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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.101 OF 2011
Cuttack this the 6th day of March, 2014

Pramod Kumar Panda...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB for being circulated to various Benches of the Tribunal or not ? *yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.101 OF 2011

Cuttack this the 6th day of March, 2014

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Pramod Kumar Panda
Aged about 44 years
S/o. Prabhakar Panda
A/48, Saheednagar
Bhubaneswar
At present working as Section Officer
Central Administrative Tribunal
Cuttack Bench, 4th Floor
Rajaswa Bhawan
Cuttack-2

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak
D.K.Mohanty

-VERSUS-

- Union of India represented through
1. The Secretary
Ministry of Personnel & Public Grievances
Department of Personnel & Training
New Delhi-110 001
 2. The Principal Registrar
Central Administrative Tribunal
Principal Bench
61/35
Copernicus Marg
New Delhi-110 001

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra



ORDER**R.C.MISRA, MEMBER(A)**

Applicant in the present Original Application is working as Section Officer in Central Administrative Tribunal, Cuttack Bench, Cuttack. He has approached this Tribunal seeking the following relief.

- i) To quash the letter of rejection under Annexure-A/5.
- ii) To direct the Respondents to count the deputation period of the applicant w.e.f 01.02.2002 for the purpose of determining the four years' service for grant of pay in PB-3 with grade pay Rs.5400/- and to pay the differential arrear salary including revision of pay retrospectively pursuant to the decision of the Hon'ble High Court of Delhi dated 11th October, 2006 in W.P. © No.14097 100/2005, Hon'ble Principal Bench of the Tribunal in O.A.No.2516 of 2000 dated 9th April, 2001 and of the Hon'ble Ernakulam bench of the Tribunal dated 11th July, 2008 in O.A.No.45 of 2008.
- iii) To pass any other order/orders as deemed fit and proper.

2. The short facts of this case are that applicant was a Direct Recruit regular Assistant working in the Office of the Joint Secretary(Training) AFHQ Civil Services, Ministry of Defence, New Delhi since 3.11.1993. He joined the post of Section Officer in the Central Administrative Tribunal, Jabalpur Bench on the basis of deputation on 1.2.2002. His period of deputation was extended from time to time and finally, he was permanently absorbed in the post of Section Officer/Court Officer with effect from 29.11.2007 vide Office Order dated 18.12.2007. Disparity in the matter of grant of scale of pay to Section Officer/Court Officer/Private Secretary in the Central



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Administrative Tribunal at par with the staff working in the above grade in the Central Secretariat was in the meantime receiving consideration of different Benches of the Tribunal. In consideration of orders passed by the different Benches of the Tribunal directing grant of the scale of pay to SO/CO/PS at par with the staff working in the Central Secretariat in the same grade, Respondent No.1, viz., the Department of Personnel & Training, Government of India, vide an order dated 1.4.2009 conveyed the sanction of the Government for grant of Grade Pay (GP) of Rs.4800/- in Pay Band (PB)-2 and GP of Rs.5400/- in PB-3 **on completion of four years of regular service** to SO/CO/PS in CAT with effect from 1.1.2006. Sanction of the Government was also conveyed to grant non-functional pay scale of Rs.8000 – 13,500/- to SOs/PSs of CAT retrospectively with effect from 1.1.1996 on notional basis subject to the following terms and conditions.

- i) Grant of non-functional pay scale of Rs.8000-13,500/- is admissible to Section Officer/Private Secretaries of CAT on completion of **four years of approved service in that grade**, subject to their vigilance clearance.
- ii) The pay of eligible Section Officer/Private Secretaries of CAT will be built up notionally w.e.f. 1st January, 1996, actual benefits on account of such re-fixation of pay will, however, be effective from 3rd October, 2003.
- iii) On account of such pay fixation, the officers would be entitled to draw arrears of pay w.e.f. 3rd October, 2003.
- iv) The Section Officers/Private Secretaries who are granted this non-functional pay

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scale of Rs.8000-275-13500/- will continue to remain in Group B (Gazetted) and their **eligibility for promotion to the next higher grade in the pay scale of Rs.10000-325-15200/- will be reckoned on the basis of total period of service spent in both the pay scales (Rs.6500-200-10500) and (Rs.8000-275-13500/-) of Section Officer/Private Secretary counted together.** They will, however, be allowed to draw pay in the PB-3 with grade pay Rs.5400/- w.e.f. 1st January, 2006 onwards.

