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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 105 OF 2009
CUTTACK, THIS THE 5th DAY OF May, 2011

Balakrishna Nayak Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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

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


(A.K.PATNAIK)
MEMBER (JUDL.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 105 OF 2009
CUTTACK, THIS THE 5th DAY OF May, 2011

CORAM :

HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)
&
HON'BLE MR. A. K. PATNAIK, MEMBER(J)

.....

Sri Balakrishna Nayak, aged about 57 years, Son of Late Fakir Charan Nayak, working as Carpenter, in the office of the Director, Central Cattle breeding Farm, PO-Sunabeda-2, Dist. Koraput and residing at present At-C.C.B.F. Colony, Sunabeda, PO-Sunabeda-2, Dist. Koraput.
.....Applicant

Advocate(s) for the Applicant- M/s. Dillip Kumar Mohapatra,
S.N.Parida, A. Sahoo,
J.Sengupta

VERSUS

1. Union of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, represented through its Secretary, Krishi Bhawan, New Delhi.
2. Director, Central Cattle Breeding Farm, Semiliguda, PO-Sunabeda-2, Dist. Koraput, Orissa.
3. Accountant General, Orissa, Bhubaneswar, Dist. Khurda.
4. Deputy Secretary to Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, New Delhi.

..... Respondents

Advocates for the Respondents – Mr. B.K.Mohapatra (A.S.C. for Respondent Nos.1,2 &3).

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ORDER

HON'BLE SHRI A. K. PATNAIK, MEMBER(JUDL.):-

Applicant, at present working as Carpenter under the Respondent-Department has moved this Tribunal in the second round of litigation seeking the following relief:

“i) The impugned order of the Director dtd. 15th November 2000 under Annexure-5 and the Dy. Secretary to Government dtd. 26.05.2008 under Annexure-6 be quashed.

ii) Necessary direction be issued to the Respondents to grant financial upgradation in his favour in the scale of Rs. 4000-6000/- with effect from 9.8.99 in terms of the assured career programme scheme with all consequential service benefits.

iii) And pass any other order....”

2. Earlier, the applicant had moved this Tribunal in O.A. No. 618/05 calling in question the legality and validity of the Respondents' action in reducing his scale of pay from Rs. 4000-6000/- that had been granted to him under the benefit of 1st ACP Scheme to 3200-4900/-. This Tribunal vide order dated 4.1.2008 disposed of the matter, the relevant portion of which reads as under :

“Without going to the merit of claim of the applicant as it is a disputed question as to whether it is an isolated post or a remaining isolated post as referred in

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clause 10(Annexure-R-2), we direct the concerned Department to refer the case of the applicant to the concerned Ministry for their decision and accordingly, the ACP would be fixed by the Department.

3. It is in the above background, the impugned order having been issued by the concerned Ministry of the Department vide Annexure-A/6 dated 26.05.2008, the applicant has moved this Tribunal seeking the relief as referred to above. For the sake of convenience, the relevant portion of the order at Annexure-A/6 reads as under:

“Whereas, the grant of first financial upgradation in the scale of pay of Rs. 4000-6000/- instead of Rs. 3200-4950/- to Shri B.K.Nayak, Carpenter, Central Cattle Breeding Farm, Sunabeda has been considered in consultation with Department of Personnel & Training and it has been observed that the Pay commission has not recommended specific scales under ACP Scheme for carpenters. In CPWD also carpenters have been allowed first ACPs in the scale of Rs. 3200-4950/-. The case of industrial employees under Ministry of defence that may include carpenter also, is different and cannot be replicated for carpenter or other skilled categories in other Ministries/Departments either for promotional avenue or for grant of ACPs and the case of Shri B.K.Nayak, Carpenter falls under ‘remaining isolated category’ in terms of Clarification No. 10 of DoPT O.M. Dated 10th February 2000 and he has rightly been granted the scale

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of pay of Rs. 3200-4950/-. Therefore, the competent authority is of the view that there is no merit in the case for grant of first financial upgradation in the scale of Rs. 4000-6000/-. This order is in pursuance of the Hon'ble CAT, Cuttack dated 4.1.2008."

4. It is the case of the applicant that he is the holder of isolated post. In order to substantiate this contention, the applicant has submitted Office Order dated 21.10.2005 passed by the Ministries of Agriculture in pursuance of interim direction of this Tribunal dated 28.07.2005 in O.A. No. 618/05, on the representation dated 4.10.2004 preferred, the relevant portion of which reads as under:

“...the post of Carpenter at this Farm being the isolated post carrying the pay scale of Rs. 3050-75-3950-80-4590 is entitled to get the 1st financial benefit in the pay scale of Rs. 3200-85-4900(S-6) and thus has been rightly allowed to Sri Nayak, Carpenter by the Departmental Screening Committee.”

5. The Respondent-Department have also filed counter contesting the Original Application, to which the applicant has filed rejoinder.

6. We have heard Sri J.Sengupta, Ld. Counsel for the applicant and Mr. B.K.Mohapatra, Ld. Additional Standing Counsel appearing on behalf of the Respondent-Department and perused the materials on record.

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7. We have also considered the submission made by the Ld. Counsel for the parties. From the pleadings of the parties, it reveals that the Respondents have passed two distinct orders, i.e. Office Order F.No. 23(24)/ACP/2005/1903 dated 21.10.2005 and F.No. 5-4/2005- Admn.III dated 26.5.2008 (Annexure-6) which is self contradictory in so far as the post of Carpenter as held by the applicant is concerned. Whereas vide office order dated 21.10.2005, the Respondents have categorized the post of Carpenter as an "isolated" post, vide order dated 26.05.2008 (Annexure-6) they have categorized the said post as "remaining isolated" post. It implies that the Respondents have attempted to blow hot and cold from the same breath. Besides the above, the order dated 26.5.2008 (Annexure-6) has not been issued in supersession of Office Order dated 21.10.2005. Viewed from this, in the absence of a definite finding as to whether the applicant is holding isolated post, the matter is remitted back to the Respondents to at first take a view, keeping in mind two contradictory orders as indicated above, as to whether the applicant is holding isolated or remaining isolated post and then determine his entitlement to the scale of pay meant for 1st ACP and pass appropriate orders within a period of two months from the date of receipt of this order under intimation to the applicant. For the purpose of technicality, we quash Annexure-5 and 6 and Office Order dated 21.10.2005.

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With the above observation, the O.A. stands disposed of.

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

(A.K.PATNAIK)
MEMBER (JUDL.)

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