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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NOS.225 & 268 TO 271 OF 2004
AND 923 & 924 OF 2005**

Cuttack this the *6th* day of August, 2009

...

Dr.Sunil Kumar Das, etc.	Applicants
-VERSUS-		
Union of India and others	Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

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**ORIGINAL APPLICATION NOS.225 & 268 TO 271 OF 2004 AND 923
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Cuttack this the 6th day of August, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

1. Dr.Sunil Kumar Das, aged about 53 years, S/o. late Narayan Prasad Das, Qr.No.D-3/4, Unit-8, Bhubaneswar, Dist-Khurda at present working as Research Officer (Medical), National Nutrition Monitoring Bureau, Orissa Unit, Bhubaneswar, At-Regional Medical Research Centre (ICMR), Chandrasekharpur, Bhubaneswar, District-Khurda (O.A.No.225/04)
2. Mrs.Sukhalata Paikray, aged about 48 years, W/o. Suresh Chandra Das, Qr.No.D-78, BJB Nagar, Bhubaneswar, District-Khurda, at present working as Asst.Research Officer (Non Medical), National Nutrition Monitoring Bureau, Orissa Unit, At-Regional Medical research Centre (ICMR), Chandrasekharpur, Bhubaneswar, District-Khurda (O.A.No.268/04)
3. Dillip Kumar Mohanty, aged about 40 years, S.o. Debendranath Mohanty, Qr.No.2 RA (F) 29/1, Unit-9, Bhubaneswar, At present working as Steno-cum-Office Assistant, (National Nutrition Monitoring Bureau), Orissa Unit, At-Regional Medical Research Centre (ICMR), Chandrasekharpur, Bhubaneswar, Dist-Khurda (O.A.No.269/04)
4. Radhakanta Sahoo, aged about 47 years, S/o. late Laxman Sahoo, At/Po-Begunia, Dist-Khurda, at present working as Driver, National Nutrition Monitoring Bureau, Orissa Unit, Bhubaneswar, At-Regional Medical Research Centre (ICMR), Chandrasekharpur, Bhubaneswar, District-Khurda (O.A.No.270/04)
5. Jugal Kishora Mohanty, aged about 54 years, S/o. late Mohan Mohanty, At-Dasapalla, Nayagarh, at present working as Field Attendant in the National Nutrition Monitoring Bureau, Orissa Unit, At-Regional Medical research Centre (ICMR), Chandrasekharpur, Bhubaneswar, District-Khurda (O.A.No.271/04)Applicants

By the Advocates:M/s.A.K.Bose, P.K.Das, D.K.Mallik

-VERSUS-

1. Union of India represented by the secretary to the Government, Deptt. Of Health & Family Welfare Department, Nirman Bhawan, New Delhi
2. Indian Council of Medical Research represented by its Director General, At-V.Ramalingawaay Bhawan, Anasari Nagar, P.Box No.4911, New Delhi-110029



3. Director, National Institute of Nutrition and Officer in charge, NNMB, Nutrition, Namai Osmania, Hyderabad-500 007, Andhra Pradesh
4. Director, Regional Medical Research and Officer-in-Charge, National Nutrition Monitoring Bureau, Orissa Unit, Chandrasekharpur, Bhubaneswar-751023, Dist-Khurda

... Respondents

By the Advocates: M/s. Manoj Kr. Mishra & D.K. Pattnaik (Res. 4)

Mr. R.N. Mishra, A.S.C.

Khageswar Pradhan, aged about 45 years, Son of Sri Lingaraj Pradhan, At/PO-Resham, Via-Bheden, Dist-Baragarh – at present residing in Qr.No.H-82, Sector-2, Rourkela-769006 and serving as Assistant Research Scientist in Malaria Research Centre, Indian Council of Medical Research, Sector-5, Rourkela-769002 (O.A.No.923/2005 & 924/2005)... Applicant

By the Advocates: Susanta Kumar Dash, S.K. Mishra, S. Dash, Miss. A. Dhalasamanta & S. Patra

