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**IN THE CENTRAL ADMINISTRATIVE TRIBUAL
CUTTACK BENCH: CUTTACK**

OA No.. 483 of 2011
Cuttack, this the 13th day of September, 2013

CORAM
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)
THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

.....

1. Shri Nakula Sethi, aged about 59 years, Son of Late Gobinda Sethi, Qrs No.Type III-R-42A;
2. Shri Debendra Nath Das, aged about 57 years, Son of Late Paramananda Das, Qrs. N.Type III-13;
3. Sri Mahendra Kumar Chand aged about 57 years, Son of Achuta Prasad Chand,

Applicant Nos.1&2 of Biju Pattanaik Air Port, New Met Colony Bhubaneswar, Dist. Khurda, Applicant No.3 is of Village - Jahanpur, Po.Manda Sahi, PS. Jagatsinghpur, Dist. Jagatsnghpur.

.....Applicants

(Advocate(s)-M/s.J.M.Mohanty,R.K.Parida,K.C.Mishra,M.Pani)

-Versus-

Union of India represented through -

1. Director General of Metrology, Metrological Office, Mausam Bhavan, New Delhi-110 003.
2. Deputy Director General of Metrology, Regional Metrological Center, IV-Duel Avenue Alipur, Kolkata, Pin Code No. 730 027.

.....Respondents

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

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O R D E R**A.K.PATNAIK, MEMBER (JUDL.)**

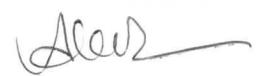
The Applicants three in numbers, have filed this Original Application, jointly seeking to quash Office Order dated 23.5.2013 in which the revised scale of pay has wrongly been fixed. They have also prayed to quash the letter dated 12.5.2011 in which their prayer for payment of arrears was rejected.

2. The facts in brief are that the Applicant No.1 entered into service on 15.5.1973 as a Peon whereas the Applicant No.2 and 3 entered into service on 27.5.1978 and 30.6.1981 respectively as Conservative Attendants. During their service career they were further promoted to different posts and lastly they were promoted as Laboratory Assistant in the year 1996 (in Group D) and to the posts of Laboratory Assistant Grade I on 28.7.2001. According to the applicants as they have completed five years of regular service in the feeder grade, they were eligible to be promoted to Senior Observer as per the Indian Metrological Department (Gr.C & D Posts) Recruitment Rules, 1987. As their cases were not considered for promotion to the posts of Senior Observer, the applicants with one Shri S.N.Roul approached this Tribunal in OA No. 1317 of 2004 which was disposed of on 19.7.2006 following the order dated 8.2.2006 of the Principal Bench of this Tribunal passed in OA No.1917 of 2005 (Amaresh Chander Matto Others –Vrs- Director General of Metrology and Others). It is the case of the of the Applicants that the said order of the PB in the case of Amaresh Chander Matto (supra) was challenged by the Respondent-Department before the Hon'ble Delhi High Court by filing WP (C) No.17457 -58 of 2006 that was dismissed on 11.12.2006. In



pursuance of the order of the PB dated 8.2.2006, applicants were promoted to the post of Sr. Observer vide order dated 23.11.2007 reckoning their notional seniority and pay fixation was made from the date indicated against their respective names with the stipulation that the arrear will not be admissible and the pre revised scale from 1.1.2006 to 29.10.2006 will be applicable to applicants vide letter dated 18.1.2008 and a notice was also issued to recover the excess payment already disbursed to them.

3. Respondent-Department have filed their counter in which it has been averred that the Applicant No.1 joined as a Peon on 16.5.1973, was subsequently promoted as Observatory Attendant and Laboratory Assistant Gr.II, Gr.I and lastly to the post of Senior Observer only on 30.10.2007 w.e.f. 1.4.2002. The Applicant No.2 was promoted to the post of Laboratory Assistant on 13.9.1996 and promoted to the post of Senior Observer on 26.10.2007 w.e.f. 1.4.2002 and applicant No.3 was promoted as Laboratory Assistant on 19.12.1997 and to Senior Observer on 26.10.2007 w.e.f. 1.4.2003. The Respondents have raised the point of limitation as well as maintainability of this OA by stating therein that as the orders under challenge were issued during 2007, as stated above, filing of the instant OA after long lapse of four years, i.e. in the year 2011, is grossly barred by time and therefore, this OA is liable to be dismissed on the ground of limitation. In this context, further case of the Respondents is that the Applicants having accepted and assumed the charge as Senior Observer from the said date without challenging the terms and conditions stipulated in the order, they are estopped under law to



challenge the same at this belated stage and accordingly they have prayed for dismissal of this OA.

