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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 373 of 2009

Cuttack, this the ~~06th~~ day of September, 2011


Amulya Krishna Dash Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ☒
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? ☒


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 373 of 2009

Cuttack, this the ~~06th~~ day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (I)

Amulya Krushna Dash, aged about 51 years, Son of Shyam Charan Dash, At-Sahapur, Po/Ps/Dist.Bhadrak, presently working as Milk Recorder, O/f the Director Central Cattle Breeding Farm Sunabeda, Koraput.

.....Applicant

By legal practitioner: M/s.D.P.Dhalsamanta, N.Rout, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Agriculture, Department of A.H. Dairying and Fisheries, Room No. 417, Krishi Bhawan, New Delhi-110 001.
2. Director (Admn.) Ministry of Agriculture, Deptt. of A.H.Dairying and Fisheries, Room No. 228, Krishi Bhawan, New Delhi-110 001.
3. Director, Central Cattle Breeding Farm, At/Po. Sunabeda, Dist. Koraput-763 002.

....Respondents

By legal practitioner: Mr.D.K.Behera, ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicant is a Milk Recorder working in the Office of the Director Central Cattle Breeding Farm Sunabeda, Koraput. In this Original Application filed U/s.19 of the A.T. Act, 1985, his prayer is to direct the Respondents to grant him the scale of pay of Rs.5000-8000/- by way of second financial up-gradation under ACP scheme with effect from 09.04.2008 as refusal to grant the

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above scale of pay by way of second up-gradation under ACP scheme is in contravention of the Rules and the provisions of Articles 14 and 16 of the Constitution of India.

2. The stand of the Respondents is that the claim of the applicant is neither sustainable under the Rules nor law as the applicant was granted the scale of pay of Rs.4000-100-6000/- on the recommendation of the Screening Committee by way of first financial up gradation under ACP scheme w.e.f. 09.08.1999. He was entitled to Rs.3200-85-4900/- which is the next higher scale of pay of the applicant. But inadvertently he was granted the scale of pay of Rs.4000-100-6000/- which scale the applicant would have been entitled to by way of second financial up gradation under the ACP scheme only after completion of 24 years of regular service. One Shri P.K.Parida, working as Diary Clerk was granted the scale of pay of Rs.4000-100-6000/- after completion of 12 years of service by way of first financial up gradation under ACP scheme and the pay scale of Rs.5000-150-8000/- after completion of 24 years of service as 2nd ACP. The Diary Clerk is the feeder cadre of UDC and UDC is the feeder post of Head Clerk in terms of the Recruitment Rules. The post of Milk Recorder is an isolated post and as such is not similar to the post of Diary Clerk. The Recruitment Rules/conditions of Service/nature of work of both the posts are

different and distinct although the scale of pay for both the posts is same. The post of Milk Recorder is not the feeder cadre of UDC. In view of the above, it is stated by the Respondents that the prayer of the applicant is misconceived and as such, this OA is liable to be dismissed with costs.

3. Despite receipt of counter on 04-01-2010 by the Learned Counsel for the Applicant and grant of adequate time no rejoinder was filed by the Applicant.

4. Relying on the ACP scheme and clarification issued thereon, it was contended by Learned Counsel for the Applicant that in the clarification at point No.10 it was clarified that the scales of pay for isolated posts shall be same as those applicable for similar posts in the same Ministry/Department. For the **remaining isolated posts** the pay scale contained in Annexure-II of OM dated 09.08.1999 of ACP i.e. standard/common pay scale shall be applicable. Since the clarification is meant for isolated posts only and the post of Milk Recorder is isolated one and similar to the post of Diary Clerk the post of Milk Recorder in the Department the applicant is entitled to the same treatment as that of the Diary Clerk. Further, it was contended by the Learned Counsel for the applicant that the source of recruitment of both the posts are same, scale of pay of both the posts are same (3050-4590/-), and duty as

also educational qualification being the same the applicant is entitled to the same treatment as has been applicable to the Diary Clerk. This argument was refuted by Mr. Behera, Learned ASC appearing for the Respondents. It was contended by Mr. Behera, Learned ASC that the claim of the applicant is based on conjecture and surmises without any authority of Rule or law. The Applicant can claim the benefit which has been provided in the Rules. In this connection, he has brought to our notice a copy of the letter dated 21.06.2011 issued by the Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries, enclosing thereto a copy of the provisions of the ACP.

5. We have considered the rival submission of the parties and perused the materials including the ACP scheme and the subsequent clarification issued by the Government of India in this regard. As the applicant mainly based his claim on the clarification at Point No.10 issued vide Office Memorandum dated 10th February, 2000, before expressing any opinion on the merit of the matter it is relevant to quote what was the query made to which what clarification was issued. It reads as under:

For isolated posts, the scale of pay for ACPs as recommended by the	For isolated posts, the scale of pay for ACP shall be the same as those applicable for similar posts in the same Ministry Department/Cadre except where the pay Commissions has recommended specific
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Commission may be implemented and not the standard/common pay scales indicated vide Annexure-II of the Office Memorandum dated August 9,1999.	pay scales for mobility under ACPs. Such specific case may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts the pay scale contained in Annexure-II of the Office Memorandum dated August 9,1999 (ACPS) shall apply.
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6. As per the ACP scheme financial up-gradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. The next scale of Rs.3050-4590/- (for the isolated posts - like the Applicant- Milk Recorder is Rs.3200-85-4900/- and thereafter to Rs.4000-100-6000/-. These are standard replacement scales for S-5, S-6, S-7 grades. There is no separate recommendation for the post of Milk Recorder working under the Respondents. As such the applicant is entitled to the scale under ACP as has been provided in Annexure-II of the Scheme i.e. the standard replacement scales. Law is well settled in a plethora of judicial pronouncements that the Tribunal has no power to decide the pay scales in the face of the explicit provision of the rules framed by the Government and clarification issued by the competent authority. We conclude that the post of Milk Recorder falls within the domain of remaining isolated posts to

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which the standard replacement scales of S-5, S-6 and S-7 grade will apply for the purpose of 1st ACP and 2nd ACP etc.

7. In view of the above, we find no merit in this OA. This OA is accordingly dismissed but without any order as to costs.


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


(C.R.MOHAPATRA)
Member (Admn.)