1. Union of India represented by the Secretary, Ministry of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi-110 011
2. Secretary, Ministry of Finance, Govt. of India, New Delhi
3. Secretary, Ministry of Science & Technology, Govt. of India, Technology Bhavan, New Mehrauli Road, New Delhi-110 016
4. Director General, Indian Council of Medical Research, Ansari Nagar, Post Box-4508, New Delhi-110029
5. Director, Malaria Research Centre, Indian Council of Medical Research, 22-Sham Nath Marg, Delhi-110 054
6. Officer-in-Charge, Malaria Research Centre, Indian Council of Medical Research, Sector-5, Rourkela-769002

... Respondents

By the Advocates: Mr. U.B. Mohapatra, SSC (Res. 1 to 3)
M/s. Sangram Das & Satyajit Behera (Res 5 and 6)

ORDER

JUSTICE K. THANKAPPAN, JUDICIAL MEMBER:

1. Since the point to be determined arises out of similar facts and circumstances, all the above mentioned Original Applications are being disposed of by this common order. For the sake of convenience, the facts, as set out in O.A.No.225/04, are being referred and reduced to writing.
2. The facts in brief are that the applicants are at present working as Research Officer, Asst. Research Officer, Steno-cum-Office Assistant, Driver, etc., under Respondent No.4, i.e., Director, Regional Medical Research &



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Officer-in-Charge, National Nutrition Monitoring Bureau, Orissa Unit, Bhubaneswar. Although they have been treated as employees under Indian Council of Medical Research (in short I.C.M.R.) and their pay was fixed allowing the benefit of 40% in the scale of pay based on the recommendations of 5th Central Pay Commission and accordingly, they were in receipt of the above benefit with effect from 1.4.1998, but all on a sudden, the Director General, Indian Council of Medical Research issued a letter dated 13.5.2008(Annexure-A/8) directing the Director, Regional Medical Research Centre, Bhubaneswar, for withdrawal of benefit of 40% fitment extended to the long term extramural research project staff, besides recovering the excess amount paid to the staff due to extension of 40% fitment benefit with effect from 1.4.1998 in suitable installments. Being aggrieved by this order, the applicants have approached this Tribunal in the present Original Application seeking the following relief:

- a) To quash the order passed under Annexure-A/8, i.e., order No.16/115/97-Admn. II dated 13.5.04 issued by the Administrative Officer for Director General Indian Council of Medical Research (ICMR)
- b) It may be declared that the applicants are entitled to addition of the fitment benefit of 40% of the basic pay in the pre-revised scale of pay and they are entitled to receive the salary with the above benefit.

3. The grounds urged by the applicants in support of their claim are that the benefit of 40% fitment having been approved by the Governing Body of the I.C.M.R. in pursuance of the advice of the Commission, the same cannot be withdrawn as the I.C.M.R. is an autonomous body and is governed by its own byelaws, rules and regulations. The decision in extending the benefit of 40% fitment taken by the I.C.M.R. is a conscious one with a view to avoiding discrimination between the staff working under the ICMR and the staff

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working in permanent center under the ICMR, keeping in view that the National Nutrition Monitoring Bureau (in short, NNMB) is not an ad hoc project, but a permanent center under the ICMR. The employees of Regional Medical Research Center having been allowed 40% fitment benefit, the denial of the same to the applicants amounts to discrimination. Further, it has been urged that the conditions of service of the employees of NNMB are governed under a set of guidelines as per Annexure-A/9 and as per the accepted guidelines, the employees of NNMB are entitled to receive the same salary as applicable to the employees of ICMR and in the above background, the employees of NNMB were in receipt of the benefit of 40% fitment and by the so called withdrawal, in effect the applicants have been adversely affected and their service conditions have been put to their disadvantageous position. It has been urged that by virtue of Office Memorandum dated 2.12.1997 issued by the Ministry of Finance there is provision for extending the benefit of 40% fitment to autonomous organization/statutory bodies, etc., and there being no instruction to restrict the said benefit in case of employees like the applicants herein whose emoluments are equal to that of the employees of the Central Government, the withdrawal of the benefit as such is by misinterpretation of the said O.M. issued by the Finance Department. In the end, it has been urged that the office order under Annexure-A/8 has been issued in violation of the principles of natural justice. On these grounds, the applicants have prayed for the relief as quoted above.