3. In terms of this order, applicant made a representation to Res.No.2 on 22.4.2009 praying for fixation of his pay in PB-3 with GP Rs.5400/- by claiming that he had completed four years' service from 1.1.2002 which was the date of deputation to CAT. The prayer of the applicant and similar such prayers were rejected and the order of rejection was communicated by Respondent No.2, viz., Principal Registrar, CAT, Principal Bench, New Delhi vide letter dated 29.6.2009. Being not satisfied, the applicant submitted another representation during September, 2009 wherein he pointed out the judicial view of the CAT, Principal Bench, CAT,Ernakulam Bench and the Hon'ble High Court of Delhi on the matter. This representation was answered by a cryptic order of the competent authority vide letter dated 14.10.2009 rejecting the prayer. Applicant challenged this order of rejection before the Jabalpur Bench of the Tribunal by filing O.A.No.23 of 2010. Jabalpur Bench of the Tribunal came to a finding that the order of rejection dated 14.10.2009 was a cryptic order and bereft of any reason and based upon such finding, disposed of the matter by directing Respondents to reconsider the matter and pass a reasoned order.



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This order of the Tribunal was passed on 25.1.2010. In obedience to the orders passed by the Jabalpur Bench of the Tribunal, Respondent No.1 considered the matter and wrote to Respondent No.2 that the CAT was totally right in counting regular service of the applicant from the date of his absorption as SO and not counting of service on deputation as SO for grant of GP Rs.5400/-. This letter of Respondent No.1 is dated 19.2.2010. Thereafter, Respondent No.2 informed the Registrar of CAT, Jabalpur Bench vide letter dated 4.3.2010 enclosing a copy of letter received from Res.No.1 that **regular service of an employee is to be counted from the date of absorption and not from the date of deputation as SO for granting GP Rs.5400/- for which a Section Officer is eligible only after rendering regular service of four years** and that this position may be brought to the notice of the applicant. Copy of this order was served on the applicant by the Deputy Registrar of Jabalpur Bench on 15.3.2010. This order has been challenged in the present Original Application by the applicant.

4. By way of challenging this order, applicant has stated that in a regular process of selection he was selected to the post of Section Officer on deputation basis. At the time of his selection on deputation, he had fulfilled all the required conditions and eligibility and also had completed eight years regular service in the feeder grade. With the approval of the parent Department as well as the borrowing Department, applicant joined the post of SO in the Central Administrative Tribunal, Jabalpur Bench on 1.2.2002 and continued on deputation basis till 29.11.2007, the date on



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which he was finally absorbed on a permanent basis in the post of Section Officer. According to applicant, there was no break in his service while extension was granted from time to time extending the period of his deputation. The order conveying the approval of Government of India dated 1.4.2009 clearly states that grant of GP Rs.4800 in PB-2 and GP Rs.5400 in PB-3, on completion of four years of regular service to SOs and PSs is effective from 1.1.2006. Government had also conveyed their sanction vide this letter for grant of non-functional pay scale of Rs.8000-13500 to SOs/PSs with retrospective effect from 1.1.1996 on notional basis subject to certain conditions which have been already quoted in this order earlier. One of the conditions stipulated in this order is that SOs who are granted non-functional pay scale of Rs.8000-13500 will continue to remain in Group B (Gazetted) and their **eligibility for promotion to the next higher grade** in the pay scale of Rs.10000-325-15200/- **will be reckoned on the basis of total period of service spent in both the pay scales (Rs.6500-200-10500) and (Rs.8000-275-13500/-) of Section Officer/Private Secretary counted together.** It has been submitted by the applicant that the period spent on deputation cannot be construed as not approved service and it cannot also be said that he had not continued in the pay scale of Rs.6500-10500/- and Rs.8000-13500/- for four years. It is, therefore his submission that the impugned order dated 4.3.2010 in which his case has been rejected suffers from infirmity of not counting his regular service from the date of his deputation as SO and counting the same from the date of his



