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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 95 OF 2002
Cuttack, this the 28th day of November, 2003

Chitaranjan Ray & Ors.	Applicants
	-Vis.-	
Union of India & Others.	Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not?
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

B. 28/11
(Smt. Bharati Ray)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No.95 of 2002
Cuttack, this the 28th day of November, 2003

C O R A M:-

THE HONOURABLE SMT. BHARATI RAY, MEMBER(JUDICIAL)

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1. Chitaranjan Ray,
Aged about 42 years,
S/o.Narendranath Ray,
working as Dy.Field Officer(Technical)
in Aviation Research Centre, Charibatia,
Cuttack.
2. Sukash Ranjan Bhowmik, aged about 30 years,
at present working as Deputy Field Officer
(Technical) Aviation Research Centre,
Charibatia, Cuttack.
3. Rabi Narayan Sahu, aged about 44 years,
S/o.Shiba Narayan Sahu, at present working
as Jr.Technical Officer-I in Aviation
Research Centre, Charoatia, Cuttack.
4. Manoj Kumar Moharana, aged about 33 years,
S/o.Sri Shridhar Moharana, at present working
as Deputy Field Officer(Technical) in A.R.C.,
Charoatia, Cuttack.
5. Sukanta Kumar Rout, Aged about 39 years,
S/o.Shri Kulamani Rout, at present working
as L.D.C. in A.R.C., Charoatia, Cuttack.
6. Bijay Kumar Das, Aged about 44 years,
S/o.Late Lakshmana Ch.Das, at present working
as Jr.Technical Officer(J.T.O.)-I in ARC,
Charoatia, Cuttack.
7. Jayanta Kumar Prusty, Aged about 42 years,
S/o.Rama Ch.Prusty, at present working as
J.T.O.-II in A.R.C., Charoatia, Cuttack.
8. T.G.Abraham, aged about 54 years,
S/o.T.M.George, at present working as
Jr.Technical Officer-I in Aviation Research
Centre, Charoatia, Cuttack.
9. Pradeepta Kumar Mohanty, aged about 42 years,
S/o.Late Puryodhan Mohanty, at present working
as J.T.O.-II in A.R.C., Charoatia, Cuttack.

10. Santosh Kumar Das, aged about 54 years,
S/o. Late Sadhu Das, at present working as
A/c. Assistant in A.R.C. Charoatia, Cuttack.
 11. Ajay Kumar Acharya, aged about 43 years,
S/o. Bira Kishore Acharya, at present working
as J.T.O-I in A.R.C. Charoatia, Cuttack.
 12. Niranjan Behera, aged about 43 years,
S/o. Late Bandhu Behera, at present working
as Sweeper in A.R.C., Charoatia, Cuttack.
 13. H.K. Rabikumar, aged about 42 years,
S/o. Late H.C. Krishnamurty, at present working
as J.T.O.-II in A.R.C., Charoatia, Cuttack.
 14. Hemanta Kumar Biswal, aged about 43 years,
S/o. Late Iswar Ch. Biswal, at present working
as J.T.O.-II in A.R.C. Charoatia, Cuttack.
 15. Babaji Charan Swain, aged about 46 years,
S/o. Gobardhan Swain, at present working as
J.T.O.-I in A.R.C. Charoatia, Cuttack.
 16. Daniel Guru, aged about 53 years,
S/o. Late Ashananda Guru, at present working
as Deputy Field Officer (M.T.) in ARC,
Charoatia, Cuttack.
 17. Ananta Kishore Nayak, Aged about 28 years,
S/o. Sadananda Nayak, at present working as
Asst. Field Officer (T) in ARC, Charoatia,
Cuttack.
 18. Arun Kumar Sahoo, Aged about 38 years,
S/o. Durga Ch. Sahoo, at present working as
Dy. Field Officer (T) in ARC, Charoatia, Cuttack.
 19. Saroj Kumar Mishra, at present working as
Dy. Field Officer (T) in ARC, Charoatia,
Cuttack.
 20. Krushna Ch. Parida, aged about years,
S/o. Late Harekrushna Parida, at present
working as D.F.O (ST) in ARC, Charoatia,
Cuttack.
 21. Fakir Ch. Behera, aged about 55 years,
S/o. Late Panchu Behera, at present working
as F.A. in ARC, Charoatia, Cuttack.
 22. Ramakanta Das, aged about 36 years,
S/o. Rama Ch. Das, at present working as
S.F.A. (T) in ARC, Charoatia, Cuttack.
 23. Sanjib Kumar Mohanty, aged about 40 years,
S/o. N.P. Mohanty, at present working as
D.F.O (T), in ARC, Charoatia, Cuttack.
 24. Siba Kumar Sahu, aged about 33 years,
S/o. Makarand Sahu, at present working as
D.F.O. (T) in ARC, Charoatia, Cuttack.
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25. Sanjay Kumar Mohanty, aged about 27 years, at present working as L.A. in ARC, Charoatia, Cuttack.
26. Narayan Mohanty, Aged about 45 years, S/o. Sukadev Mohanty, at present working as J.T.O.-I in ARC, Charoatia, Cuttack.
27. Saroeswar Biswal, aged about 44 years, S/o. Late Nilamani Biswal, at present working as J.T.O.-I in ARC, Charoatia, Cuttack.

