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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 181 of 2006
Cuttack, this the 25th day of January, 2010

AIFCEGO	Applicant
Versus		
Union of India & Ors.	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.181 of 2006

Cuttack, this the 25th day of January, 2010

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

1. All India Federation of Central Excise Gazetted Officers, Bhubaneswar Unit represented by its President Sri Gouranga Charan Roul, aged about 53 years, Son of Padma Charan Roul, C.R.Building, Bhubaneswar, Dist. Khurda.
2. Sri Lokanath Mishra aged about 50 years, son of late Babaji Mishra at present working as Superintendent, Central Excise Customs & Service Tax, Bhubaneswar-I Commissionerate C.R.Building, Bhubaneswar-751 007, Dist. Khurda.
3. Sri Asit Kumar Mohanty, aged about 52 years, son of Late Jagananda Mohanty at present working as Superintendent, Central Excise, Customs & Service Tax, Bhubaneswar-II Commissionerate, C.R.Building, Bhubaneswar-751 007.
4. Sri Gopal Charan Bahubalendra, aged about 45 years, son of Muli Bahubalaendra at present working as Superintendent, Central Excise, Customs Service Tax, Bhubaneswar-I Commissionerate, C.R.Building, Bhubaneswar-751 007.

.....Applicant

Legal practitioner :M/s. A.K.Bose, P.K.Das, D.K.Mallick Counsel.

- Versus -

1. Union of India represented by its Secretary, Ministry of Finance and Company Affairs, Department of Revenue, North Block, New Delhi-110 001.
2. The Secretary to Government of India, Bharat Sarkar, Department of Home Affairs/Griha Mantralaya, New Delhi.
3. Chairman, Central Board of Excise and Customs, North Block, New Delhi-110 001.
4. The Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone, C.R.Building, Bhubaneswar-751 007.

....Respondents

Legal Practitioner :Mr. B.Dash, ASC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Shri Gouranga Charan Roul describing himself to be the president of the All India Federation of Central Excise Gazetted Officers, Bhubaneswar Unit along with three others who are working as the Superintendent of Central Excise Customs & Service Tax, Bhubaneswar -I & II Commissionerates, Bhubaneswar respectively by filing this Original

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Application under section 19 of the Administrative Tribunals Acct, 1985 sought direction to the Respondents to grant the pay scale of Rs.8000-275-13,500/- to the cadre of Superintendent, Central Excise and Customs with effect from 01.01.96 and the pay scale of Rs.10,000-325-15,200/- to those Superintendents who have been awarded second financial up-gradation under ACP scheme with effect from 09.08.1999 and to grant them all consequential reliefs with arrear of pay and interest. The main foundation in support of the aforesaid claims of the Applicants are the decisions rendered by the other Benches of the Tribunal (Annexure-A/1 & A/2), granting the above scale to the DSP in CBI and Deputy Central Intelligence Officer of IB and that the report of the High Power Committee constituted by the Central Government recommending enhancing the scale of pay to the Superintendent of Central Excise and Customs at par with the DSP and Deputy Central Intelligence Officer of CBI and IB. Further stand of the Applicants is that they have been compelled to approach this Tribunal in the present OA for the inaction of the Respondents to extend the benefit of enhanced Pay scale on the basis of the recommendation of the HPC in spite of representation submitted through the General Secretary of the Union to the Respondent No.3 under Annexure-A/10 dated 27.4.2005.

2. By filing counter, Respondents strongly contested the hike in pay scale as demanded by the Applicants in this OA. Their stand is that Government is not duty bound to accept the recommendation of the High Power Committee. Report of the High Power Committee is advisory and recommendatory in nature. Applicants cannot claim parity in the pay scale of the employees working in the same grade in different wings of the Government. Prescription of identical pay scales cannot be a ground to substantiate that the post of Superintendent of Central Excise is in term of the

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nature of duties and responsibilities, analogous to that of a Deputy Superintendent of Police, CBI. While denying the applicability of the other Bench decision relied on by the Applicants, it has been contended by the respondents that considering various aspects of the matter, the pay scale of the Superintendent of Central Excise and Customs has been up-graded to Rs. 7,500-12,000/- w.e.f. 21.4.2004. Being satisfied with this pay scale, the Original Application No.373 of 2003 filed by the Applicant No.2 and three others with the prayers made in this OA was withdrawn by them. As such, the present Original Application is not at all maintainable. Accordingly, the Respondents have prayed for dismissal of this OA being devoid of any merit as also on the law of constructive resjudicata.

3. Heard Learned Counsel for both sides and perused the materials placed on record. There is no necessity to advert to all the arguments, put-forward by way of reiteration of the facts pointed out in the pleadings, by Learned Counsel for both sides and it would suffice to state that power of the Tribunal to decide in regard to equation of posts or equation of pay scale is no more *res integra* and it has been held by the Hon'ble Apex Court in a number cases in the past that fitment of pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive wing of the Government. It must be determined by experts bodies like pay commission. They would be the best judge to evaluate the nature of



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duties and responsibilities of posts. Similarly, it is trite law that report of Pay Commission set up by the Government is subject to acceptance by the Government. Such report can be accepted or rejected by Government pursuant to its policy and no court or Tribunal can direct the Government to accept the recommendations and implement the same, of course, in the instant case the applicants do not seek direction to the Respondents to accept the report of the High Power Committee.

4. Be that as it may, it has been contended by Learned Counsel for the Applicants that the representation under Annexure-A/10 is still pending with the Respondent No.3 and a direction may be issued to Respondent No.3 to consider and dispose of the same. Respondents in paragraph 6.1 of the counter have stated that applicants made representation to the Respondent No.3 under Annexure-A/10. Respondents' counsel did not say whether any decision has been taken meanwhile by the Respondent No.3 on the said representation. Without going through the other points raised by either sides, also we do not see that any injustice would be caused, in case direction is issued to the Respondent No.3 to consider and dispose of the said representation under Annexure-A/10 at this stage within a stipulated period which is fixed by the end of March, 2010 and communicate ~~of~~ the result thereof. Ordered accordingly.

5. In the result, in terms of the directions made above, this OA stands disposed of. No costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)