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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 114 OF 2001
Cuttack, this the 24th day of September, 2001

Dr.B.P.Dash and others Applicants

Vrs.

Union 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)

(SOMNATH SOM)
VICE-CHAIRMAN
24.9.2001

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CORAM:

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

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1. Dr.B.P.Dash, aged about 40 years, son of Godabarish Dash.
2. Mr.A.S.Acharya, aged about 45 years, son of S.C.Acharya
3. Mr.Biswanath Murmu, aged about 39 years, son of Bhagabad Murum
4. Mr.Nityananda Mandal, aged about 35 years, son of Rathi Kanta Mandal.
5. Dr.D.P.Hansoldah, aged about 35 years, son of Sura Charan Hansadah.
6. Mr.N.Marai, aged about 42 years, son of Theophil B.Marai.
7. Dr.P.K.Sahoo, aged about 36 years, son of Bhramarbar Sahoo.
8. Mr.M.C.Mohanty, aged about 30 years, son of Rabindra Prasad Mohanty.
9. Dr.M.S.Bal, aged about 32 years, son of Sambhunath Bal
All are of Research Assistants, Regional Medical Research Centre, Chandrasekharapur, Bhubaneswar, District-Khurda..... Applicants.

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Advocates for applicants - M/s B.Routray
D.K.Mohapatra

Vrs.

1. Union of India, represented through its Secretary to Government of India, Ministry of Health & Family Welfare Department, New Delhi.
2. Director General, Indian Council of Medical Research, P.B.No.4508, New Delhi.
3. Director, Regional Medical Research Centre, Chandrasekharapur, Bhubaneswar-23, Dist.Khurda

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Respondents

Advocate for respondents-Mr.A.K.Bose, SR.CGSC.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the nine petitioners, who are working as Research Assistants in Regional Medical Research Centre (hereinafter referred to as "RMRC"), Bhubaneswar, which is an institute under the Indian Council of Medical Research ("ICMR" for short), have prayed for quashing the order dated 26.2.2001 (Annexure-6) and the orders dated 1.3.2001 at Annexure-7 series and also for a direction to the respondents to release the arrears as well as differential salary of the applicants in the scale of Rs.1640-2900/- and its corresponding pay scale with effect from 1.1.1986 with all service benefits. By way of interim relief they had prayed for staying operation of the above orders. In the order dated 29.3.2001 these two orders were stayed till 18.4.2001. The stay order was further continued in order dated 24.5.2001 after considering the showcause filed by the respondents for vacation of the interim order of stay. Thus, the interim order of stay is continuing till date.

2. The case of the applicants is that they are all Post-Graduate Degree holders in Science and have been duly recruited by the respondents in the post of Research Assistants in the scale of Rs.425-700/-. After introduction of the Fourth Pay Commission pay scales with effect from 1.1.1986, the scale was revised to Rs.1400-2300/-. The applicants have stated that according to Bye-laws governing the service conditions of employees of ICMR, Fundamental Rules and Supplementary Rules and orders issued by Government of India from time to time will apply to the

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employees of ICMR. The applicants have stated that after coming into force of the Fourth Pay Commission pay scales, the scale of Medical Social Workers was increased from Rs.1400-2300/- to Rs.1600-2660/- and the scale of pay of Office Assistant/Stenographer was increased from rs.1400-2600/- to Rs.1640-2900/-. The applicants have stated that even though they are performing higher duties and responsibilities and having Post-Graduate qualification, they are drawing lower scale of pay than their counterparts in Government of India. While representations filed by some of them were under consideration of Government of India, some of the Research Assistants working in the Institute of Research in Medical Statistics, Chetput, Madras, another sister institute under ICMR, filed several writ applications before the Hon'ble High Court of Madras claiming the scale of Rs.1640-2900/-. These writ applications were disposed of in order dated 6.8.1996 with a direction to the respondents to consider the claim of the petitioners with reference to points raised in their affidavit and reply affidavits and their averments made in the representations to the respondents. The Hon'ble High Court directed that appropriate orders on the representations should be passed within three months after giving the petitioners a reasonable opportunity of being heard. The applicants have stated that even though the ICMR had recommended higher pay scale, Government of India rejected the representations in their order dated 11.4.1997. This order was challenged before the Hon'ble High Court of Madras in writ petitions which were transferred to