4. This matter came up on 31.5.2004 for admission. While directing notice to the Respondent-Department, this Tribunal stayed the operation of the impugned order under Annexure-A/8 dated 13.5.2004 until further orders. It



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reveals from the record that the Respondent-Department filed their counter on 9.5.2005 and as per order dated 19.9.2005, the Tribunal treated this matter as part-heard, when Shri Bose, learned counsel for the applicants sought to move the petition for amendment directing the matter to be put up on 24.10.2005. Although Misc. Application No.797/05 seeking amendment was filed thereafter by the applicants, but the Registry, for the reasons best known, did not put up the matter and thereby the stay order granted by this Tribunal continued at the instance of the Registry till 24.6.2008 when the matter was put up for amendment and the amendment having been allowed, the Respondents were allowed time to file additional counter to the amended petition.

5. The Respondent Nos. 2 and 4 have filed their counter and additional counter respectively. In the counter it has been submitted that by virtue of the impugned order the benefit of 40% fitment which was wrongly granted to the applicants have been directed to be recovered. They have submitted that the said benefit as recommended by the 5th CPC is not applicable to the project employees in view of letter dated 2.12.1997 issued by the Ministry of Finance, Department of Expenditure. It has been submitted that the staff of the Council (ICMR) working in long term extramural projects including the applicants who are engaged in NNMB Project were not entitled to the said benefit and therefore, the decision of the Governing Body of the Council (ICMR) extending 40% fitment benefit to the concerned employees was only recommendatory in nature and ought to have been implemented only with the approval of the parent Ministry, i.e., Ministry of Health & Family Welfare and the Ministry of Finance (Department of Expenditure). The Respondents have

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stated that the Executive Committee of the Indian Council of Medical Research allowed the said benefit to the present applicants keeping in view the circular dated 24.12.1997, which was recommendatory in nature and when at a later stage, the Council sought clarification from the Ministry of Finance (Department of Expenditure), the same having been examined in the light of the aforesaid recommendations of the Council as also the report of the 5th CPC, it was clarified that such benefit was not admissible to the extramural project staff who were not covered by the order dated 2.12.1997 and thus, they were not entitled to 40% fitment benefit. These being the backgrounds, the impugned order at Annexure-A/8 came to be issued. The Respondents have also agitated that the present O.A. besides the point to be determined on merit, suffers from non-joinder of necessary party inasmuch as the Ministry of Finance (Department of Expenditure) has not been impleaded, on whose advice, the above benefit has been withdrawn. Lastly, it has been submitted that the applicants are purely temporary worker/employees whose jobs are purely attached to the project work and therefore, they could not be equated with the regular employees of the Council. The submissions made by the Respondents in the additional counter are more or less the same as in the main counter.

6. Applicants have filed rejoinder and additional rejoinder to the counter and additional counter, respectively.
7. Heard the learned counsel appearing on behalf of the respective parties and perused the materials on record.



8. Having regard to the submissions made, the point emerges to be determined is whether the applicants are entitled to the benefit of 40% fitment and if not to what relief?

9. Before proceeding to deal with the matter, it is necessary to quote the relevant portion of Office Memorandum dated 2.12.1997 issued by the Government of India, Ministry of Finance, Department of Expenditure in the matter of pay revision of employees of quasi-Government Organizations, Autonomous Organizations, Statutory Bodies, etc. set up by and funded/controlled by the Central Government – Guidelines regarding, which reads as under:

“As the Ministry of Home Affairs etc. are aware, the Government have already issued orders regarding revision of pay scales of Central Government employees on the basis of the recommendations of the Fifth Central Pay Commission as accepted by the Government. It has been decided that these orders may be extended to the employees of Autonomous Organizations etc. whose pattern emolument structure, i.e., pay scales and allowances (in particular the Dearness Allowances, the House Rent Allowances and City Compensatory Allowance) are identical to those of the Central Government employees. This is further subject to the stipulation that conditions of service of employees of those organizations, specially those relating to hours of work, payment of OTA etc. would also be exactly similar to those in Government Departments. There is no objection to the Autonomous Organizations etc. adopting the Central Civil Services (Revised Pay/Rules, 1997. It may, however, be clarified that the revised scales of pay as incorporated in part A of the First Schedule to the Rules *ibid* alone may be adopted. It may further be added that the revised scales would be admissible to those employees who opt for these in accordance with the extant Rules...”