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absorption. His case is that the period of deputation from 2002 to the date of his absorption in the year 2007 should be interpreted as regular service and therefore, on that basis, benefit of GP Rs.5400 as envisaged under the order dated 1.4.2009 should be extended to him. It is his submission that the impugned order is a manifestation of injustice meted out to him. He has further contended that his grievance is covered by the decision of the Hon'ble High Court of Delhi dated 11th October, 2006 in W.P. © No.14097-100 of 2006 in which it was held that the period spent on deputation is to be counted **for the purpose of regular service for promotion to next post.** This was also the view taken by CAT, Principal Bench in O.A.No.2516 of 2000 and CAT, Ernakulam Bench in O.A.No.45/2008 decided on 19.4.2001 and 11.7.2008 respectively. In spite of these decisions, Respondent No.1 has rejected the claim of the applicant without proper application of mind to the merits of the case. The further submission of the applicant is that had he continued in his parent Department also, he could have been promoted to the post of Section Officer much later (sic) than his absorption in the borrowing Department. Based on these grounds, applicant has finally prayed that the order of rejection at Annexure-A/5 be quashed and the benefit of GP Rs.5400/- as per the DOP&T order dated 1.4.2009 should be conferred upon him with effect from 1.2.2002, when he joined CAT on deputation basis.

5. Respondents have filed their counter reply in this case which reveals the fact that the applicant earlier was working as a direct recruit Assistant




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in the Ministry of defence since 3.11.1993. He joined the post of SO in CAT, Jabalpur Bench on 1.2.2002. He continued to function in this post on deputation basis and his tenure of deputation was being extended from year to year. Finally, on the basis of his own request, the applicant was absorbed in the CAT in the post of SO/CO on 29.11.2007. Permanent absorption in CAT, according to Respondents, was given to the applicant in relaxation of the Recruitment Rules for the post of SO/CO in CAT. It has been submitted that for the purpose of fixation of seniority in the grade of SO for promotion, applicant's seniority will be counted from the date of his absorption i.e., 29.11.2007. By way of implementation of the recommendations of 6th CPC, Res.No.1 vide order dated 1.4.2009 granted GP Rs.4800 in PB-2 with effect from 1.1.2006 and GP Rs.5400/- in PB-3 on completion of 4 years of regular service in the grade of Section Officer/Private Secretary in CAT. In the same order non-functional pay scale of Rs.8000-13,500/- to SO/PS was granted retrospectively with effect from 1.1.1996 on completion of four years of approved service in the grade subject to vigilance clearance. Therefore, according to Respondents, it is amply clear that eligibility for grant of higher GP and/or higher non-functional pay scale to SO/PS in CAT is linked to completion of four years of regular service in the respective grade. On the basis of the above order dated 1.4.2009, applicant has made out a case for granting him higher grade pay of Rs.8000-135000 by counting four years initial service on deputation from 1.2.2002 as regular service. This prayer of the applicant



