

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT BILASPUR

Original Applications Nos 62/03 & 396 /03

Bilaspur, this the 18th day of, March, 2005

Hon'ble Mr. M.P. Singh, Vice chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Applications Nos 62/03

1. Subhash Chandra Roy,
S/o late Jnendra Roy,
Date of birth 13.9.1951,
O/o Central Excise Headquarters,
Tikarapara, Raipur(C.G.).
2. A.K. Chaterjee,
S/o late Ranjit Chaterjee,
Date of birth 8.4.1945,
O/o Central Excise Headquarters,
Tikarapara, Raipur(C.G.).
3. Prasanta Mondal,
S/o late J.N.Mondal,
Date of birth 16.5.1953,
O/o Central Excise Headquarters,
Tikarpara, Raipur(C.G.).
4. Smt. Renubala Mallick,
W/o Shri Chita Ranjan Mallick,
Date of birth 18.6.1949,
O/o Central Excise Headquarters,
Tikarpara, Raipur(C.G.).
5. Smt. Chapala Biswas,
Date of birth 27.10.1951,
O/o Central Excise Headquarters
Tikarpara, Raipur(C.G.).
6. Parthasarthi Bhahma,
S/o late Pulin Brahma,
Date of birth 16.4.1952,
O/o Central Excise Headquarters
Tikarpara, Raipur(C.G.).
7. Bhaba Ranjan Kulu,
S/o late Harendra Nath Kulu,

Date of birth 28.3.1954.
O/o Central Excise Hqeadquarters
Tikarpura, Raipur(C.G.).

8. Sudhanshu Bepari,
S/o Shri Surendra Nath Bepari,
Date of birth 14.12.1953.,
O/o Central Excise Hqeadquarters
Tikarpura, Raipur(C.G.).

9. Bikash Chandra Dhar,
S/o late Shreenath Dhar,
Date of birth 15.4.1956,
O/o Central Excise Hqeadquarters
Tikarpura, Raipur(C.G.).

10. Lochan Lal Tikaria,
S/o late Luddhak Ram Tikaria,
Date of birth 23.9.1953
O/o Central Excise Hqeadquarters
Tikarpura, Raipur(C.G.).

Applicants

(By Advocate -Shri V. Tripathi on behalf of Shri S.Paul)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Finance,
Department of Revenue,
New Dehli.

2. Central Board of Excise & Customs,
Through its Member(Personnel),
North Block,
New Delhi.

3. Principal Chief Controller of Accounts,
O/o Central Board of Excise & Customs,
AGC Principal Building, First Floor,
New Delhi.

4. Commissioner,
Central Board of Excise & Customs,
New Central Excise Building,
Tikrapara, Raipur(C.G.)

Respondents.

(By Advocate – Shri S.A. Dharmadhikari)



(2) Original Application No. 396/03

1. Shri Paritosh Kumar Biswas
S/o late Fakir Chand Biswas
aged about 46 years,
DOSL-II, Central Excise &
Customs, Commissionerate,
Bhopal.
2. Monoranjan Mistry,
S/o Shri Jogendra Nath Mistry,
aged 55 years, DOSL-II,
Central Excise & Customs Commissionerate,
Manik Bag Palace, Indore.
3. Ram Narayan Mistry,
S/o Shri Madhale Mistry,
aged 58 years, DOSL-II, Central Excise &
Custom Commissionerate,
Manik Bag Palace, Bhopal.
4. Jahar Kumar Dey,
S/o late Atul Chandra Dey,
aged 49 years, DOSL-II, Central Excise
Division, Nepier Town,
Jabalpur.
5. K.K. Bhadra,
S/o late S.N. Bhadra,
aged 52 years, DOSL-II,
Central Excise Division,
Ratlam.
6. A.C. Roy,
S/o late Suresh Chandra Roay,
aged 58 years, TA (Voluntary retired),
C/o S.C. Roy Central Excise Customs
Headquarter, Tikrapara, Raipur. Applicants

(By Advocate – Shri V. Tripathi on behalf of Shri S.Paul)

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Respondents.

(By Advocate – Shri S.A. Dharmadhikari)

COMMON (ORDER)

By M.P. Singh, Vice Chairman

As the issue involved in the afore-mentioned Original Applications is common, and the grounds raised and the facts are identical, for the sake of convenience, these Original Applications are being disposed of by this common order

2. By filing these Original Applications, the applicants have sought the following main reliefs :-

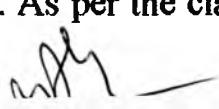
(b) Upon holding that the applicants are entitled to continue to enjoy the benefit of two advance increments given to them in the year 1989 and also the Special Pay for the purposes of fixation of promotional post (As the case may be), set aside the order dated 2.7.2001 ANNEXURE A/1 and the Revised Pay Fixation orders ANNEXURE A/2.

