

**ORISSA HIGH COURT: CUTTACK**

***AFR***

**W.P(C) NO. 4324 OF 2020**

In the matter of an application under Article 226 of the  
Constitution of India.

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Maheswar Mohapatra ..... Petitioner

-Versus-

Union of India & Ors. .... Opp. Parties

For petitioner : M/s. M. Basu, S. Debdas  
and M. Kanungo, Advocates

For opp. parties : Mr. C. Pradhan,  
Senior Panel Counsel,  
Government of India

P R E S E N T:

**THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI  
AND**

**THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

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**DECIDED ON : 29.01.2024**

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**DR. B.R. SARANGI, ACJ.** The petitioner, by means of this writ petition, seeks to quash the order dated 14.02.2019 passed in O.A. No.260/543 of 2012 under Annexure-9, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the said O.A. and denied

to grant relief to the petitioner with regard to holding of higher post. The petitioner also seeks to quash the order dated 10.07.2019 passed in R.A. No.260/0019 of 2019 (arising out of O.A. No.260/543 of 2012 disposed of on 14.02.2019) under Annexure-10, whereby the Tribunal has confirmed its order under Annexure-9.

2. The factual matrix of the case, in brief, is that in the year 1974 the petitioner, by following due procedure, was selected to the post of Accounts Clerk-cum-Typist in the Ministry of Education & Social Welfare and he joined in the said post on 25.01.1974. After establishment of Nehru Yuva Kendra Sangathan (NYKS), he was transferred and subsequently absorbed in the Sangathan in the year 1996, pursuant to the judgment passed by the apex Court in SLP(C) No.2421-2422 and 14717 of 1995. During his service period, the Government of India, vide order dated 16.11.2007, sanctioned several posts of NYKS. Consequentially, the services of the petitioner, along with other Accounts Clerk-cum-Typist of the Sangathan, were regularized,

pursuant to order dated 6/7.08.2008, w.e.f. their initial date of joining.

2.1. While the petitioner was continuing as such, the NYKS had issued an office order dated 29.01.2007 indicating that he was transferred to the office of NYK, Balasore and was directed to hold the charge of District Youth Coordinator. Pursuant to the said office order, it was instructed that the Accounts Clerk-cum-Typists, who were working in the pay scale of Rs.6500-10500 for more than 5 years, will hold the charge of District Youth Coordinator and shall be designated as District Youth Coordinator In-charge. It was further instructed that the petitioner shall continue to draw salary in his existing pay scale till regular promotion through duly constituted DPC as per rules.

2.2. The NYKS had issued another office order on 29.06.2009, consequent upon the recommendation of the DPC for the promotion of Accounts Clerk-cum-Typists to the post of Administrative Officer, pursuant to which the petitioner, along with others, was promoted to

the post of Administrative Officer. While issuing the promotion order in favour of the petitioner, it was decided by opposite party no.2 that the promotion will be made effective from the date, when the officers will join duty in their respective promoted posts. While passing the said order, it was clarified that the promoted officers will continue in the pay scale of promoted post, i.e., Administrative Officer and work as District Youth Coordinator In-charge in their place of posting. Accordingly, the petitioner was posted at Balasore against the post of District Youth Coordinator In-charge.

2.3. Pursuant to aforesaid office order dated 29.06.2009, the petitioner joined against his promotional post of Administrative Officer and discharged his duties. While continuing as such, opposite party no.2 issued an office order on 09.07.2012 directing the officials, including the petitioner, who were holding charge of District Youth Coordinators, that they stand reverted to their substantive posts. Accordingly, the concerned Zonal Directors were instructed to issue

separate orders for the transfer and posting of those officials within the zones.