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Chennai Bench of the Tribunal and numbered as T.A.Nos.13 to 21 of 1999. These T.As. were allowed in order dated 26.9.2000. The Tribunal in their order quashed the order dated 11.4.1997 rejecting the representations of those applicants and directed the respondents to consider the case of the applicants for revision of their pay scale from Rs.1400-2300/- to Rs.1640-2900/- with effect from 1.1.1986. It was directed that such revised higher pay scale ^{Sd/-} will have notional effect from 1.1.1986 and the applicants will be entitled to arrears of pay and allowances upon such re-fixation of pay only with effect from 1.7.1997, i.e., the date of filing of the writ applications. The applicants have further stated that another writ application filed by 22 applicants, who were presumably working under Director, T.B.Research Centre, Chetput, Madras, was transferred to Chennai Bench and numbered as TA No.10 of 2000. This TA No.10 of 2000 was allowed with similar direction as in the case of earlier batch of T.As. The applicants in the O.A. have made elaborate averments as regards recommendations made by Director-General, ICMR, to the Secretary, Ministry of Health, and have noted that Director-General, ICMR was of the view that the Fourth Pay Commission have recommended higher scale of Rs.1640-2900/- to Statistical Assistants/Research Assistants who are required to have P.G.qualification and when such a pay scale has been given to all Research Assistants under Central Government as well as other autonomous bodies like CSIR, there is no reason why the same should not be given to the Statistical Assistants/Research

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Assistants with P.G.qualification in IRMS, Madras (who were original writ applicants before the Hon'ble High Court of Madras) but also other Research Assistants working in ICMR. It further appears that in the Executive Committee of the ICMR it was noted that the proposal has been turned down by the Government on the ground that even though Research Assistants might be having P.G.qualification, this was not the essential qualification for their recruitment to the post of Research Assistants. It further appears that at the relevant time there were no Recruitment Rules for Research Assistants in ICMR. Apparently Research Assistants were generally having Post-Graduate qualification. But in some cases, some of the institutes under ICMR seem to have recruited Research Assistants without P.G.qualification. The I.C.M.R.'s proposal before the Government was that only those Research Assistants with P.G.qualification should be allowed the scale of Rs.1640-2900/-. The applicants have further stated that ICMR further stated in their proposal to Government that job responsibilities of Research Assistants are similar to those of Research Assistants in Central Drug Laboratories and therefore, they recommended the scale of Rs.6500-10500/-. The applicants have further stated that in letter dated 30.10.2000 (Annexure-4) Director-General, ICMR instructed respondent no.3 that as Chennai Bench of C.A.T. had decided to upgrade the scale of Research Assistants from Rs.1400-2300/- to Rs.1640-2900/- for those who were recruited with P.G.qualification, such

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incumbents in the scale of Rs.1640-2900/- will be entitled for higher scale of pay of Rs.6500-10500/- under Parts B and C of the Fifth Pay Commission recommendations. Accordingly, respondent no.3 in orders dated 24.11.2000 at Annexure-5 series fixed the pay of the applicants in the scale of Rs.6500-10,500/- with effect from 1.1.1996 along with the next date of increment subject to clarification from ICMR regarding scale of pay of Research Assistants. Subsequently, respondent no.3 issued a further order dated 26.2.2001 (Annexure-6) indicating that Ministry of Health & Family Welfare have ^{consent for} extension of time for ^{3 mos.} three months for implementation of the order passed by the Chennai Bench of the Tribunal with regard to payment of higher scale of pay to the Research assistants recruited with Post-Graduate qualification. The pay scale of Rs.5500-9000/- should be allowed to Research Assistants till formal approval of the Ministry for higher scale of Rs.6500-10,500/- is received. Thereafter the order at Annexure-6 has been impugned by the applicants in this O.A. Subsequently, in a series of orders dated 1.3.2001 (Annexure-7 series) the pay of the applicants was fixed in the scale of Rs.5500-9000/- with effect from 1.1.1996 along with fixation of their next date of increment. Against these orders, the applicants have filed representations and have come up before the Tribunal with the prayer referred to earlier.