(c) Consequently, command the respondents to provide all consequential benefits to the applicants as if the aforesaid impugned orders are never passed.

3. The brief facts of the case are that the applicants were initially appointed as Primary Teachers in Dandkanya Project. On being declared surplus in the said organisation, they were re-deployed in the Central Excise

Department in the year 1986 in the matching grade in the scale of Lower Division Clerk of Rs.950-1500. In pursuance to the circular dated 28.9.1967 the applicants were granted two advance increments by the department as they have passed the promotional examination full and in first attempt. Subsequently some of the applicants were also promoted to the post of UDC and were appointed against 10% identified posts of UDC for performing the arduous nature of duties and were granted special pay of Rs.70/- per month. In pursuance of the judgment of the Hon'ble Supreme Court in the case of Union of India and others Vs. Bijoy Lal Ghosh, (1998) 3 SCC 362, the applicants were granted the benefit of higher pay scale as recommended by the Chatopadhyaya Pay Commission, with effect from 1.1.1986. All those Primary School Teachers who had rendered less than 12 years of service were granted the pay scale of Rs.1200-2040 and those who had rendered more than 12 years of service were granted the pay scale of Rs.1400-2600 by the Ministry of Home Affairs, Rehabilitation Division. However, in the revised pay order dated 8.11.1998 the two advance increments granted to the applicants w. e. f. 5.5.1989 were not allowed to them, as the pay scale in which they were fixed was higher than the pay scale of LDC. Subsequently, a clarification was sought by the respondents from the Ministry of Finance as to whether the applicants are entitled to the advance increments in the revised scale of Rs.1200-2040 / Rs.1400-2600, which they had earned in the lower pay scale of LDC on passing departmental examination for promotion as UDC. The Ministry of Finance, Department of Revenue clarified vide letter dated 2.7.2001 (Annexure-A-1) that the applicants are not entitled for the advance increments as these advance increments were given to them in the pay scale of LDC i.e.Rs.950-1500. Since the applicants are now drawing higher scale of pay, they are not entitled for advance increments in the revised pay scale. Similarly, another clarification was also sought as to whether some of the applicants who were getting special pay of Rs.70/- per month on being appointed as UDC (Rs.1200-2040) against 10% identified posts for performing arduous nature of duties will be entitled for grant of special pay in the higher scale of Rs.1400-2600. As per the clarification given by the Government, these 10%

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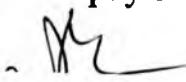


UDCs were also not entitled for special pay of Rs.70/- for doing arduous nature of duties since they were already fixed in the higher scale of pay. In the light of the above clarifications, the revised pay fixation orders dated 6.5.2002, 31.12.2002, 13.1.2003 were issued disallowing the two advance increments and special pay to the applicants. Now, when the recovery of earlier payment of two advance increments and special pay ^{is} ~~are~~ under process, the applicants have approached this Tribunal claiming the aforementioned reliefs.

4. Heard the learned counsel of both the parties.

5. The learned counsel for the applicants has stated that some of the applicants were earlier granted two advance increments on passing the departmental test for promotion as UDC in view of the instructions contained in letter dated 28.9.1967 (Annexure-A-4) and these instructions are still in force. Similarly, some of the applicants, who were granted special pay of Rs.70/- while working against the 10% identified post of UDC for performing arduous nature of duties, had actually performed these duties, therefore, there is no question of making any recovery from them in regard to the special pay while granting them the revised pay scale in pursuance of the aforesaid decision of the Hon'ble Supreme Court.

6. On the other hand, the learned counsel for the respondents has submitted that two advance increments were granted to some of the applicants while they were working as LDC and similarly, the special pay of Rs. 70/- was granted to some of the applicants while they were working against the 10% identified posts of UDC for performing arduous nature of duties, and the same were taken into consideration while fixing their pay at the time of their promotion to the next higher grade. This was in accordance with the rules applicable to them while they were working in that grade. Since the pay of the applicants is being revised in the higher scale of pay in pursuance of the judgment of the Hon'ble Supreme Court granting them the benefit of Chattopadhyaya Commission, they cannot get the benefit of special pay as well as the benefit of two advance increments as they are now being placed in the higher scale of pay of Rs.1200-2040 / Rs.1400-2600, which is more than the pay scale of LDC / UDC respectively.



7. We have given careful consideration to the rival contentions advanced on behalf of both the parties.

8. The question for consideration before us is whether the applicants who were working as Teachers in the Dandakarnya Project and on being declared surplus were redeployed as LDC in the identical scale of LDC and were granted two advance increments on passing the departmental examination and some of them also granted special pay for working against 10% identified posts of UDC, will also be entitled to the same benefit now, when ^{their} pay is being fixed in the higher pay scale in pursuance of the Supreme Court's Judgment dated 4.3.1998, ^{based} on the recommendations of the Chattopadhyaya Commission ?

