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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 307 OF 2001
Cuttack this the 20th day of Aug. 2004

Jogesh Chandra Nayak & Ors. ... Applicants

- VERSUS -

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 7-8
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7-2

[Signature]
(M.R. MOHANTY) 20/08/04
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack this the 20th day of August 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

1. Sri Jogesh Chandra Nayak, aged about 41 years, S/o. late Budhiram Nayak, at present working as General Manager, A.G.Canteen, Office of the Pr. Accountant General (A&E), Orissa, Bhubaneswar and Secretary General, All India Central Govt. Canteen Employees' Workers' Association, Headquarters Office at/PO-Bhubaneswar, Dist-Khurda
2. Sri Ananta Kumar Mishra, aged about 59 years, S/o. late Damodar Mishra, at present working as Cook, A.G.Canteen, Office of Pr.A.G.(A&E), Orissa, Bhubaneswar
3. Sri Baidhar Khanurai, aged about 50 years, S/o. Sri Balaran Khanurai, at present working as Clerk, A.G.Canteen, Office of Pr.A.G.(A&E), Orissa, Bhubaneswar

... Applicants
M/s.K.C.Kanungo
S.Behera
R.N.Singh
M.K.Mandal

By the Advocates

- VERSUS -

1. Union of India represented through Secretary to Govt. of India, Ministry of Finance, Govt. of India, North Block, Central Secretariat, New Delhi-I
2. Secretary to Govt. of India, Ministry of Personnel Public Grievance and Pensions, North Block, Central Secretariat, New Delhi-I
3. Director of Canteens, Department of Personal and Training, Loknayak Bhawan, 3rd Floor, Khan Market, New Delhi-3

... Respondents
Mr.B.Dash, A.S.C.

By the Advocates

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicants (Shri Jogesh Chandra Nayak & two others) working in A.G.Canteen, Office of the Principal Accountant General (A&N), Orissa, Bhubaneswar, having filed this Original Application under Section 19 of the Administrative

Tribunals Act, 1985, seeking the following reliefs:

"... to quash Para-2(I) of Annexure-1 and quash Annexure-6 to meet the ends of justice.

... to hold that the applicants are entitled to the benefit of upgradation of pay in pursuance to ACP scheme from the date of actual entry into service.

... to direct the Respondents to extend the benefit of ACP scheme to the applicants as well as other Canteen Employees with arrears".

2. The facts of the case in brief are that the employees of the non-statutory departmental canteens having been declared Government servants, are being given the service facilities at par with the other central Government employees. However, the applicants have been denied the full benefit of Assured Career Progression (ACP) Scheme by misinterpreting the conditions as laid down in that scheme, as a result of which some of the employees like the applicant No.2 herein will retire without enjoying the full benefit of the ACP scheme. It is the case of the applicants that although the canteen employees are treated as Central Government employees, following the decision of the Hon'ble Supreme Court and benefits, such as, pension, gratuity and Govt. accommodations have been extended to them with effect from the date of actual entry in service, but the date, 26.9.1983, has not been taken into account for the purpose of determining the eligibility under the A.C.P. Scheme.

3. The Respondents, by filing a detailed counter have submitted that the benefit under the A.C.P. scheme has been extended to the employees of non-statutory

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canteen employees by virtue of O.M. dated 25.7.2000, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. Based on this order, the employees will be entitled to financial upgradation after completion of 12 years and 24 years of regular service and for that purpose, their regular service will be reckoned with effect from 26.9.1983 or the actual date of appointment(s) in regular pay scale(s), whichever is later. The Respondents have denied that any of the provisions in the scheme has been misinterpreted to the disadvantage of the applicants. They have also pointed out that excepting pension, GPF, and Group Insurance etc., the service benefits, as available to other Central Govt. employees of comparable status have been extended to the applicants with effect from 1.10.1991, following the decision of the Hon'ble Apex Court to that effect. The Respondents have further submitted that the canteen employees had again moved the Hon'ble Supreme Court seeking pension from the date of initial appointments. However, the Apex Court was pleased to direct that pension would be given to those, who retire on or after 1.10.1991, by reckoning qualifying service from 26.9.1983 and in case of those, whose service falls short of the minimum qualifying service of 10 years, their service prior to 26.9.1983 would be taken into account to the extent of the short-fall. Thereafter, in the year 1996, the Canteen Employees again moved the ^{Principal Bench of this} Tribunal in Original Application No.572/96 seeking pension from the date of initial appointment. That O.A. having been allowed vide order dated 3.12.1999 passed by the Principal Bench, the

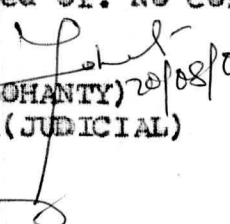
carried the matter in appeal, which is reported to be pending before the Hon'ble High Court of Delhi. While the matter stood thus, the Government decided to reckon the entire past service rendered on regular basis by canteen employees towards pension with the condition that the enhanced pension along with interest would be refunded by the employees in the event of the appeal being upheld by the High Court of Delhi.

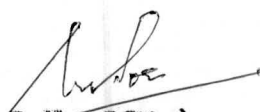
4. We have heard the learned counsel for the parties and perused the materials placed before us.

5. The undisputed fact of the matter is that the benefit under the ACP scheme has been extended to the canteen employees. The basic feature of the scheme is that the employees, after having completed 12 years and 24 years of regular service are entitled to 1st and 2nd financial upgradation respectively, with a view to optimising their career progression. This also safeguards the employees from stagnation. We, therefore, agree with the submission made by the Respondents that the canteen employees are assured of financial upgradations after completion of 12 and 24 years of regular service. It has also been disclosed in the counter that some of the canteen employees had again gone before the Hon'ble Supreme Court seeking pension by reckoning their qualifying service from the date of their initial appointments. However, the Apex Court directed that pension would be given to those, who retire on or after 1.10.2001 by reckoning qualifying service from 26.9.1983 and in case of those whose service falls short of the minimum qualifying period of 10 years, their

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service prior to 26.9.1983 would be taken into account to the extent of short fall. As the matter with regard to counting of service and/or treating the applicants as regular Government servants before 1.10.1991 has been allowed to be extended upto 26.9.1983 by the Hon'ble Apex Court, the order passed by the Respondents-Department vide Annexure-1 dated 25.7.2000 cannot be called in question. We have also been informed by the Bar that the question of treating the service of the canteen employees as regular with effect from the date of their initial appointments for the purpose of pension has been decided by the Principal Bench of the Central Administrative Tribunal in O.A.No.572/96 and the appeal against this order is pending before the Hon'ble High Court of Delhi. These being the facts of the case, we feel that at this juncture, pending disposal of the appeal against the order of the Principal Bench of this Tribunal, status quo may continue and we do not interfere with the impugned order dated 25.7.2000 issued by the Ministry of Personnel, Public Grievances and Pensions, with regard to ACP Scheme.

6. With the above observation, this O.A. is disposed of. No costs.


(M.R. MOHANTY) 20/08/04
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY