

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

ORIGINAL APPLICATION NO. 1300 OF 1997

HON'BLE MR. M.K. MISHRA, MEMBER- A.
HON'BLE MR. K.B.S. RAJAN, MEMBER- J.

Madhu Sudan Banerjee, S/o Late S.C. Banerjee,
Residing at Vill. Udairajpur, P.O. Madhyagram,
Distt. North 24 Parganas, 743 275. Ex Investigator
in the office of Regional Assistant, Director, National
Sample Survey Organisation (Field Operation Divn.),
27 & 29, Brabourne Road, now at 164,
G.L. Thakur Road, Baranagar, Calcutta 700 035.

.....Applicant

V E R S U S

1. Union of India service through the Secretary,
Ministry of Home Affairs, Deptt. of Internal Security,
(Rehadi;itation Div.), New Delhi- 110 001.
2. The Regional Asstt. Director, National Sample Survey
Organisation(Field Operation Div.), 164, G.L. Thakur Road,
Calcutta- 700 035.

.....Respondents

<u>For the applicant :</u>	Sri S.K. Dutta
<u>For the Respondent:</u>	Sri M.S. Banerjee.

Heard on 28.06.05.

Order pronounced on 01-7-2005

O R D E R

BY HON'BLE MR. K.B.S. RAJAN, J.M.

The applicant is aggrieved by the non extension of the benefit of the judgment dated 5th May 1988 in OA No. 182 of 1986 (Suryakumar Dani vs Union of India and another), as according to the applicant, he is similarly situated as the applicant in that OA and the respondents cannot discriminate him on any score.



2. The capsulated facts of the case of the applicant are narrated in the succeeding paragraphs.

(a) The applicant had joined as Group D employee in the office of FA and CAO, Dandakaranya Development Authority and was promoted sometimes in 1964 as LDC and thereafter in the year 1979 as UDC. Subsequently by order dated 18th September, 1982, the applicant was promoted as Senior Accountant with retrospective effect from 15th September, 1982 in the scale of Rs 425 .. 640. Thereafter, in view of the Dandakaranya Project having been wound up, the employees of the said project were deployed to various places and the applicant was redeployed in the National Sample Survey Organization, Calcutta as "Investigator" in the scale of Rs 380 .. 640.

(b) The applicant could learn that in the case of one Shri Surya Kumar Dani, the Cuttack Bench of the Tribunal had directed the respondents to revise the pay of the said applicant in the post of Senior Accountants from Rs 425 .. 640 to Rs 550 .. 900 (Pre revised) w.e.f. 01/01/1973 and to Rs 1640 .. 2900 (Revised) w.e.f. 01-01-1986 or from the dates of his actual appointment whichever is later and actual benefit from the date of judgment i.e. 5.5.1988.

(c) The applicant filed a representation in regard to revision of his pay scale and the same not having been considered, he moved OA No. 243/1991, which was disposed of by order dated 17-07-1997 with the direction to the respondents to dispose of the representation by a speaking order.

(d) The respondents, in pursuance of the said order of this



impugned order dated 9-9-97 whereby they have rejected the claim of the applicant stating as under:-

"Your representation has been examined in the light of the judgment of the CAT dated 17-7-1997. Whereas you were working as Senior Accountant in the Office of Financial Adviser and Chief Accounts Officer, Dandakarnya Project, Shri Surya Kumar Dani was working as Senior Accountant in the Office of Chief Administrator Dandakarnya Project. The post of Senior Accountant in both the organizations was governed by different set of recruitment rules. Whereas the mode of recruitment in both the recruitment rules has been defined is promotion failing which by transfer on deputation, the criteria for promotion differs in both the cases. The criteria for promotion in both the offices are as follows:-

- 1. Office of Chief Administrator Office, Dandakarnya Project:
"By promotion on selection basis by way of passing departmental test from the grade of Junior Accountant/UDC cum Accountant etc., with 3 years service in the grade."*
- 2. Office of Chief Financial Adviser and Chief Accounts Officer, Dandakarnya Project: From amongst the UDCs and UDC-cum-Cashier with 10 years service in these posts.*
- 3. In view of the above, the post of Senior Accountant in the Office of Chief Administrator, Dandakarnya Project and the office of the Financial Adviser and Chief Accounts Officer, Dandakarnya Project cannot be treated as similarly situated. Therefore, your request for revision of your pay scale from Rs 425 - 640 to Rs 550 - 900 is not justified."*

3. The applicant has therefore, filed this O.A. for extension of the benefit of the judgment in the case of Suryakant Dani (Supra).

4. The respondents defended the O.A. According to them there is a vital difference in the case of Dani and that of the applicant inasmuch as the mode of promotion is different in that whereas in the case of the applicant it is 10 years service as UDC or UDC cum Cashier, in the case of Dani it is by way of a competitive test amongst Accountants/UDC/UDC cum accountants with 3 years of service.



5. Arguments were advanced. The learned counsel for the applicant has submitted that there cannot be two different scale for the same post in the same organization. He had specifically invited the attention of the Tribunal to the specific recommendations to the IV pay Commission as extracted in the judgment of the Cuttack Bench to support his view that all along all the senior accountants were treated alike only. The relevant passage reads as under:-

"We have heard Mr. C.A.Rao, learned counsel for the petitioner and Mr. A.B.Misra, learned Senior Standing Counsel for the Central Govt. at some length. Mr. Rao drawn our attention to a memorandum submitted to the Member Secretary, Fourth Pay Commission by the Chief Administrator, Dandakaranya Development Authority. In the said memorandum in one of the paragraphs it is stated as follows :-

"In fitness of things, the post of Senior Accountant in the Project Reserves the same scale of pay applicable to the posts of Senior Accountant in the Departments like P & T and other Central Government Organisation."