3. Respondents in their counter have stated that even though under the Bye-laws of ICMR, the FR and SR and orders issued by Government of India

would apply mutatis mutandis Clause 6 of Annexure-1 enclosed by the applicants themselves specifically provides that scales of pay for various posts under the ICMR shall be similar to those with corresponding duties under the Government of India, provided that the Governing Body of ICMR may prescribe different scale of pay for certain posts having regard to duties and responsibilities attached to those posts. The respondents have further stated that there were no Recruitment Rules prescribing P.G.qualification for Research Assistants and in some cases recruitments were made to the post of Research Assistant of persons without Post Graduate qualification. It is further stated that if P.G.qualification is not a prescribed qualification, the fact that a person holding the post happens to have Post-Graduate qualification cannot be a consideration for giving him higher scale of pay. The respondents have further stated that the applicants have filed representations claiming the scale of Rs.1640-2900/- basing on the decision of the Hon'ble Supreme Court in the case of Union Government and others v. Shantiram Ghosh and others, but that decision has no application to the present case. It is further stated that the Chennai Bench of the Tribunal allowed the scale of Rs.1640-2900/- to the Research Assistants in the manner noted by us earlier and the corresponding Fifth Pay Commission pay scale ^{which is} ~~of~~ Rs.5500-9000/-. It is further stated that the decision of Chennai Bench of the Tribunal has been stayed by the Hon'ble High Court of Madras in Writ Petition No.35916/2001 filed on 29.4.2001. The respondents have further stated that

the claim for higher scale of pay was rejected by the Union Government on the ground that the case of Research Assistants of ICMR cannot be compared with Assistants and Stenographers of CCS and CSSS as the duties and responsibilities are different. It is further stated that the Chennai Bench restricted the payment of actual arrears and this has also to be taken note of. The respondents have further stated that the original scale of the applicants was Rs.1400-2300/- which was revised to Rs.4500-7000/- by the Fifth Pay Commission, but higher scale of Rs.5500-9000/- was given subject to verification of certain conditions as stipulated in Annexure-3. It is further stated that Chennai Bench of the Tribunal did not indicate what the Fifth Pay Commission replacement scale will be and therefore the applicants are not entitled to the scale of Rs.6500-10,500/-. It is further stated that the applicants were never in the scale of Rs.1640-2900/- and revised orders were rightly passed to grant them the scale of Rs.5500-9000/-. It is stated that granting the scale of Rs.6500-10,500/- to the applicants was a bona fide mistake and it was open to the respondents to correct the same and before such correction it was not necessary to issue any showcause notice. On the above grounds the respondents have opposed the prayer of the applicants.

4. The applicants in their rejoinder have made elaborate averments denying the assertions of the respondents. It is not necessary to refer to these averments because these will be taken note of while considering the submissions made by the learned counsel of both sides.

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5. We have heard Shri B.Routray, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned Senior Standing Counsel has filed the order dated 3.7.2001 of the Hon'ble High Court of Madras staying operation of the order of the Chennai Bench of the Tribunal in TA Nos. 13 to 21 of 1999.

6. From the above pleadings of the parties, it is clear that the order dated 26.9.2000 of the Chennai Bench of the Tribunal on which the petitioners have relied, has been stayed by the Hon'ble High Court of Madras. The petitioners have stated in their rejoinder that the order dated 26.9.2000 of Chennai Bench in TA Nos.13 to 21 of 1999 has been challenged, but Chennai Bench of the Tribunal have passed similar order in TA No.10 of 2000 and this decision has not been challenged. We have already referred to the decisions of Chennai Bench in both these cases and have noted that in their order dated 3.11.2000 disposing of TA No.10 of 2000 Chennai Bench have allowed the application before them in terms of the order dated 26.9.2000 passed in TA Nos.13 to 21 of 1999. The first question which arises for consideration is whether this Bench can consider the matter when the entire issue is before the Hon'ble High Court of Madras. It is to be noted that Chennai Bench in their order dated 26.9.2000, the gist of which has already been referred to above, had ordered granting of scale of Rs.1640-2900/- to Research Assistants from 1.1.1986 notionally and from 1.7.1997 effectively. Chennai Bench of the Tribunal did not indicate that Fifth Pay

