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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION Nos. 609 and 627 to 636 OF 2012
Cuttack, this the 24~~th~~ Day of January, 2014

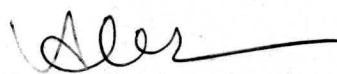
N. Bhattacharya & Others Applicants

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(A.K. PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OANo.609 of 2012

Cuttack, this the 24th day of January, 2014

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

.....

1. Sri Nityananda Bhattacharya, aged about 58 years, S/O-Late Jibananda Bhattacharya, At-17 Mohanray Para, P.o/Ps/-Khadra, Dist-Mursidabad, West Bengal. (In O.A. No.609/12)
2. Sri Gobinda Chandra Sethy, aged about 59 years, S/O-Late Satrugna Sethy, At-Tanarpa Sasan, Biribati, Ps.Kandarpur, Town/Dist-Cuttack. (In O.A. No.627/12)
3. Sri Sachidananda Das, aged about 58 years, S/O-Late Binakar Das, Ps/Dist-Jagatsinghpur. (In O.A. No.628/12)
4. Sri Krushna Chandra Das, aged about 58 years, S/O-Late Udayanath Das, At/Po-Damanbhumi, Ps-Jankia, Dist-Khurda. (In O.A. No.629/12)
5. Sri Gouranga Charan Sahoo, aged about 58 years, S/O-Late Harihar Sahoo, At/Po-Damanbhumi, Ps-Jankia, Dist-Khurda. (In O.A. No.630/12)
6. Sri Sanatan Baral, aged about 60 years, S/O-Late Mukunda Baral, At-Tinigharia, Po-Nuabazar, Ps-Chauliagang, Town/Dist-Cuttack. (In O.A. No.631/12)
7. Sri Rajanikanta Mishra, aged about 58 years, S/O-Late Udayanath Mishra, At-Matikani, Po-Pratapur, Ps.-Tarasingh, Dist-Ganjam. (In O.A. No.632/12)
8. Sri Swapneswar Jena, aged about 58 years, S/O-Late Sarbeswar Jena, At-Raghunathpur, Po-Paramhansa, Biribati, Ps.Kandarpur, Town/Dist-Cuttack. (In O.A. No.633/12)
9. Sri Pradeep Kumar Singh, aged about 59 years, S/O-Late Baidhar Singh, At/Po-Mochia SAHI, Ps-Badasahi, Dist-Maurbhanj. (In O.A. No.634/12)
10. Sri Swinderjit Singh, aged about 59 years, S/O-Late Bachan Singh, At-Khusipur, Po-Dalepur, Ps-Kalanaur, Dist-Gurudaspur, Punjab. (In O.A. No.635/12).

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11. Sri Sudhmoy Chatterjee,, aged about 58 years, S/O-Late Baidyanath Chatterjee, Village/Po-Hijuly, Ps-Ranaghat, Dist-Nadia, West Bengal. (In O.A. No.636/12)

All are at present working as Technical Personnel in the grade of T-5, Central Rice Research Institute, AT/Po-Bidyadharpur, Town/Dist-Cuttack-753006.

.....Applicants

Advocate(s).....M/s. Ashok Mishra, S.C. Rath.

VERSUS

Union of India represented through

1. The Secretary Indian Council of Agricultural Research, Krishi Bhawan, New Delhi- 110001.
2. Director, Central Rice Research Institute, At/Po-Bidyadharpur, Town/Dist-Cuttack-753006

.....Respondents

Advocate(s).....Mr. S. B. Jena.

ORDER

A.K.PATNAIK, MEMBER (JUDICIAL):

The 11 (Eleven) Applicants who are continuing as Technical Personnel in the Grade of T-5, Central Rice Research Institute, At/Po-Bidyadharpur, Town/Dist. Cuttack have filed instant OA Nos. 609 and 627 to 636 of 2012 praying as under:

- “(a) To quash the letter dated 11.06.2001 under Annexure-6 and orders dated 05.07.2012, dated 03.08.2012 and 03.08.2012 under Annexure-7, 8 & 9;
- (b) To direct the Respondents not to recover any amount from the applicants in respect of the advance increments;
- (c) To pass any other order/orders as would be deemed fit and proper in the circumstances of the present case.”

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2. On 22.08.2012 notices were issued to the Respondents to file their counter. Despite adequate opportunities and last opportunity being granted on the specific undertaking furnished by Mr. S.B. Jena, Learned Additional CGSC appearing for the Respondents, on 07.05.2013, no counter was filed by the Respondents. When the matter was listed on 26.7.2013 Mr. Jena has again prayed for time to file counter but the same was rejected. However, it was ordered that if he has anything to say he may say so during hearing and incorporate the stand of the Respondents in the written note of submission. Hence counter filed on 29th August, 2013 was ignored when the matter was taken up for final hearing on 12th December, 2013.

