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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.26 of 2007
Cuttack, this the 16th day of February, 2009

Smt.Susama Neura 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.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.26 of 2007

Cuttack, this the 16th day of February, 2009

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)

Mrs.Susama Neura, aged about 36 years, W/o.Rekhram Dandsena resident of Village/Post-Kodomeri, PS-Jonk, Dist. Nuapada, at present working as Stenographer, Gr-II, National Sample Survey Organisation (Field Operation Division), Farm Road, PO Modipara, Dist. Sambalpur-768 002.

.....Applicants

By Advocate: M/s. K.C.Kanungo, S.C.Beura, S.K.Pattnaik

- Versus -

1. Union of India represented through Secretary to Government of India, Ministry of Statistics and Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi.
2. Additional Director General, National Sample Survey Organization (NSSO), Field Operation Division (FOD), East Block No.6, Level 4-7, R.K.Puram, New Delhi-66.
3. Dy. Director General, National Sample Survey Organization (NSSO), Field Operation Division (FOD), Commercial Complex, Acharya Vihar, Bhubaneswar-13, Dist. Khurda.
4. Joint Director, National Sample Survey Organization (NSSO), Field Operation Division (FOD), Farm Road, At/Po. Mudipara, Dist. Sambalpur-768 002.

....Respondents

By Advocate :Mr. S.B.Jena, ASC

O R D E R

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

The case of the Applicant is that she was initially recruited to the post of Stenographer in the pre-revised scale of Rs.1200-2040/- w.e.f. 30.06.1994. Consequent upon the recommendation of the Vth Central Pay Commission the scale of pay



of Rs.1200-2040/- was revised to Rs.4000-6000/- w.e.f. 01.01.1996. On restructuring of the cadre of Stenographer, the Applicant along with other Stenographers Gr.III were promoted to the post of Stenographer Gr.II in the scale of pay of Rs.5000-150-8000/- purely on Ad-hoc basis vide order under Annexure-A/1 dated 1st December, 1999. In the promotional grade, her pay was fixed at the initial stage of Rs.5000/-. She was reverted to the post of Stenographer Grade III w.e.f. 31.01.2004 and on reversion her pay was fixed at Rs.4, 800/- on the scale of pay of Rs.4000-6000/-. On the recommendation of the Departmental Promotion Committee she was promoted to the post of Stenographer Grade II in the scale of pay of Rs.5000-150-8000/- on regular basis vide order under Annexure-A/5 dated 07.03.2005; fixing her pay at Rs.5150/- vide order under Annexure-A/6 dated 21.03.2005. According to the Applicant, on her reversion by applying the ratio of the decision of the Hon'ble Apex Court in the case of Bhadei Rai v Union of India and others (2006 SCC (L&S 89) her pay should have been protected and should have been fixed at Rs.5, 600/- which she was getting at the time of reversion and accordingly on her promotion she should have been given fixation at the higher place than fixed in the order under Annexure-A/6. It is her case that she represented for rectification of the wrong committed by the Respondents in the matter of fixation of her pay, the said request of the applicant was rejected and communicated to her under Annexure-A/8. Hence, by filing the present Original Application she seeks the following relief:

"To quash Annexure-A/8 for the ends of justice;

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To hold that the applicant is entitled to get pay protection of Rs.5600/- the emoluments she was drawing as adhoc promotee in the higher grade of Stenographer Grade II on the date of reversion dt.1.2.2004.

To hold that the Applicant is entitled to pay fixation in the promotional post of Stenographer Grade II keeping in view of Rs.5600/- and increment in the lower post of Stenographer Grade III;

To hold that the fixation of pay Rs.4800/- vide Annexure-A/4 is illegal and to that extent it is to be quashed;

To direct the Respondents to modify Annexure-A/6 by re-fixation of pay of the Applicant I the promotional post of stenographer Gr.II taking her pay at Rs.5600/- (as on 1.2.2004);

To direct the Respondents the benefit of arrears pay fixation w.e.f. 10.2.2005 till actually paid and the differential pay from 1.2.2004 to 10.3.2005 for the ends of justice;

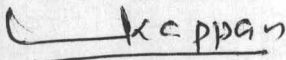
To issue any other further order(s) or direction(s) to the Respondents in the interest of justice."


2. According to the Respondents as stated in the counter initially the pay of the applicant on promotion to Stenographer Gr.II was fixed at Rs.5,150/-. However, on the instruction of the nodal Ministry her pay was re-fixed at Rs.5,600/- w.e.f. 10.03.2005 upon her regular promotion to the post of Stenographer Grade II after protecting her pay under proviso to FR 22 (1). Thereafter her pay was raised to Rs.5750/- on 1.1.2006 and Rs.5900/- on 1.1.2007. However, the Respondents have objected to the prayer for fixation of her pay on her reversion to Stenographer Grade II at Rs.5600/- i.e. the pay which she was getting at the time of reversion in the promotional post.

3. Applicant by filing rejoinder objected the stand taken by the Respondents in their counter. It has been stated that had the pay protection be given to the Applicant then she would be entitled to one more increment on her promotion to higher post.

4. Heard rival submission of the parties and perused the materials placed on record. It is seen that impugned order under Annexure-8 dated 5th September, 2006 has been modified so far as protection of pay on her further promotion to higher grade on regular basis is concerned by the Respondents under Annexure-R/1 and R/2. Now Applicant seeks protection of pay in the reverted grade by virtue of the decision rendered in the case of Bhadei Rai v Union of India and Others , 2006 SCC (L&S) 89. However, it is seen that while rejecting the prayer of the Applicant the Respondents failed to take note of the decision relied on by the Applicant. In this view of the matter, such prayer of the applicant needs re-consideration by the Respondents afresh.

5. Accordingly, the Respondents are hereby directed to re-examine the case of applicant so far as allowing her pay protection in the reverted post as per the rules and law cited above and pass a reasoned order within a period of 45 days from the date of receipt of copy of this order. No costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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