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Commission revised pay scale will be applicable to 1.1.1996 and did not also indicate what that scale will be. In the present application before us the stand of the petitioners is that the replacement scale for the pre-revised scale of Rs.1640-2900/- is Rs.6500-10,500/- which was rightly allowed to them at first by the ICMR. The stand of the respondents is that the replacement scale for the scale of Rs.1640-2900/- is Rs.5500-9000/-. Thus, the sole question for consideration before this Bench is whether the replacement scale for the pre-revised scale of Rs.1640-2900/- is Rs.6500-10,500/- or Rs.5500-9000/-. Both the parties have referred to Finance Ministry's resolution dated 30.9.1997 and the Notification No.GSR 569(E) dated 30.9.1997. Part A of the First Schedule of the Central Civil Services (Revised Pay) Rules, 1997, shows under Serial No.10 that the Fifth Pay Commission scale for the pre-revised scale of Rs.1640-2900/- is Rs.5500-9000/-. In Part B and Part C of the same notification, i.e., GSR 569(E), dated 30.9.1997 deal respectively with revised pay scales for certain common categories of staff and revised scales of pay for certain posts in Ministries, Departments and Union Territories. In both these Parts, in separate schedules attached to Parts B and C, particular posts with their pre-revised scale and replacement scale have been listed out. Part B deals with certain common categories of staff in which Research Assistants do not find a mention. In Part C posts under Ministries, Departments and Union Territories have been listed out separately Ministrywise and the details regarding

different organisations under Ministry of Health & Family Welfare along with designation of posts, the pre-revised and revised scale have been printed at pages 74 to 76 of Swamy's Compilation of Central Civil Services Revised Pay Rules 1997 (Third Edition). It is necessary to note that institutes under ICMR are not mentioned in this list because ICMR is a registered Society and institutes mentioned here are all Government organisations. The designation of Research Assistant is mentioned under various organisations. For example, Research Assistants (Medical) who obviously are MBBS Degree holders have been mentioned under the heading "All India Institute of Hygiene and Public Health, with the pre-revised scale of Rs.2000-3200/-. Under the heading "National Malaria Eradication Programme", Research Assistants have been mentioned with the pre-revised scale of Rs.1400-2300/- and replacement scale of Rs.5500-9000/-. Under the same heading/Programme, Malaria Supervisors have the pre-revised scale of Rs.1640-2900/- and their replacement scale has been shown as Rs.6500-10,500/-. Similarly, under the Central Drug Laboratories, Research Assistants/Senior Scientific Assistants have been given the scale of Rs.6500-10,500/- against the pre-revised scale of Rs.1640-2900/-. It is on this basis that the applicants claim that ICMR had rightly given them the scale of Rs.6500-10,500/-. In this notification No.GSR 569(E), under Part C certain conditions have been mentioned and these are very relevant for determination of the present dispute.

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This portion of Part C is quoted below:

**"REVISED SCALES OF PAY FOR CERTAIN POSTS
IN MINISTRIES, DEPARTMENTS AND UNION
TERRITORIES**

The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in Column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in Column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter alia to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades, etc. Therefore, in those cases where conditions such as changes in recruitment rules, etc., which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts with effect from 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts, etc., it will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then."