4. In the rejoinder, the Applicants have challenged the contentions of the Respondents, in so far as the point of limitation is concerned, by stating therein that it is not correct to state that the Applicants have approached this Tribunal after four years of the issuance of the orders during 2007. It has also been stated that after the order of dismissal passed by the Hon'ble Delhi High Court upholding the order of the Principal Bench the Respondent-Department are estopped to act as per the draft amendment recruitment rules and, therefore, this Bench of the Tribunal has rightly allowed the prayer of the applicants in OA No. 1317 of 2004 and directed the Respondents to convene the Review Departmental Promotion Committee and consider the case of the Applicants for promotion year wise from the date of vacancy in terms of the old rules prior to the notification of the amended recruitment rules taking into consideration the date of eligibility of the applicants for the post of Senior Observer and issue order in accordance with Law. The Applicants have specifically stated that in view of such observations, the Tribunal also quashed the order of promotion of the Applicants as Laboratory Assistant Gr. III, Gr.II and Gr.I which was issued vide order dated 23.10.2007. On the aforesaid context, the applicants while praying for adjudication of this OA on merit have prayed for the relief claimed in this OA.

5. We have heard Shri J.M.Mohanty, Learned Senior Counsel assisted by Shri R.K.Parida, Learned Counsel and Mr. U.B.Mohapatra, Learned Senior

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CGSC appearing for the Respondent-Department and perused the materials placed on record.

6. Shri Mohanty, Learned Senior Counsel appearing for the Applicants while reiterating the contentions made in the OA as well as rejoinder, has submitted that the change in the criteria for filing up of the posts of Laboratory Assistant Gr.III, Gr.II & Gr.I was made as per the 5th CPC recommendation vide order dated 27.5.2002 without making any amendment to the RR and the same was notified in the gazette on 24/30.8.2003. In the old Recruitment Rules there was a stipulation that the incumbent after five years of regular service as Laboratory Assistant is entitled to be considered for promotion to the post of Senior Observer that was changed only on 30.8.2003 by relying upon the well settled position of law that the vacancy which arose prior to coming into force the new rule was required to be filled up under the old rules. Therefore, when the respondents were directed to convene the review DPC the same should have been conducted by considering the case of the applicants in a year wise manner in which vacancy arose and in terms of the relevant recruitment rules that was existing prior to notification of the new rules. By drawing our attention to the order dated 11.6.2006 passed in OA No. 1317 of 2004, Shri Mohanty submitted that the aforesaid Original Application was disposed of in line with the order passed in OA No.1917 of 2005 by the Principal Bench that was subsequently upheld by the Hon'ble Delhi High Court. His second contention was that when there was a recommendation that the post of Senior Observer is to be filled up through direct



recruitment, it is obvious that the Laboratory Assistant / Observer who were / are continuing in the respective post will lose their promotional prospects of being a Senior Observer which they are legitimately entitled to as per the provision of the old RR. Shri Mohanty strenuously argued that the Respondent No.1 by taking into account of the order dated 8.2.2006 promoted the Applicants to the post of Senior Observer with immediate effect on or from the date of assumption of charge in the new post/place reckoning their seniority notionally but denied the arrears of payment for the promotional post as admissible to them though there was no such direction either by the Principal Bench or by this Bench of this Tribunal. By stating so, Shri Mohanty submitted that the observation in the office order dated 23.10.2007 that "*they will reckon notional seniority and pay fixation from the date indicated against their name in Col.No.5 of the promotional order. However, arrears will not be admissible to them*" is unwarranted and not sustainable in the eyes of law as because by reckoning notional seniority from the date as indicated against the applicants' name, the authority has admitted the arrears payable to the promotees as no fault can be founded with the applicants for considering their promotions under the ^{existing} recruitment rules and not under the amended recruitment rules which was not at all in force. It has further been contended by him that even on notional promotion showing them working in an official capacity cannot deprive the consequential monetary benefits including pension and arrears. Last but not the least, it has been contended by Shri Mohanty that when the order dated 23.10.2007 supersedes the earlier promotion granted to