3. The case of the Applicants, in nut shell, is that Respondent No.1 framed Technical Service Rules for grant of merit promotion or advance increments to technical personnel in which it has been stipulated that there shall be a system of merit promotion from one grade to next higher grade irrespective of the occurrence of the vacancies in the higher grade or grant of advance increments in the same grade on the basis of the assessment of the performance. Accordingly, the persons concerned will be eligible for consideration of such promotion or for grant of advance increments after the expiry

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of the number of prescribed years of service in that grade. As per the provisions under Rule 6.4 (a), the Technical Personnel in T-5 grade and possessing essential qualifications prescribed in the Notification dated 3rd February, 2000 for category III for direct recruitment shall be eligible for assessment promotion to T-6 grade after completing five years of service in T-5 Grade. On the basis of the aforesaid Rules, Respondent No.2 issued orders 29.06.2011, 27.10.2011 and 30.06.2010 respectively granting the Applicants advance increments w.e.f. 01.01.2010. The increments so granted were counted for grant of other service benefits. While the matter stood thus, consequent upon recommendation of 6th CPC, Respondent No.1 issued an order dated 11.06.2012 in which it was stipulated that only one advance increment will be granted to those Technical persons who have been recommended/approved for grant of advance increments with effect from 01.01.2006 at the rate of Rs.279/- only (3% of the minimum pay in the Pay Band) and where more than one advance increments have already been paid as on 01.01.2006, the same will be restricted to only one and necessary recoveries will be made for the excess payment. Vide order dated 05.07.2012 and 03.08.2012 the advance increments have been revised to Rs.279/- only to be paid to the Applicants with effect from the date(s) applicable in each case which as per the Applicants is much lower than the

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increments given to them earlier. Being aggrieved, they have submitted representations. As the representations did not yield any result, alleging inaction, they have approached this Tribunal in the instant OAs with the aforesaid prayers.

4. We have heard Mr. Ashok Mishra, Learned Senior Counsel for the Applicant assisted by Mr.S.C.Rath and Mr.S.B.Jena, Learned Additional CGSC appearing for the Respondents and perused the materials place on record. After conclusion of the hearing, Learned Counsel for both sides have filed their written notes of arguments which have also been taken note of.

5. By placing reliance on judicial pronouncements viz; in the cases of **Syed Abdul Qudir and others -Vrs- State of Bihar** reported in 2009 AIR SCW 1871, **Chandi Prasad Uniyal and Ors -Vrs- State of Uttarakhand and others** reported in AIR 2012 SC 2951 and the order of the Hon'ble Calcutta High Court dated 03.08.2012 passed in Writ Petition No. 470 of 2012 (Dr.Prasant Sampatrao Deshmukh-Vrs-ICAR & Ors), Mr.Mishra, submitted that since the advance increments were paid to the applicants with due authority of law, the Respondents should have followed "the Assessment Procedure for Grant of Merit Promotion or Advance Increment(s) to Technical Personnel" in its proper perspective while ordering recovery which having not been followed the

order to recover the amount is liable to be set aside. Next contention of Mr. Mishra is that recovery towards excess payment made to the applicants is not permissible as the payment in question have not been made due to any fraud or misrepresentation on the part of the Applicants. Hence he has reiterated the prayer made in the OA.

6. On the other hand, Mr. Jena, appearing for the Respondents opposed the stand taken by Mr. Mishra by stating that the ICAR vide letter dated 11.06.2012 instructed All the Director of the Institutes to revise pay structure of the employees who have been granted advance increments prior to 01.01.2006 corresponding to the stage at the basic pay as on 01.01.2006 and those who have been granted advance increment between 01.01.2006 and 31.08.2008 under the Revised Pay Rules, 2008 to be granted Annual Increment on 1st of July every year. In the said letter it was directed that no advance increment corresponding to the advance increments granted under the pre revised pay scale will be granted to them during the period between 1.1.2006 and 31.8.2008 while making their due drawn statement. Hence during this period advance increment will be given as per the fixed amount approved by the Ministry of Finance. Further more in the said letter it was directed that only one advance increment will be granted to those technical persons who have been