10. In the light of the above instructions, we have to consider the various grounds urged by the applicants in support of their claim. In the first instance, the applicants have urged that the Governing Body of I.C.M.R. having approved the 40% fitment benefit as per the advice of 5th CPC, the said benefit should not have been withdrawn. In this backdrop, it would be profitable to

quote hereunder Rule 6 of Bye-laws governing the conditions of service of the employees.

“6. The scales of pay for various posts under the Council shall be similar to those with corresponding duties under the Government of India, provided, however, that the Governing Body of the Council may prescribe, in certain cases a different scale of pay for certain post/posts, having regard to the duties and responsibilities attached to them and after taking into account the Government of India's order issued from time to time on the subject”.

11. From the above, it is clear that the applicants are not the holders of various posts under the Council, but holders of the posts in the Project under the control of the Council and therefore, there can never be parity in pay scales of the applicants with those of the employees under Council, which are similar to those with corresponding duties under the Government of India. Thus, the status of the employees under the Council and that of the Project under the control of the Council is diametrically opposite. Even the Governing Body of the Council having regard to the second proviso had prescribed certain scale of pay in respect of the applicants, it ought to have taken into account the Government of India's orders issued from time to time. In other words, there being no order issued by the Government of India, the benefit could not have been granted, or at the most the matter could have been referred to the parent Ministry, i.e. Ministry of Health & Family Welfare, who is the best judge in the matter to take a decision in that behalf. Having not adhered to this vital instruction, it is but natural that the benefit of 40% fitment granted to the applicants by the Governing Body of ICMR is fraught with infirmity. Assuming that the applicants were in receipt of similar pay scales as those of the employees under the Council, even then their status having not been recognized as employees of Central Government and/or Autonomous



Organization, subject to fulfillment of other terms and conditions, by no stretch of imagination it can be held that granting of such pay scale was based on the report of the 5th C.P.C., or Rule 6 of the Byelaws, or any instructions issued by the Government of India. With regard to extension of similar treatment to the applicants as of the employees in NIN, Hyderabad, as urged in the rejoinder, it is to be noted that the Respondents in the additional counter have indicated the service conditions of the ICMR employees and Permanent Institutes employees (NIN employees) vis-à-vis Project employees (NNMB employees), wherein they have categorized and classified the employees of NIN as that of the I.C.M.R. Besides the above, we have gone through the various decisions cited by the respective parties in support of their claims. Having regard to all those, we would find that the applicants' claim is not supported by any concrete or substantive material and the grounds which are urged in support thereof are not quite enough having any reasonable nexus to tilt the decision to their side.

12. Last but not the least, we would like to observe that the Ministry of Finance, Department of Expenditure having not been impleaded as party-Respondent at whose instance the benefit of 40% fitment allowed to the applicants has been withdrawn, the O.As suffer from non-joinder of necessary party.

13. Having regard to the discussions held above, we hold that the applicants have not been able to establish their claims in the instant Original Applications. However, the recovery ordered on account of erroneous extension of the aforesaid benefit shall not be given effect to as the applicants are in no way responsible in that behalf and it was the I.C.M.R. which had



granted such benefit, and in the event such recovery is effected at this distant point of time, it would seriously curb the financial condition of the applicants. It is to be noted that as per Annexure A/8 dated 13.8.2004 it was directed not to prepare the pay bill of the staff for the month of May 2004 by taking into account the benefit of 40%. In the instant case, due to the interim orders obtained by the applicants, they have been allowed to continue to receive that benefit, to which they are not at all entitled. In this context, it is to be observed that the incumbents who have not approached the Tribunal must have been disallowed 40% fitment benefits w.e.f. May 2004. Viewed from this, it would amount to meting out discrimination to those incumbents who are not before the Tribunal in the event the recovery w.e.f. May 2004 is not given effect to, so far as the present applicants are concerned. Therefore, it is made clear that the amounts paid to the applicants on account of 40% fitment benefit up to April 2004 shall not be recovered from them.

14. With the aforesaid observation and direction, the Original Applications are dismissed. The interim orders of stay stand vacated. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER