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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 92 & 93 OF 2005
Cuttack this the 20th day of Jan/05

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER

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IN O.A.No.92/2004

Sri Siba Charan Sahoo, aged about 35 years,
S/o. Bhramarbar Sahoo, resident of Village-Shinghal,
PO-Sambalpur, PS-Kishan Nagar, Dist-Cuttack - at
present employed as Halwai in the Departmental
Canteen, Office of Commissioner of Income Tax,
Orissa, Arunodaya Market, Cuttack, Dist-Cuttack

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Applicant

Advocate for the applicant

M/s. K.C. Kanungo
S. Behera
B. Das
C. Padhi

- VERSUS -

1. Union of India represented through Chairman,
Central Board of Direct Taxes, North Block,
New Delhi-1
2. The Chief Commissioner of Income Tax, Orissa
Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-7,
Dist- Khurda
3. Commissioner of Income Tax, Orissa, Arunodaya
Market, At/PO/Dist-Cuttack

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Respondents

By the Advocates

Mr. B. Mohapatra, ASC
Mr. U. B. Mohapatra, SSC

IN O.A.No.93/2004

Sri Bairagi Sahoo, aged about 45 years, S/o. Brundaban
Sahoo, At-Markandapur, PO-Siara, Via-Bammal, PS-Puri
Sadar, Dist-Puri - at present working as Halwai,
Office of the Chief Commissioner of Income Tax, Ayakar
Bhawan, Rajaswa Vihar, PS-Saheed Nagar, Bhubaneswar-7,
Dist- Khurda

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Applicant

By the Advocates

M/s. K.C. Kanungo
S. Behera
B. Das
C. Padhi

- VERSUS -

1. Union of India represented through Chairman,
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Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-7,
Dist-Khurda

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Respondents

By the Advocates

Mr. R.C. Behera, ASC
Mr. U.B. Mohapatra, SSC

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : Since the point in issue

to be decided arises out of common facts and circumstances, we dispose of both the above mentioned OAs through this common order. For the sake of convenience, we may as well reduce to writing the facts as referred to in O.A. No.92/04.

2. Shri Siba Charan Sahoo (applicant in O.A.No.92/04) was appointed as Halwai by means of direct recruitment in the departmental canteen run by the Office of the Commissioner of Income Tax, Orissa. His case is that he was appointed on 11.2.1987. The employees of the departmental canteen were regularised and treated as Government servants consequent upon the decision of the Hon'ble Supreme Court dated 11.10.1991 in the Writ Petition No.6189-7044 and 8246-55 of 1983 in Chandra Kanta Jha and others, P.N.Sarma and Others vs- Union of India & Ors. By a subsequent order of the Central Government, the Assured Career Progression Scheme (in short ACP Scheme) for the employees working in non-statutory departmental canteens/tiffin rooms located in Central Government offices was made applicable (Annexure-3 dated 25.7.2000). In terms of this scheme, the in situ promotion scheme, which was in vogue earlier was abolished and the employees were

made eligible for a minimum of two financial upgradations during the entire service career in case they were not offered two vacancy bound promotions. These financial upgradations were to take place after 12 and 24 years of regular service. However, no financial upgradation was granted to the applicant even after a lapse of 15 years when he represented to Respondent No.2 to remove this anomaly vide his representation dated 3.7.2002. Instead of redressing his grievance, the Res. No.2 by his letter dated 23.1.2003 (Annexure-6) referred the matter to Res.1 seeking clarification with regard to entitlement of the scale on financial upgradation. Even on the date of filing of the O.As no clarification had been issued by Res.1 in the matter. On the other hand, the applicant has submitted, that in the Office of Chief Commissioner of Income Tax, Mumbai, this benefit has been extended vide Annexures-A/7 and A/8 dated 31.1.2001 and 10.9.2002 respectively to the canteen employees including Halwai upgrading their scale of pay to Rs.4000-6000/- as the first financial upgradation. Similar action has been taken by the Directorate of Census Operations, Orissa, Bhubaneswar, Ministry of Home Affairs, granting financial upgradation under the A.C.P. Scheme to Halwai from the present scale of Rs.3200-4900/- to the next higher scale of Rs.4000-6000/-. The applicant, has therefore, prayed for issuing direction to the Respondents to grant him the benefit under the A.C.P. scheme (first financial upgradation) from the scale of Rs.3200-4900/- to Rs.4000-6000/- with effect from 9.8.1999 with interest.

3. The Respondents have opposed the prayer of

the applicant. They have admitted that the applicant was appointed as Halwai in the departmental canteen carrying the pay scale of Rs.3200-4900/- with effect from 26.9.1983 and that the A.C.P. scheme has been introduced in the Department with effect from 9.8.1999. They have explained that the benefit under the Scheme could not be extended to the applicant on the ground that in the scheme itself it has been specifically provided that in case of isolated post, in the absence of definite hierarchy in the grades, enhanced upgradation shall be given by the Ministries/Departments concerned ^{to the} immediately next higher pay scales as indicated in Annexure-2. It has been further submitted that the isolated post for the purpose of A.C.P. has been defined/clarified in the Government of India, DOPT O.M. No.35034/1/97-Est.(D) Vol-IV dated 20.2.2000 that it is a stand alone post having neither feeder grade nor promotional grade. It has also been stated that a post having no promotional grade, but having a feeder grade and vice versa shall not be treated as isolated post for the purpose of A.C.P. Scheme (Annexure-R/1). It has been further explained that in case of Halwai, the post can be filled up either first by movement or promotion failing which by direct recruitment. In this case, the applicant was recruited directly from the open market. In the circumstances, it does not come within the definition of isolated post and hence, it was necessary for the Government to clarify/define as to the scale to which the Halwai is to be given on financial upgradations both after 12 and 24 years of service. It has also been clarified that there is no

promotional avenue for the Halwai in the Department.

4. We have heard the learned counsel of both the sides and perused the records placed before. The learned counsel for the applicant repeatedly brought before us the orders issued by the Chief Commissioner of Income Tax, Mumbai and Directorate of Census Operations, Orissa, Bhubaneswar granting first financial upgradation to the Halwais to the pay scale of Rs.4000-6000/-. He has also drawn our attention that the Respondents-Department being one entity, it could not follow the different principles in implementing the A.C.P. scheme between their Commissionerate as that would constitute discrimination. There is considerable force in the contention of the learned counsel for the applicants. However, we also appreciate the discomfiture in which Res. 2 has been put, because of non receipt of clarification from Res.1. It is also not possible as submitted by the learned Senior Standing Counsel for the Respondents, for Res. 2 to follow the action taken by the Chief Commissioner of Mumbai, without clarifying its doubt and the doubt raised by Res.2 is quite valid in law. The Department of Personnel & Trg. O.M. dated 10.2.2000 has defined the nature of isolated post for the purpose of A.C.P.Scheme as referred to in Annexure-R/1 to the counter. It has been clearly stated that "Isolated post is a stand alone post having neither feeder grade nor promotion grade". In the case of Halwai, there is a feeder grade, i.e., Asst.Halwai. The Government, while extending the benefit under the A.C.P. Scheme to the employees of the departmental

canteen, by letter dated 25.7.2000 (Annexure-A/3) has clearly indicated that from the post of Halwai, there is no upward movement to the post of Asst. Manager/ Manager etc. Isolated post has already been defined by the Department of Personnel & Trg. as a post which is filled up by direct recruitment, is a post which does not belong to any cadre and is a post which does not offer any upward/vertical movement of the post holder(s). The post of Halwai in the departmental canteen does not become an isolated post for those who occupy the said posts by way of promotion, but it does assume the character of an isolated post, once the post holder is recruited directly from the open market. In the instant case the applicant having been recruited directly to the post of Halwai and the Government having made a policy declaration for the Central Government Civilians Employees in all the Ministries/Department that they will be provided with a safety ^{net} in aid to deal with the problem of genuine stagnation and hardship faced by them due to ^{lack of} adequate promotional avenues and hence every employee is assured of two financial upgradations. It is in their O.M. dated 9.8.1999 itself, the Government has laid down as under :

"Isolated posts in Group A, B, C & D categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above".

It has to be noted here that the A.C.P. scheme has been introduced only to benefit the employees belonging to Group-B, C and D and for the isolated post

the employees in Group A have also been included clearly, because, an isolated post holder whether in Group A, B, C or D does not have any vertical promotional prospects. That being the policy declaration of the Government, the Department is bound by the same in line with the ratio of the judgment in the case of Ramachandra Keshav Adke v. Govind Joti Chavare and Others (reported in AIR 1975 SC 915), wherein, their Lordships of the Hon'ble Supreme Court have held as under :

"...where it was held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule square applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other."

In view of the above provisions of the A.C.P. Scheme, we have no hesitation to hold that the applicant being the holder of the post Halwai as a direct recruit is holding an isolated post and therefore, he is entitled to the benefit of A.C.P. Scheme under the provisions of Para 3.1 of the Govt. of India O.M. dated 9.8.1999 and as the scale of pay of the applicant is Rs.3200-4900/- he is entitled to the benefit of first financial upgradation to the scale of Rs.4000-6000/-.

We, therefore, direct the Respondents to consider the case of both the applicants in terms of the procedure laid down in the O.M. (referred to above) for grant of first financial upgradation under the A.C.P. Scheme and to give them the benefit of the next higher scale in the hierarchy, i.e., Rs.4000-6000/- as granted to the

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Halwais of Departmental canteens run by the office of Chief Commissioner of Income Tax, Mumbai/Directorate of Census Operations, Orissa, Bhubaneswar. This exercise shall be completed within a period of 120 (one hundred and twenty days) from the date of receipt of this order.

As regards the prayer for grant of interest, we are not inclined to pass any order on this.

With the aboservations and directions as made above, both the O.As are allowed. No costs.

Sd/- J. K. KAUSHIK
JUDICIAL MEMBER

Sd/- B. N. SOM
VICE-CHAIRMAN

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