.... APPLICANTS.

-Versus-

1. Union of India represented through its Cabinet Secretary, Cabinet Secretariat, Government of India, New Delhi, Beekaneer House, New Delhi-110 011.
2. Deputy Secretary (SR), Cabinet Secretariat, Beekaneer House, New Delhi-110 001.
3. Director of Aviation Research Centre, East Block, V.R.K. Puram, New Delhi-110 016.
4. Deputy Director (Administration) Aviation Research Centre, At/Po: Charoatia, Dist. Cuttack.
5. Assistant Director (Administration), Aviation Research Centre, At/Po: Charoatia, Ps: Choudwar, Cuttack.
6. Union of India represented through the Secretary, Ministry of Finance and Department of Expenditure, New Delhi.
7. Director of Accounts, Cabinet Secretariat, R.K. Puram, New Delhi-110 060.

.... RESPONDENTS.

By legal practitioner : Mr. A.K. Bose,
Senior Standing Counsel (Central).

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O R D E R

SMT. BHARATI RAY, MEMBER (JUDICIAL) :

Heard Mr. D. R. Ray, Learned Counsel appearing for the Applicants and Mr. Anup Kumar Bose, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record.

2. The un-disputed facts of this case are that Cuttack has been declared as B-2 City w.e.f. 14.5.93. All the employees of the Central Government became eligible to get the consequential benefits as and when it was made available by the Government of India according to the 4th Pay Commission Report. It is the case of the Applicants that soon after the Cuttack has been declared as B-2 City the employees of the Central Government have been extended the benefits of enhanced rate of H.R.A. But the Respondents here in this case, denied the said benefits to the Applicants. Applicants made several representations to the Respondents for extension of the said benefits and each time, the Respondents were given assurance to the Applicants that the matter is under consideration. Ultimately, Respondent No. 2 vide its order No. A-270011/11-BA-II-727 dated 26.4.2001 referring to the ARC Directorate D.O. No. ARC/Co-ord./2/95-155 dated 22-03-1996 and 12-2-2001 intimated that the Government have been pleased to accord the approval for extension of the benefits of H.R.A. to the employees posted at ARC Charbatia at the rates applicable to Cuttack B-2 Class City with effect from 01.01.2001. The said letter dated 26.4.2001 is enclosed as Annexure-1 to the O.A.

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pursuant to the said letter, mentioned above, the Applicants were extended the benefits of H.R.A. at the rates applicable to Cuttack B-2 City w.e.f. 1.1.2001. When the matter stood thus, the Applicants have been paid their salaries of January, 2002 without any house rent allowance, without any prior notice or providing any opportunity of being heard. It is the case of the Applicants that in terms of the order dated 26.4.2001, when the Applicants were allowed to get the benefits of H.R.A. at the rate applicable to Cuttack B-2 City, they are eligible to get the said benefits w.e.f. 14.5.1993; when all other employees of the Central Govt. enjoyed the same and as such the Applicants are entitled/eligible to get the arrears from 14.5.1993 till 1.1.2001. But the Respondents without considering that aspect of the matter, have stopped the H.R.A. w.e.f. January, 2002. By denying the said benefits to the Applicants, w.e.f. 14.5.1993, the Applicants have been deprived of getting the protection clause provided in the Office Memorandum dated 3.10.1997; notifying the reclassification of cities will not be applicable in the areas for which section of H.R.A. under Para-3-b(iii) of H.R.A. rules have been issued after 1.8.1997. Vide Ministry of Finance OM No.2(3)/97-E.II(B) dated 8.10.1997 the order dated 14.5.1993 was amended basing upon the 7th Pay Commission Report and Cuttack which was earlier categorised as Class-B-2 City has been recategorised as 'C' class City. The order dated 14.5.1993 was modified by the OM dated 8.10.1997 basing on the 7th Pay Commission Report, whereafter Cuttack which was earlier categorised as Class-B/2 City has been recategorised as C-Class city. It is the grievance of the Applicants that