9. We find that on being declared surplus in the Dandakarnya Project, the applicants were declared surplus and were redeployed in the grade of LDC. In the present department, they were granted two advance increments on passing the departmental examination as per the instructions contained in circular dated 28.9.1967 (Annexure-A-4). In due course of time some of them were promoted and appointed against 10% identified posts of UDC for doing arduous nature of duties. As per the instructions issued by the Government of India, the benefit of grant of advance increments was extendable only to the persons who were working as LDC in the grade of Rs.950-1500 and had passed the departmental examination of UDC. Similarly, the benefit of special pay was to be given only to those who were working as UDC in the pay scale of Rs.1200-2040 and against the 10% identified posts of UDC for doing arduous nature of duties. Now, in view of the aforesaid judgment of the Hon'ble Supreme Court, in the year 1998 the benefit of recommendations of Chattopadhyaya Commission for Teachers is to be extended to them as they were working as Teachers in Dandakarnya Project before redeployment in the present office. The pay scale of LDC was Rs.950-1500 and that of the UDC was Rs.1200-2040. All the applicants were redeployed in the grade of LDC (Rs.950-1500) and some of them were promoted to the grade of UDC (Rs.1200-2040). However, in pursuance of the judgment of the Hon'ble Supreme Court all the applicants are required to be placed in the higher scale of pay of Rs.1200-2040 / Rs.1400-2600 w.e.f.

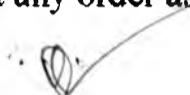
1.1.1986 i. e. even before the date of redeployment of the applicants in the present office. Since the pay of the some of the applicants is now being revised in the higher pay scale of Rs.1200-2040, the benefit of grant of two advance increments cannot be extended to them as that benefit can be granted only to those who were working as LDC in the scale of Rs.950-1500 and passed the test for promotion to the grade of UDC in the scale of Rs.1200-2040. Similarly, on the same ground, the benefit of special pay cannot be extended to those applicants who were granted the special pay of Rs.70/-.

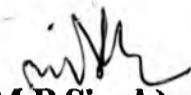
~~Since~~ These benefits were available to the applicants in the grade of LDC in the pay scale of Rs.950-1500 and the special pay of Rs.70/- in the grade of UDC in the pay scale of Rs.1200-2040 and not in the higher scale of Rs.1200-2040 and Rs.1400-2600 respectively. We, therefore, do not find any illegality or irregularity committed by the respondents in fixing the pay of the applicants in pursuance of the judgment of the Hon'ble Supreme Court as per the clarifications given by the Ministry of Finance.

10. As regards the prayer of the learned counsel for the applicants that no recovery should be made from the applicants on account of grant of two advance increments and special pay, the same is not tenable and is rejected. In this case, there is no question of making any recovery on account of two advance increments as well as the special pay, because the applicants are being placed in the higher pay scale of Rs.1200-2040 / Rs.1400-2600 w.e.f. 1.1.1986 i. e. the date when they were working in the Dandakaranya Project and, therefore, they are entitled only to the arrears of difference of pay between the emoluments drawn by them and the emoluments for which they will be entitled now in terms of the fixation of pay in the revised scale of pay in pursuance of the judgment of the Hon'ble Supreme Court. On that account also the ground taken by the applicants about the recovery of special pay as well as advance increments is only a figment of imagination and in reality there would be no recovery on this ground from the applicants on revision of their pay scale in the higher pay scale as clarified by the Ministry of Finance. In fact, they will be entitled for the arrears of salary between the emoluments actually drawn by them and the emoluments which will be payable to them in pursuance of the judgment of the Hon'ble

Supreme Court in the revised higher pay scale. For the reasons recorded above, both the OAs are liable to be dismissed.

11. In the result, both the Original Applications are dismissed, however, without any order as to costs.


(Madan Mohan)
Judicial Member


(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन सं ओ/न्यू..... जवलपुर. दि.....
 चतिलिपि अज्ञे हितः—

- (1) सचिव, उच्च न्यायालय वाद हाईकोर्ट, जवलपुर
- (2) आवेदक श्री/श्रीमती/..... देव काउंसल
- (3) पत्त्यर्थी श्री/श्रीमती/वहु
- (4) अधिकारी, देव प्रभा, जवलपुर लालपीठ

संघर्षा एवं आवश्यक कार्यवाही देव

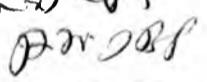
प्रभा

24. 3. 05

मुख्य रजिस्ट्रार


 S. Paul 22/3/05


 S.D. Dharmadhikari 22/3/05


 C.L. 22/3/05

*Issued
on 24.3.05*