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was rejected by Res.No.2 intimating him that regular service of four years shall be counted only from the date of absorption in CAT from 29.11.2007. Being aggrieved, applicant filed OA No.23/2010 before the CAT, Jabalpur Bench, which was disposed of at the stage of admission with direction to Respondents to reconsider the grievance of the applicant by considering various judicial pronouncements in the matter. Respondent No.1 in obedience to this order of CAT,Jabalpur Bench reconsidered the matter and by issuing letter dated 19.2.2010 confirmed that the date of regular service of the applicant shall be counted only from the date of his absorption in CAT with effect from 19.11.2007 and not from 01.02.2002, the date of initial appointment on deputation, as claimed by him. After the rejection of his representation as aforesaid, applicant has filed the present O.A. in which he has relied on the judicial pronouncements which he had earlier cited in his O.A before the CAT, Jabalpur Bench, but he has not produced the full texts of the judgments for reference. However, in both the orders, prayer of the applicants in O.A No.2516/2000 (S.R.Gautam and ors. Vs. UOI & Ors.) before CAT, PB, New Delhi and O.A.No.45/2008 (K.V.Peter vs. UOI & Ors) before CAT, Ernakulam Bench was allowed treating the same as being covered by the decision of the Hon'ble Supreme Court in K.Madhavan and another vs. Union of India & Ors. (1987) 4 SCC 566. It is the case of the Respondents in the counter reply that in the case of K.Madhavan (supra) the Hon'ble Supreme Court held that the deputation may be regarded as a transfer from one Government department to another and reiterated that



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transfer cannot wipe out the length of service in the post from which an employee has been transferred and if a Government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the post before his transfer ought to be taken into consideration.

6. Therefore, it is the submission of the Respondents that the applicant in the present O.A. came from a lower post of Assistant to the higher post of Section Officer on deputation and in consideration of this fact his service in the post of Section Officer till his date of absorption on permanent basis on 29.11.2007 cannot be counted as regular service. It is the further submission of the Respondents that subsequently, in Civil Appeal No.1485 of 2003 decided on 16.12.2009 (Director CBI and another vs. D.P.Singh) (2010) 1 SCC (L&S) 194 (2010) 1 SCC 647 Hon'ble Apex Court by referring to Department of Personnel & Training O.M. dated 29.5.1986 held that seniority of a deputationist who was not holding the same or equivalent post in his parent department has to be counted from the date of his absorption. In view of this, it has been submitted by the Respondents that counting of regular service of the applicant from the date of his absorption and not from the date of deputation for grant of higher grade of pay as has been done is absolutely correct. According to Respondents, applicant is not entitled to any relief as claimed by him in this O.A. and therefore, the O.A. is liable to be dismissed.



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7. Applicant has filed his written note of submission which mentions that at the time of joining CAT, he had already acquired eligibility for promotion to the post of SO and his juniors were promoted immediately thereafter in the parent Department to the grade of S.O. In the order of DO P&T dated 1.4.2009, it was incorporated that the non- functional pay scale of Rs.8000-13500 will be granted to the SOs/PSs of CAT with retrospective effect from 1.1.1996 on notional basis subject to certain conditions. The minimum eligibility criteria were that the benefit of such non- functional pay will be extended to SOs/PSs on completion of four years of **approved service in the grade**, subject to vigilance clearance. Subsequent to issue of this order, by exercising powers conferred under Section 36(b) read with Section 36 of the A.T.Act, 1985, new rule, called Central Administrative Tribunal (Staff) (Conditions of Service) Amendment Rules, 2009(hereafter referred to Rules, 2009) was framed. It is the case of the applicant that perusal of the aforesaid Rules, 2009, ^{and} make it clear that **SOs & PSs are entitled to get non- functional pay only on completion of four years' service, but there is no mention to the effect that it has to be either approved service or regular service.** It has been agitated further in the written note of statement that applicant's **period of deputation from 1.2.2002 to 28.11.2007 cannot be termed by any stretch of imagination as unapproved service** and therefore, there was every reason for the **Respondents to consider this period as approved service** for the purpose of conferring the benefit envisaged in order dated 1.4.2009. It has been



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further argued that the case of the applicant was rejected by Res.2 on the basis of clarification dated 19.2.2010 issued by the DOP&T. The Hon'ble Apex Court in the case of Union of India vs. N.R.Parmar & Os.(Civil Appeal No.7514-7515 of 2005 decidd on 27.11.2012) has already settled the position of law that **clarification issued by the DOP&T has no overriding effect on a statute. Since the Rules, 2009 provide that SOs/PSs are entitled to non- functional scale only on completion of four years of service, this provision will govern the case of the applicant.** According to applicant, since neither regular service nor approved service has been mentioned in the Rules, 2009, the service rendered during the period of deputation must be taken into account for conferring the **benefit of non-functional scale on the applicant.**

8. Having heard the learned counsel for both the sides, we have also perused the records. Having regard to the pleadings of the parties, the following point emerges for our determination.