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recommended/approved for grant of advance increment with effect from 1.1.2006. By submitting that no illegality have been committed by the Respondents while issuing the aforesaid order Mr. Jena, brought to the notice of this Tribunal the provisions enumerated under Rule 6.1 of the I.C.A.R. Technical Rules in which it has been provided that merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increments in the same grade will be allowed on the basis of the performance of the individual employee after expiry of the number of prescribed period of service in the said grade. While admitting that the council by its instruction issued in August, 1995, has allowed the T-5 employees to go to T-6 grade after completion of 12 years residency period in T-5 grade, submitted that the same was allowed only in case the said employees who have possessed bachelor's degree/diploma in the relevant field. After 1995 no instruction or provision was made in the said technical service rules to assess an employee belonging to T-5 category after completion of five years service in T-5 grade for promotion to T-6 grade or to grant him any advance increment in T-5 grade. Mr. Jena submitted that in pursuance of 6th CPC recommendation, rule regarding grant of advance increments to technical employees was referred to the MoF and in return the MoF approved grant of advance



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increment @ 3% of the entry level of the Pay Band. Mr. Jena further submitted that as per the approval of the Ministry of Finance the ICAR authorities decided to grant one increment to the Technical Employees @ 3% of the minimum Pay Band w.e.f. 01.01.2006 and directed recovery of the overpayment made to the Technical Employees who have been granted the advance increment as per the old Rules. It was contended by him that the matter was duly examined by the Law Division and in the light of the decision of the Hon'ble Apex Court it was decided to recover the amount as the same was paid by mistake. Hence it was contended by him that there being no illegality in refixation of pay and consequential recovery of the amount paid by mistake, this OA is liable to be dismissed.

7. After giving in-depth consideration to the points advanced by the respective parties, I have gone through the decisions relied upon. Mr. Mishra has made his sincere endeavour to distinguish the latest decision of the Hon'ble Apex Court in the case of Chandi Prasad Uniyal and Ors (supra) so as to allow the prayer of the applicants by following the law laid down by the Hon'ble Apex Court in the case of Syed Abdul Qudir and others (supra).

8. I find that the decision rendered in the case of Syed Abdul Qudir (supra) has no application to the case in hands as the excess amount sought to be recovered from the



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appellants therein was paid due to a bona fide mistake on the part of the authorities for wrong interpretation of the rule that was applicable to the appellants for which the Hon'ble Apex Court have come to a conclusion that the appellants cannot be held responsible for such whole confusion which was because of inaction, negligence and carelessness of the official concerned of the government of Bihar that resulted in hardship to the appellants teachers which is not the position in the present case.

9. In so far as the case of Dr. Prasant Sampatrao Deshmukh (supra) is concerned, the same is related to grant of Island Special Duty Allowance which was paid to the applicant, therein, by misinterpreting the law and subsequently the same was detected by the Auditor who objected for payment of the amount and advised recovery of the same to protect the public exchequer which is not a consequential action of Pay Commission recommendation but an administrative action. Hence the facts and issues involved in the above case has no similarity in the instant case.

10. Rather, I find the Hon'ble Apex Court reached certain conclusion in so far as recovery of the excess payment to the employees are concerned, after placing reliance on the case of Syed Abdul Qudir and others (supra). The relevant



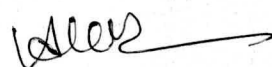
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portion of the decision is quoted herein below:

"A plain reading of sub-rule (i) of Rule 78 makes it clear that an incumbent, on being appointed to the new post, involving the assumption of duties or responsibilities of greater importance than those attached to such permanent post, will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post, but in the event of appointment to the new post, not involving such assumption, the fixation of pay will be done under sub-rule (ii) of Rule 78 according to which, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post. Or, if there is no such stage he stage next below that pay, plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post. It may be mentioned here that under Rule 78 (i) of the Bihar Service Code, there is no provision of granting of additional increment while fixing the basic pay of the higher post, which appear to be the reason for ignoring the said rule by the State Government and deciding to have the central pattern vide FR.22-C and instructions issued by the Central Government from time to time in the case of pay fixation on promotion vide Resolution dated 18.12.1989.

FR.22-C, which was substituted even prior to the issuance of Resolution dated 18.12.1989, and was replaced by FR.22(I) (a) (1) and FR.22(I) (a) (2), read thus:-

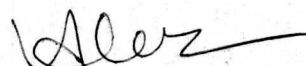
F.R.22-C.- Notwithstanding anything contained in these Rules, where a Government Servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued: Provided that the provisions of this rule shall not apply where a government servant holding a Class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Class I post."



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11. I find that action of the authorities in recovering the excess paid to the applicants on refixation of pay is not an unilateral action but a conscious decision taken after taking into consideration of the recommendation of 6th CPC as well as advice rendered by MoF and the same has been made applicable to all similarly situated employees working in different Institutes under ICAR as a matter of policy and, thus cannot be termed as a discriminatory treatment to the applicants.

12. For the discussions made above, I find no merit in all these OAs which are accordingly dismissed by leaving the parties to bear their own costs.


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