madras);

(2) Sk.Rasul v. Union of India, 2000 November
Swamysnews 83 (Mumbai);
and

(3)

Shyambabu Verma v. Union of India, 1994(2)
SCC 521.

We have perused these decisions. The prayer of the applicant in this petition is two-fold. His first prayer is based on the averment that on his initial appointment as Assistant (G) his pay was correctly fixed taking into account his pay on his ad hoc appointment as Assistant (F&A) and the applicant has prayed that this pay fixation should be maintained, and the second pay fixation reducing the level at which his pay was fixed as on 28.6.1990 in the order at Annexure-4, should be quashed. The second aspect of his contention is that even if it is taken for the sake of argument that original pay fixation was wrongly done and the second pay fixation at Annexure-4 is the correct one, even then the order of recovery of Rs.54,542/- from his salary (Annexure-7) should be struck down, being bad in law. These two aspects are considered separately.

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5. The applicant has taken the stand that this appointment as Assistant (F&A) was on regular basis and he continued as such for more than three years and two months without any break. The respondents have pointed out that Assistant (G) and Assistant (F&A) belong to two different cadres in the institutes of Council of Scientific & Industrial Research. The hierarchy of General Cadre is LDC, UDC, assistant (G), Section Officer, Administrative Officer/Under Secretary, Controller of Administration/Deputy Secretary. In Finance & Accounts Cadre the hierarchy is LDC, UDC, Assistant (F&A), Section Officer (F&A), Finance & Accounts Officer, and Senior Finance & Accounts Officer. It is to be noted that the scale of pay of Assistant (F&A) and Assistant (G) is the

same. It was originally Rs.1400-2600/- and subsequently revised to Rs.1640-2900/-. But two posts in two different cadres can carry the same scale of pay. The applicant has not denied the averment of the respondents that Assistant (G) and Assistant (F&A) belong to two cadres though recruitment to both the posts is from UDC, LDC and other grades, as is borne out by the two selection notices at Annexure-R/3 for Assistant (G) and Assistant (F&A). Moreover, the order of appointment of the applicant to the post of Assistant (F&A) at Annexure-1 clearly shows that the appointment is on ad hoc basis. The applicant has not enclosed any order to show that subsequently he was appointed to the post of Assistant (F&A) on regular basis. Had it been so, then he could not have returned to his original cadre of Assistant (G). Therefore, it must be held that appointment of the applicant to the post of Assistant (F&A) was on ad hoc basis and not on regular basis.

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6. The next question which arises for consideration is whether on his subsequent appointment to the post of Assistant (G), the pay received by him during his ad hoc service as Assistant (F&A) can be taken into account for fixing his pay, as has been done here initially. The relevant portion of FR 22(I) is quoted below:

"F.R.22(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay

in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty-five, whichever is more."

The applicant being admittedly in the General Cadre, during his ad hoc service in the post of Assistant (F&A) he held a post which was ex cadre for him and obviously going by the above rule quoted by us, his pay in the ex cadre post cannot be taken into account for fixing his pay in the regular post in the cadre to which he was subsequently promoted as Assistant (G). The last portion of the rule quoted by us speaks of ad hoc appointment followed by regularisation. But this means ad hoc appointment followed by regularisation in one's own cadre. If ad hoc appointment is in an ex cadre post

which is followed by regular appointment in his own cadre, then last portion of the rule quoted by us above will not apply. The learned counsel for the petitioner has mentioned the case of one A.N.Chabra, Assistant (G) who like the petitioner rendered service on ad hoc basis in the ex cadre post of Assistant (F&A). Council of Scientific & Industrial Research in their order dated 30.12.1998 (Annexure-6) have clarified that in such cases ad hoc period of service in the ex cadre post and the pay drawn therein cannot be taken into account while fixing the pay of the person in his regular cadre post. The learned counsel for the petitioner along with his rejoinder has enclosed an order dated 28.5.1999 in the case of same A.N.Chabra where his pay has been refixed in the pay scale of Rs.1640-2900/- taking into account the ad hoc service rendered in the ex cadre post of Assistant (F&A). This order seems to have been issued in pursuance of decision of the Principal Bench of the Tribunal, dated 16.4.1999 in O.A.No.510 of 1999. This decision has not been filed by the applicant before us and therefore, it is not possible to note what the facts of that case were and if those are exactly similar to the case of the applicant. In any case this order of revised pay fixation of A.N.Chabra specifically provides that this order of fixation of pay is issued without prejudice to the rights of the Council in the matter. In consideration of all the above, we hold that the applicant is not entitled to have his pay fixed

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in the post of Assistant (G)) after taking into account the pay received by him as ad hoc Assistant (F&A).

Moreover, FR 22(IV) squarely covers the case of the applicant. This rule is quoted below:

"(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

It is provided in the above rule that where the Government servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed with reference to his presumptive pay in the cadre post which he would have held but for his holding an ex cadre post. In this case, by the second revised fixation of pay, the pay of the applicant has been fixed with reference to his presumptive pay in the post of UDC from which he was promoted on regular basis in his own cadre to the post of Assistant (G). There is thus no infirmity in the action of the Department in this regard. This prayer of the applicant is accordingly rejected and it is held that Annexure-4 has been rightly issued by the respondents.

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7. The second aspect of the matter is whether as a result of revised pay fixation at Annexure-4 the amount of Rs.54,542/-, which is stated to have been paid to the applicant in excess because of wrong fixation of his pay, can be recovered from him. The applicant was appointed as Assistant (G) on 28.6.1990 and the first pay fixation must have been done shortly thereafter. The revised pay fixation order at Annexure-4 has come after nine years. During this period the applicant has been allowed to draw pay which has been wrongly fixed and for this the applicant is in no way responsible. It has been urged by the learned counsel for the petitioner that under these circumstances the amount mentioned in the order at Annexure-7 is not legally recoverable. On this point the learned counsel for the petitioner has referred to the three decisions noted by us easrlier. It is only necessary to refer to Shyambabu Verma's case (*supra*), decided by the Hon'ble Supreme Court because in their decision in Sk.Rasul's case (*supra*) the Mumbai Bench of the Tribunal have followed the decision of the Hon'ble Supreme Court in Shyambabu Verma's case) and in the decision in S.Radha's case(*supra*) same principle has been enunciated. In Shyambabu Verma's case (*supra*) the applicant was given by mistake the revised pay scale of Rs.330-560/- even though he was an unqualified Pharmacist and was not entitled to that scale and was entitled to the pay scale of Rs.330-480/-. This mistake came to light after more than ten years. The Hon'ble Supreme Court held that though reduction of pay prospectively is justified, the recovery of the amount wrongly paid to the incumbent cannot be done because the excess paid was due to the fault of the respondents and the petitioner was in no way responsible for the same. The ratio of the above decision of the Hon'ble

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Supreme Court squarely applies to the case of the applicant before us. The applicant was in no way responsible for wrong fixation of pay and the mistake was detected after nine years. In view of this, going by the law as laid down by the Hon'ble Supreme Court in Shyambabu Verma's case (*supra*) we quash the order of recovery at Annexure-7 and direct that the amount of Rs.54,542/- is not recoverable from the applicant. If any amount has already been recovered, then the respondents should return the amount to the applicant within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

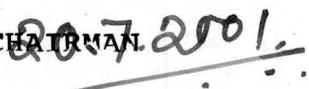
8. In the result, therefore, the Original Application is partly allowed in terms of the observation and direction above. No costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN


20/7/2001

CAT/CB/ 2001 July, 2001/AN/PS