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the Respondents are not extending the said benefits w.e.f. 14.5.1993 and allowing the same only w.e.f. 1.1.2001, even without allowing them to avail of the protection clause as amended in the Office Memorandum, referred to above and, therefore, the Respondents have acted discriminatorily. Being aggrieved by such action of the Respondents, the Applicants have filed the present Original Application U/s.19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- *(i) hold/declare that the applicants are eligible and entitled to avail the HRA at the rate applicable to Cuttack as B-2 City since B-2 City declaration i.e. 19.5.1993 or since the employees other Departments were allowed to avail the said benefits;
- (ii) further hold and declare that clarification issued on 11.4.2001 is not at all applicable so far as the applicants are concerned;
- (iii) hold and declare that the date of extension of benefit of B-2 City (Cuttack) as at Annexure-1 is illegal, arbitrary and imaginary to the effect sought for;
- (iv) further hold/declare that on the facts and circumstances of the case, the Respondents have no authority to withhold the H.R.A. of the Applicants;
- (v) further direct the Respondents to disburse the arrear house rent allowance from January 2001 to May 2001 which has not yet been paid to the Applicants;
- (vi) pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice*.

3. Respondents have contested the application by filing the counter reply. It is the case of the Respondents that some of the ARC employees had represented to the Respondent Nos.1 to 5 for payment of HRA on the basis that Cuttack is a B-2 City. The matter was taken up with the higher authority that Cuttack has been declared as B-2 City. In terms of the

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Cabinet Sectt. order No.A-27011/1/95-EA-II-272 dated 26.4.2001, the HRA was paid to the eligible officials w.e.f. 1.1.2001. After discontinuance of enhanced rate of HRA, the same was moved to Cabinet Sectt. Subsequently, the order dated 26.4.2001 of Cabinet Secretariat has been cancelled vide Cabinet Secretariat order No.A-27011/1/95-EA-II-713 dated 08.08.2002. It is, therefore, the contentions of the Respondents that Cuttack has been reclassified as 'C' category city vide OM dated 3.10.1997. However, grant of HRA at B-2 Class city rates to the ARC employees of Charbatia was under the protection clause given in para-3 of the OM dated 3.10.1997. The clarification issued by the Ministry vide OM No.2(36)/99-E.II(B) dated 11.4.2001 states that protection clause referred to above will not be applicable to those cases for which sanction of HRA under para-3(b) (iii) of HRA has been issued after 1.8.1997, the benefit of HRA at B-2 Class city rate will not be applicable in the case of employees of ARC, Charbatia. The Ministry agrees with the views of DACS that the grant of HRA at B-2 Class rates in the instant case has been extended only from 1.1.2001 (i.e. after 1.8.1997). In view of the above clause, the Cabinet Secretariat vide their order dated 8.8.2002 cancelled the approval conveyed vide dated 26.4.2001. Hence in view of the order of the Ministry the Applicant is not entitled to the reliefs claimed by them.

4. On going through the above facts and circumstances and the instructions/circulars issued on the subject, I find that although the benefits of HRA that was extended to other Central Government employees w.e.f. 14.5.1993, the Applicants did not approach the Tribunal against the said action/inaction

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on the part of the Respondents for not extending the said benefits to them. When they were allowed the benefits of H.R.A. w.e.f. 1.1.2001, the Applicants accepted the same without any protest. That being the position, the Applicants cannot now claim the benefits of extension of H.R.A. w.e.f. 1.4.1993 at an enhanced rate of H.R.A. which was extended to all other Central Government employees. As already mentioned, in terms of OM dated 11.4.2001, the protection clause provided in OM dated 3.10.1997 notifying the re-classification of Cuttack City, will not be applicable in the areas; for which sanction of HRA in Para-3(b) (iii) has been issued after 1.8.1997. The benefits of HRA have been extended to the Applicants w.e.f. 1.1.2001 i.e. after 1.8.1997. Therefore, the Applicants are not entitled to get the benefits of the protection clause as mentioned above. Since Cuttack city has been reclassified as Class-C on the basis of pay Commission's recommendation, the Applicants are not entitled to get the benefits that was extended earlier. However, since there was/is no mis-representation on the part of the Applicants in getting the extension of the benefits, the Respondents cannot make any recovery of the payments of the HRA from the Applicants.

5. In view of the facts and circumstances of the case, I do not find any merit in this O.A. The Applicants are not entitled to get the HRA as claimed by them. However, the Respondents are directed not to make any recovery on the basis of the order of cancellation dated 8.8.2002 and if any recovery that has already been made from the Applicants, the same shall be refunded to the Applicants within a period

of 30 (thirty) days from the date of receipt of a copy of this order.

6. In the result, this Original Application is dismissed. No costs.

Bharati R
(SMT. BHARATI RAY)
MEMBER (JUDICIAL)

KNM/CM.