Whether the service rendered by the applicant on deputation basis is the service as envisaged in Rules, 2009 so as to make him eligible to grant non- functional scale of Rs.8000-13500/-.

9. In this regard DOP&T circular dated 1.4.2009 at Annexure-A/4 is of much significance. This order states that sanction of the Government is also conveyed to grant non-functional pay scale of Rs.8000 – 13,500/- to SOs/PSs of CAT retrospectively with effect from 1.1.1996 on notional basis subject to certain conditions. Condition No. (i) is very clear that grant of non-functional pay scale of Rs.8000-13,5000/- is admissible to Section


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Officers/Private Secretaries of CAT on completion of four years of approved service in that grade, subject to their vigilance clearance.

Therefore, the question here for resolution is whether the period of deputation will be interpreted to mean as approved service.

10. Learned counsel has argued that the applicant was brought to CAT on deputation basis with effect from 1.2.2002 and continued as such without any break the period of deputation service being extended from year to year, until 2007, when he was permanently absorbed in CAT. It is his case that this period should be treated as approved service.

11. On this point, learned Senior Central Government Standing Counsel for the Respondents pleaded that approved service in relation to grant of non-functional scale is the service rendered by the applicant only after his absorption in CAT. In this connection, learned Senior Central Government Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court in Director CBI and another vs. D.P.Singh in Civil Appeal No.1485/2003 reported in 2010(1) CC (L&S) 194 wherein it has been laid down that seniority of deputationist who was not holding the same or equivalent post in his parent department has to be counted from the date of his absorption. In course of this judgment Hon'ble Apex Court has referred to DOP&T O.M. dated 29.5.1986 regarding seniority of persons absorbed after being on deputation, which reads as under.

"Even in the type of cases mentioned above, this is, where an offer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted



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from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent Department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para(iv) to Para-7 of general principles communicated vide OM dated 22.12.1959".

(iv) In the case of a person ^{who} ~~which~~ is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for transfer on deputation/transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from:

The date he has been holding
the post on deputation,
Or

The date from which he has been appointed on a regular basis to the same or equivalent grade in his parent Department, whichever is later'.

"The Hon'ble Supreme Court has further observed that in so far as the present case is concerned, admittedly, the respondent did not hold the rank of DSP or the equivalent post in his parent Department on the date of his appointment as DSP on ad hoc basis in 1977 or at the time of his absorption in 1987 and, therefore, his seniority as

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 DSP can only be counted from the date of his absorption i.e. 29.6.1987".

Further the Hon'ble Supreme Court in Para-19 has held that in K.Madhavan this Court, while holding that "deputation" may be regarded as "transfer" from one government department to another, reiterated that transfer cannot wipe out length of service in the post from which an employee has been transferred and if a government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the post before his transfer ought to be taken into consideration. This legal position admits of no doubt but the respondent herein did not hold the post of DSP or equivalent grade on regular basis in his parent Department prior to his absorption and, therefore, the principle laid down in K.Madhavan has no application".

12. Based on this ratio decided by the Hon'ble Apex Court in the matter of fixation of seniority of a deputationist, Respondents have argued that the applicant was not holding the post of Section Officer in his parent department, when he was brought on deputation in the year 2002 to CAT. On this very sound principle his representation for granting him non-functional scale has been rejected keeping the relevant judicial pronouncements in mind.