the applicants as Laboratory Assistants Gr.II and Gr.I as well as when the applicants were re-designated as Senior Observers, their pay scale cannot be revised as Laboratory Assistant and, hence there should not be any recovery of the pay earlier granted to the Applicants. In this context, Shri Mohanty urged that the settled position of law provides that the pre revised scale which was fixed and paid to the applicants as Senior Observer cannot be recovered by revising their pay as Laboratory Assistant after the 6th CPC recommendation and the Respondents have no right to treat the applicants as Laboratory Assistant and fixed their scale in the said grade when the applicants are admittedly senior to the observers. Therefore, he prayed for quashing the office order dated 23.5.2011.

Per contra, Mr.U.B.Mohapatra, Leaned Senior CGSC appearing for the Respondents at the outset opposed the very maintainability of this OA on the ground of limitation by reiterating the submissions made in the counter. In so far as merit of the matter is concerned, Mr.Mohapatra drew our attention to the relevant portion of the order/direction of the Principal Bench of this Tribunal and submitted that there was only a direction to convene Review DPC to consider the case of the Applicants against the vacancy in a year wise manner in terms of the recruitment rules that was existing prior to the notification of new RR and to pass appropriate orders in accordance with law within a period of four months from the date of receipt of the order. So also by drawing our attention to the order passed by the Hon'ble Delhi High Court, Mr. Mohapatra submitted that while disposing of the aforesaid writ petition by confirming the order of the Principal Bench of this



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Tribunal, the Hon'ble Delhi High Court directed that though the applicants have no right to be considered for promotion as soon as the vacancy arises still then it is the settled law and there are administrative instructions to the effect which stipulates that the aspects of promotion should be dealt with expeditiously which is not applicable in case of the Respondents (Applicants in OA). By stating so Mr.Mohapatra submitted that nowhere in the orders of the Principal Bench and the Hon'ble Delhi High Court, it has been directed for payment of arrears. By drawing our attention of the earlier order of this Bench Mr.Mohapatra candidly submitted that this Tribunal allowed the OA No. 1317 of 2004 with certain observation and in pursuance of the said order, the Respondents had considered the case of the Applicants and issued order dt. 23.10.2007 in appointing the Applicants to the post of Senior Observer by granting / fixing their seniority and pay notionally. The applicants' representation for payment of arrears was duly considered but the same was rejected as the said benefits were not allowed to the applicants in the OA No.1917 of 2005.

7. We have considered the rival submissions made by the learned counsels appearing for the respective parties. In so far as law of limitation canvassed in this case is concerned, we find that the representation of the Applicants for payment of arrear salary was rejected only on 12.5.2011 and the OA was filed challenging the said order on 21.6.2011 which was well within the period of limitation provided in Section 21 of the A.T. Act, 1985. Coming to the merit of the matter, we may state that the case of the Applicants falls to the ground on the



very facts that there was no such direction issued either by the Principal Bench while deciding the dispute nor by the Hon'ble Delhi High Court based on which the OA No. 1317 of 2004 filed by the Applicants was disposed of by this Bench on 11.7.2006. Relevant portion of the order dated 24.11.2006 in WP (C) Nos. 17457-58/2006 of the Hon'ble Delhi High Court is extracted herein below:

15. We also agree with the distinction drawn by the Tribunal between a case, where there are no existing Recruitment Rules and only draft rules exist and which are operated upon to make the recruitments, and, a case like the present where statutory rules are in existence and the amendment to those existing rules is in a draft stage. While in the former case, the draft rules could be validly operated, in the later case, the pre-existing statutory rules could not be overridden by draft amendment rules.

16. **It is true that respondents have no right to be considered for promotion as soon as a vacancy arises. At the same time, it is also settled law and there are administrative instructions to that effect as noticed by the Tribunal, which stipulate that the aspect of promotion should be dealt with expeditiously. In any event, the claim of the respondents is not based on the said principle.** It is, as noticed above, based on the rule stated in B.L. Gupta (Supra). Whenever the vacancies may be filled, the said rule would apply.