Neither in the counter nor during the oral arguments advanced by the learned Sr. Standing counsel it was disputed that the Senior Accountants in other departments and other Central Govt. Organisations do not receive a pay scale of Rs. 550-900/- as maintained by the petitioner rather it is admitted. In this connection we feel persuaded to say that the nature and duties of the Senior Accountants in the Dandakaranya Development and other departments are not same a fact which has not been stated."

6. The learned counsel for the applicant further submitted that even the intention of the Govt. is to afford uniform pay scale to all the senior accountants working in the project. He draws support to this submission from the fact that the Govt. had issued two letters in the case of Dani one dated 25th January 1990 and the other 10th March, 1992. For the purpose of proper appreciation, the two letters are reproduced below:

25th January 1990

With reference to your letter No.131/42/86/Legal



(A.II), dated the 3rd August, 1989 and in pursuance of the directions of the Central Administrative Tribunal, Cuttack Bench in OA 182/86 FILED BY Shri S.K. Dani, Senior Accountant, Dandakaranya Project, on the subject cited above, I am directed to convey sanction to the revision of pay scale of Senior Accountants, Dandakaranya Project, notionally from Rs. 425-640/- to Rs. 500-900/- (Pre-revised) w.e.f. 1.1.1973 and to Rs. 1640-2900/- (Revised) w.e.f. 1.1.1986 or from the dates of their actual appointment, whichever is later, and actual benefit from the date of judgment, i.e. 5.5.1988.

2. This issues with the concurrence of the Integrated Finance vide their I.D. No. 35/Fin./90, dated 22.1.1990."

"10th March 1992"

In continuation of this Ministry's letter No. 10(56)/86-Admn III/Litig dated 25th January 1990 and in pursuance of the Central Administrative Tribunal Cuttack Bench judgment dated 1.8.1991 in O.A. 164/90 and 165/90 filed by Shri S.K. Dani and Shri J.N. Talukdar and Ors., ex-Senior Accountant, Dandakaranya Project sanctioned of the President is conveyed to the revision of pay scale of Sr. Accountant Dandakaranya Project, from Rs. 500-900 to Rs. 550-900 (Pre-revised) w.e.f. 1.1.1973 and Rs. 1640-2900/- (Revised) w.e.f. 1.1.1986 or from the date of their actual appointment, whichever is later.

Senior Accountants of the Dandakaranya Project will also be entitled to draw arrears of pay and allowances minus already drawn for the period they worked as Senior Accountants in the Project

This issues with the concurrence of the Integrated Finance vide their I.D. No. 80/Fin./92 dated 28.2.1992."

7. The counsel for the applicant submitted that in the former the

words used are "Senior Accountants" and "their" without naming any particular individuals and it is in the latter letter that pay scale has

been revised in respect of the two applicants before the Cuttack Bench. Had the intention of the govt been that the benefit of the

Cuttack Bench was to percolate only to the two applicants therein,

there was absolutely no need to have two orders, i.e. one dated 25th


January, 1990 and the other dated 10th March, 1992. Thus,

according to the applicant, the former order is an order in the nature

of order in rem while the latter is an order in personam.

8. There is full substance in the submission of the learned counsel for the applicant both in respect of the nature of orders passed in pursuance of the judgment of the Cuttack Bench as well as in respect of all the posts of Senior Accountants in the Dandakaranya Project being treated as identical for all purposes. The mode of recruitment alone cannot make distinction between two sets of Senior Accountants. There is not a whisper from the side of the Respondent to contend that there are variations or differences in the functional responsibilities. The scale of pay of the feeder post in the two cases is identical and till the judgment of the Cuttack Bench was announced, the pay scale of senior accountants was also the same. It is also worth mentioning that while only 3 years experience was stipulated in respect of Senior Accountant working in the office of Chief Administrative Office, Dandakaranya project, the extent of experience sought for in the case of Senior Accountant in the Office of the Chief Financial Advisor and Chief Accountant Officer of the Project is ten years.

9. Considering the above, it is evident that there is no justification in the respondent's contention that the Senior Accountants functioning under FA and CAO are not to be treated at par with those working in the office of the Chief Administrator. There cannot be a higher pay scale for one Senior Accountants and lower pay scale in respect of another set of senior accountants within the same organization. The scale of pay of the feeder post in the two cases is identical and till the judgment of the Cuttack Bench was announced, the pay scale of senior accountants was also the same. It is also worth mentioning that while only 3 years experience was stipulated in respect of Senior Accountant working in the office of Chief



Administrative

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Office, Dandakaranya \project, the extent

of experience sought for in the case of Senior Accountant in the Office of the Chief Financial Advisor and Chief Accountant Officer of the Project is ten years.

10. In the result, the OA is allowed. Order dated 9-9-97 impugned in the OA is quashed and set aside. The applicant is entitled to the revision of pay scale notionally from Rs 425 .. 640 to Rs 550 900 (Pre revised) w.e.f. 01/01/1973 and to Rs 1640-2900 (Revised) w.e.f. 01-01-1986 or from the dates of his actual appointment whichever is later and actual benefit from the date of judgment in the case of OA 182/86 of the Cuttack Bench, i.e. 5.5.1988.

11. The respondents are directed to work out the arrears of pay and allowance and also revise the pension of the applicant on the above pay and make the arrears of pay and allowance and the difference in the terminal benefits within a period of eighty months from the date of communication of this order.

12. As this is the second round of litigation and the applicant has been forced to approach the Court, the applicant ^{is entitled to} cost also which we quantify at Rs 3,000/-.



MEMBER- J.



MEMBER- A.

/ANAND/