13. In the case of State of Punjab & Ors. vs. Inderjet Singh & Ors. 1998(2) SLJ 113 (SC) = (1997) 8 SCC 372, the Apex Court held,

"The concept of deputation is well understood in Service Law and has a recognized meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word deputation is of no help. In simple words, deputation means service outside the cadre or outside the parent Department. Deputation is deputing or transferring an employee to a post outside



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his cadre, that is to say, to another Department on a temporary basis. After the expiry of period of deputation the employee has to come back to his parent Department to occupy the same position unless in the meanwhile he has earned promotion in his parent Department as per the Recruitment Rules”.

14. Considering the above settled position of law, it is very clear that the applicant's argument that if he had continued in his parent Department he could have been already promoted to the grade of Section Officer after he immediately came on deputation to CAT cannot be counted upon to consider his seniority in and/or to regularize his period of deputation as Section Officer in CAT. The principle of deputation as enunciated by the Hon'ble Apex Court is that if the person would have been reverted to his parent Department he would have joined the same position from which he was deputed to the ^{borrowing} parent Department unless in the meantime his juniors had been promoted to the next higher grade in which case his promotion will be granted by the parent Department with effect from that date. Therefore, any claim in this regard that he would have been already promoted as Section Officer in the parent Department can only be taken as presumptuous since the terms and conditions of deputation have nothing to do with his promotional prospects in his parent Department .

15. The learned counsel for the applicant has further contended that the table appended to the Central Administrative Tribunal(Staff Conditions of Service) Amendment Rules, 2009 clearly indicates that Section Officers and Private Secretaries are entitled to get the non-functional pay on completion of four years of service, and there is no mention of approved service or

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regular service. The letter dated 19.2.2010 issued by the Department of Personnel & Training, however, communicates that only the regular service of the applicant is to be counted, and his service on deputation is not to be reckoned. It is argued that this clarification of DOP&T is not in consonance with the Rules which must have overriding effect in the matter. While considering this argument, we have noted that in the table appended to the said Rules, the following entry has been made.

Section Officer/Court Officer	8000-275-13500(on completion of four years)	PB-3	15600-39100(on completion of four years)	5400
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16. The entry 'on completion of four years' is no doubt a very simple entry. It does not mention service, regular service, or approved service. The clarification of DOP&T specifies that regular service is to be counted from the date of absorption, and the period of service on deputation should not be counted. However, the argument that the clarification runs contrary to the spirit of the statute is not acceptable. We do not find anything that is repugnant to the import of the Rules in this clarification.

17. To elaborate this point further, we would like to mention that Central Administrative Tribunal(Staff) (Conditions of Service) Amendment Rules, 2009 are applicable to employees who are borne in the cadre of the Central Administrative Tribunal. The applicant was taken as Section Officer on the basis of deputation on 1.2.2002. He was absorbed as such only on

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29.11.2007. During his period of deputation between 1.2.2002 and 29.11.2007 he was not borne in the ~~cadre~~^{regular} regular cadre of the Central Administrative Tribunal. The Rules as cited above mention that grant of non-functional pay scale is applicable to Section Officer/Court Officer 'on completion of four years', which in this context will mean only four years of regular service, since the Rules are applicable to the employees borne in the cadre. The further inference in the case of the applicant is that these four years of regular service will commence only from 29.11.2007, i.e., the date of his permanent absorption in the Central Administrative Tribunal . It shall not count from his date of deputation, i.e., 1.2.2002, since the above mentioned Rules would not apply to his case, when he was on deputation. Therefore, the alleged discrepancy between the provisions of the Rules and the decision of the Department of Personnel & Training in the case of the applicant, does not actually exist. The argument advanced by the applicant in this regard thus falls to the ground. Thus, the issue framed in Para-8 of this order is answered negatively.

18. Based upon the discussions as held above, we do not find merit in the prayer made by the applicant, and accordingly, the O.A. is dismissed being devoid of merit. No costs.

(R.C.MISRA)
MEMBER(A)




(A.K.PATNAIK)
MEMBER(J)