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The first thing to be noted from the above is that unlike scales mentioned in Part A, the scales mentioned in Part C are not automatic Fifth Pay Commission replacement scales. The conditions prescribed by the Pay Commission before giving these scales have to be complied with and it has been laid down that necessarily, therefore, the scales recommended under Part C will take prospective effect from the date of taking of such action by the

concerned Ministries and Departments and till then the posts will be governed by the normal replacement scales. It is mentioned that introduction of the pay scales recommended under Part C may require changes in the Recruitment rules, cadre restructuring, redistribution of posts, etc. All this presupposes conscious decision by the authorities, in this case ICMR as also the Health Ministry, about necessary steps which are required to be taken. The respondents have stated that there were no Recruitment Rules for Research Assistants in ICMR. This is corroborated by the rejoinder filed by the applicants along with which they have filed the Recruitment/Promotion Rules for various technical cadre staff of ICMR. In this, Research Assistants have been shown with pay scale of Rs.1400-2300/- and required educational qualification has been mentioned as Post-Graduate Degree in relevant subject. This Recruitment Rule has been circulated on 22.3.2000. Besides making a vague averment that even prior to promulgation of the Rule, there were earlier Rules under which minimum educational qualification for Research Assistant was Post-Graduate Degree, the applicants have not enclosed any earlier Recruitment Rules for the post of Research Assistant. This is only one aspect of the various conditions mentioned in Part C of the notification extracted by us above. In case of National Malaria Eradication Programme, we have already made reference specifically to the posts of Malaria Supervisors and Research Assistants under that Programme. On a reference to the report of the Fifth Pay Commission we find that the Commission in

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paragraph 69.84 of the report while recommending the various replacement scales referred to by us earlier, have specifically mentioned that the cadre structure given by the Commission at Annexure-69.1 should be adopted for the entire hierarchy under the Programme. In other words, the replacement scales recommended under Part C in respect of National Malaria Eradication Programme are conditional on adoption of the cadre structure recommended by the Commission. We are emphasising this to bring home the point that the replacement scales mentioned in Part C are not ipso facto applicable. The necessary conditions laid down by the Pay Commission have to be fulfilled and this would mean that ICMR and Ministry of Health should take conscious decision about adoption of those recommendations of the Pay Commission and thereafter these scales will be applicable with prospective effect. Till such time the normal replacement scale would be applicable. The normal replacement scale prescribed under Part A of the above notification, as already noted, is Rs.5500-9000/- against the Fourth Pay Commission pre-revised pay scale of Rs.1640-2900/- and therefore, the respondents are right in granting this scale by way of replacement of the scale of Rs.1640-2900/-. The scale of Rs.6500-10,500/- given earlier was specifically subject to clarification to be received from the ICMR and this has been mentioned in the orders at Annexure-5 series. In the letter of the ICMR, dated 30.10.2000, granting of replacement scale in Part-C has been mentioned. But, as earlier noted by us, this is subject to the conditions

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limiting the application of the replacement scales mentioned in Part-C quoted by us above. In view of our above discussion, we find no infirmity in the action of the respondents granting the scale of Rs.5500-9000/- to the applicants.

7. The other aspect of the matter is that the entire question of Research Assistants getting the pre-revised scale of Rs.1640-2900/- is pending consideration of the Hon'ble High Court of Madras before whom the Tribunal's order dated 26.9.2000 has been challenged and operation of that order has been stayed. In view of this, while upholding the action of the respondents in granting the scale of Rs.5500-9000/- to the applicants by way of replacement scale of Rs.1640-2900/-, we direct that excess amounts already received by the applicants because of introduction of the scale of Rs.6500-10,500/- should not be recovered from them till a final view is taken by the Hon'ble High Court of Madras. We have taken note of the fact that before introduction of the Fifth Pay Commission scales every employee has to give an undertaking that any excess paid will be recovered from him. This is because the normal requirement of pre-audit is dispensed with at the time the Pay Commission scales are introduced due to numbers involved. Even then because of the larger issues which are pending consideration of the Hon'ble High Court of Madras, we direct that a final view with regard to recovery of the amount already given to the applicants, should be taken by the ICMR only after the

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Hon'ble High Court of Madras take a view on the main question of entitlement of Research Assistants of ICMR institutes for the scale of Rs.1640-2900/- with effect from 1.1.1986 notionally and from 1.7.1997 effectively.

8. In the result, therefore and subject to our observations and direction above, the Original Application is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
24.9.2001.
VICE-CHAIRMAN

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