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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NO.127 OF 2002
Cuttack, this the 24th day of March, 2003

Shri Braja Sundar Mohapatra Applicant
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 to all the Benches of the Central Administrative Tribunal or not? *yes*

24.03.03
(M.R.MOHANTY)
MEMBER(JUDICIAL)

24.03.03
(B.N.SOM)
VICE-CHAIRMAN

11.

CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

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

Sri Braja Sundar Mohapatra, aged about 42 years, son of Sri Bansidhar Mohapatra, PlotNo.F-5-60, Sector 6, C.D.A., Cuttack, at present National SampleSurvey Organization, Bhubaneswar

..... Applicant

Advocate for the applicant –M/s D.Lenka & D.S.Ray
Vrs.

1. Union of India, represented through the Secretary, Ministry of Statistics and Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi 110001
2. Deputy Director General, Ministry of Statistics and Programme Implementation, National SampleSurvey Organization, Field Operation Division, East Block No.6, Label Nos.6 and 7, R.K.Puram, New Delhi 110 066
3. Deputy Director, Orissa Eastern Region, Commercial Complex, First Floor, Acharya Vihar, Bhubaneswar 13

..... Respondents.

Advocate for respondents – Mr.A.K.Bose, Sr.CGSC

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ORDER

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

Shri Braja Sundar Mohapatra, presently working as Investigator, National Sample Survey Organization, Bhubaneswar, has filed this Original Application, being aggrieved by the delay on the part of the Respondents in giving him the benefit of Assured Career Progression Scheme (A.C.P Scheme) of the Government of India.

2. The facts of the case are that the Respondent-Department by their order under Annexure 5, dated 10.12.1999 granted financial upgradation under the A.C.P.Scheme to the applicant with effect from 9.8.1999. However, very soon thereafter, vide Annexure 9, dated 10.4.2001, the said benefit was withdrawn by the Respondents, and the office order read as follows:

“In partial modification of Office Order No.A-32016/13(MAIN)/99-Estt.II, dated 10th December, 1999 granting financial upgradation benefit to 235 Investigators the name of Shri B.S.Mohapatra, Investigator, Regional Office, Bhubaneswar, is hereby deleted. His name for financial upgradation under the A.C.P.Scheme would be considered in due course of time.”

The applicant represented against this order of withdrawal of the A.C.P.benefit, vide his letter dated 26.4.2001. In response to his representation, the Respondent-Department vide Annexure 11 informed him that his case would be put up before the Screening Committee again for review and the decision of the Committee would be communicated to him. Further, the Respondents vide their O.M. dated 16.4.2002 informed him that the

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Screening Committee constituted for the purpose found him "Not Yet Fit" for grant of financial upgradation.

3. The Respondents in their counter have submitted that the Screening Committee, which held its meeting in December 1999 inadvertently overlooked the fact that the applicant was undergoing the punishment of withholding of increment of pay for one year with effect from 11.9.1998. This mistake was later on corrected by issuing O.M. dated 7.6.2001 (Annexure 11). Subsequently, his matter was reviewed by the Screening Committee, which held its meeting on 11.2.2002, but he was found not fit for financial upgradation. The Respondents have submitted that as per the provisions of the A.C.P.Scheme, the applicant could be offered financial upgradation only on the recommendation of the Screening Committee.

4. We have heard Shri D.Lenka, the learned counsel for the applicant and Shri A.K.Bose, the learned Standing Counsel for the Respondents and perused the records placed before us.

5. From the facts of the case, it is clear that the financial upgradation of the applicant was withheld with effect from August 1999 on the ground that he was undergoing a punishment of withholding of one increment for a period of one year without cumulative effect from September 1998. As per the Government instructions in the matter, the applicant could not have been granted financial benefit during the period of one year from September 1998. However, with effect from 11.9.1999 when the currency of the penalty was over and as the applicant was otherwise found fit for financial upgradation by the Screening Committee, which held its meeting on 3.12.1999, he should have been granted financial upgradation by the Respondents. In

the case of a regular promotion also, when the recommendation of the DPC is kept in a sealed cover, it is opened after the currency of the punishment is over and if on opening of the sealed cover, the official is found fit for promotion, the benefit of promotion is granted. The same procedure should have been followed in this case also. We have also gone through the O.M. dated 9.8.1999 issued by the Ministry of Personnel, Public Grievances and Pension, notifying the A.C.P.Scheme. One of the conditions for grant of benefit under the A.C.P.Scheme is fulfillment of normal promotion norms. That being the case, the Respondents should have adopted sealed cover procedure in the instant case and should have granted benefit of financial upgradation to the applicant after opening the sealed cover as he was found fit for upgradation by the Screening Committee of 3rd December, 1999. But the effect of financial upgradation had to be delayed on account of currency of the statutory punishment against him.

6. In view of the above facts and circumstances of the case and the service law governing such matters, we allow the O.A. and direct the Respondents to grant financial upgradation to the applicant under the A.C.P.Scheme with effect from 1.10.1999. No costs.

Mohanty
24.03.03
(M.R.MOHANTY)
MEMBER(JUDICIAL)

B.N.Som
(B.N.SOM)
VICE-CHAIRMAN

AN/PS