17. We see no infirmity with the well-reasoned order of the Tribunal and therefore decline to interfere with the same. Dismissed."

Similarly, relevant portion of the order 11.7.2006 in OA No.1317 of 2004 of this Tribunal is extracted herein below:

"6. Admittedly, all the Applicants had completed 5 years of service as Lab. Assistant and were eligible for consideration to the post of Sr. Observer in the scale of Rs.5000-8000/- under the rules then in existence. It is also not disputed that the re-designation/re-structure of the post of Lab. Assistant/Observer into three grades was done as per 5th Pay Commission's recommendation vide order dated 27.05.2002. No amendment was, however, made to the rules at the time of order for re-designation was issued on 27.05.2002 and it was only in Gazette of India dated 24-30.08.2003 that the new



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Recruitment Rules for the re-designated posts had been notified. There is also no dispute that in the old rules Lab. Assistant/Observer with the 5 years of regular service was entitled to be considered to the post of Sr. Observer. The rule position, however, changed only with effect from 30.08.2003. It is now well settled that vacancies which arise prior to the coming into force of the new rules are required to be filled up under the old rules. The issue in fact has been considered threadbare by judgment of the Principal Bench of CAT in the case of Amaresh Chander Mattoo and others vs. Director General of Meteorology (supra). In that case also the Applicants were working as Lab. Assistants/Observers and had claimed that they had completed 5 years of service in the Grade much prior to the coming into force of the new rules and as such they were entitled to be considered against the vacancies of Sr. Observers under the old rules. The Applicants therein had qualified for the Sr. Observer's post in different years from 1999-2003. Therein also the plea of limitation was taken which was rejected. The Respondents were directed to convene Review DPC and consider the case of the Applicants year wise for the vacancies and in terms of RRs that were existing prior to the notification of the new rules taking up such consideration with reference to the date of eligibility of the Applicants for promotion to the post of Sr. Observer and pass appropriate order in accordance with law. These directions were given after setting aside order dated 05.04.05 promoting the Applicants from Lab. Assistant Gr.III to Lab. Assistant Gr.D by following the new RRs promulgated on 30.08.03. The position is exactly similar in the case before us. In spite of the fact that decision had earlier gone against the Respondents, the Respondents have again taken the same stand before this Tribunal. The Respondents in this context cannot be permitted to raise the same issues, which have been settled by Division Bench of the CAT, again and again before other Benches of the Tribunal. Therefore, we are agree with the Ld. Counsel for the Applicant that the matter is squarely covered by the judgment of the Principal Bench referred to above on all fours. In our opinion, the same can be disposed of by giving identical directions. Accordingly, order dated 05.04.2005 promoting the Applicants to the post of Lab. Assistant Gr.II is set aside and the Respondents are directed to convene a Review DPC and consider the case of the Applicants year wise, for the vacancies and in terms of RRs that were existing prior to the notification of new RRs. The consideration shall be with reference to the date of eligibility of the Applicants for promotion to the post of Sr. Observer. Appropriate orders in accordance with law shall be passed by the Respondents within a period of four months from the date of receipt of this order. The Respondents shall report

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compliance to the Tribunal after four months and the matter be listed before the Tribunal for that purpose only after four months."

8. The Applicants have not challenged the order of this Tribunal for not directing the benefits to be extended to them as claimed in this OA retrospectively. Since Applicants did not work in the said post grant of benefits notionally in compliance of the order of this Tribunal cannot be faulted with. Further Law is well settled in a plethora of judicial pronouncements that the aggrieved party cannot come to Court praying relief in piecemeal manner. We also find that the Respondents granted the benefits of seniority and payment notionally to the applicants before the PB, New Delhi vide order No.DGM UOI No.A-32013/1/05-E(3) dated 19.10.2007 as would be evident from the order at Annexure-A/6 which has also not been disputed by the Learned Senior Counsel appearing for the Applicants. Therefore, any direction as sought by the Applicants, in our considered view would tantamount to causing injury to the earlier order of this Tribunal which is not permissible in the eye of law. Hence we find no illegality in the order dated 23.10.2007. Since the fixation of pay and order of recovery is a consequential action to the aforesaid order the same cannot be termed as illegal or unjust.

9. In the result, we find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)