2.4. Aggrieved thereby, the petitioner approached the Central Administrative Tribunal, Cuttack Bench, Cuttack, by filing O.A. No.260/543 of 2012 seeking following reliefs:-

*(a) To quash the impugned order dtd.9.7.12 passed under annexure -7 and the Respondents be directed to allow the applicant to continue in the post of In charge DYC ( District Youth Coordinator ).*

*(b) To direct the Respondent No.2 to give promotion to the applicant with all consequential benefits w.e.f., 29.1.2007.*

*(c) To direct the Respondents to produce relevant record with copy of the Learned Advocate of the applicant.*

*(d) Any other order or further orders and or direction/s may be passed as this Hon'ble Tribunal deems fit and proper."*

The petitioner also prayed for interim order of stay against the aforesaid office order dated 09.07.2012 and on consideration of the same, the Tribunal granted interim protection, vide order dated 06.08.2012. Consequentially, the petitioner was continuing as District Youth Coordinator In-charge.

2.5. While continuing as such, opposite party no.3 issued an office order on 17.02.2014, wherein necessary arrangement was made against the place of posting of the petitioner, who was holding the charge of District Youth Coordinator in NYK, Puri and Bhadrak, as he was going to retire on 28.02.2014. On attaining the age of superannuation, the petitioner retired from service on 28.02.2014 and on the date of his retirement, he handed over the charges of District Youth Coordinator, NYK, Puri to the Deputy Director on the basis of charge memo prepared in the office of NYK, Puri.

2.6. During pendency of the aforesaid O.A., the Head Office of NYKS prepared draft combined eligibility list on 24.07.2014 for consideration of promotion of the officers on the post having grade pay of Rs.4600/- and Rs.4200/- to the post of Assistant Director/District Youth Coordinator in NYKS, wherein the name of the petitioner found placed at Sl. No.15 and since 29.06.2012, he had completed qualifying service for promotion to the post of Assistant Director/ District Youth Coordinator. After preparing the aforesaid draft

combined list, the NYKS also issued another office order dated 11.08.2014, wherein the final combined eligibility list for considering promotion of the officers on the post having Grade Pay of Rs.4600/- and Rs.4200/- to the post of Assistant Director/ District Youth Coordinator was finalized after considering completion of their qualifying services for the post of Assistant Director/ District Youth Coordinator up to the vacancy year 2014, wherein the name of the petitioner found place at Sl. No.15.

2.7. The Tribunal, vide order dated 14.02.2019, rejected the claim of the petitioner by dismissing O.A. No.260/543 of 2012 on the ground that the petitioner was not able to produce any corroborative documentary evidence showing that he had ever been promoted within the four corners of rules and instructions. Aggrieved thereby, the petitioner filed R.A. No.260/0019 of 2019 along with limitation petition before the Tribunal seeking following reliefs:

*“The petitioner therefore prays that this Hon’ble Tribunal may graciously be pleased to allow this Review Petition in the interest of justice and*

*the order dtd.14.2.2019 may kindly be modified/reviewed to the extent that the applicant is entitled to receive salary in the post of District Youth Coordinator from dtd. 29.1.2007 to dtd. 28.2.2014 including other benefits as extended to all other similar situated person keeping in view of the documents filed under annexure-9 series filed by the applicant much prior to the date of final hearing;*

*And for this act of kindness the applicant as in duty bound shall ever pray.”*

But, the Tribunal, vide order dated 10.07.2019 under Annexure-10, dismissed the said review application.

Hence, this writ petition.

3. Mr. M. Basu, learned counsel appearing for the petitioner vehemently contended that the orders impugned passed by the Tribunal in rejecting the claim of the petitioner, in absence of any corroborative documentary evidence showing that the petitioner was promoted to hold the higher post, cannot be sustained in the eye of law, since the Tribunal has failed to appreciate that the petitioner was allowed to discharge the higher responsibility without any interruption even though no formal promotion was given to him by holding DPC. It is further contended that the petitioner was holding the promotional post and discharging the



duty as District Youth Coordinator In-charge for quite long time without any interruption and, thereby, he is entitled to get the benefit as due and admissible to him. Even though he was reverted, but by virtue of interim order granted by the Tribunal, he was continuing in the higher post of District Youth Coordinator In-charge and, as such, he is entitled to get the scale of pay admissible to the said post. Denial of such benefit to the petitioner by the Tribunal on flimsy ground of non-availability of corroborative documentary evidence, has no justification, when materials are available on record to prove that he was discharging the responsibility of the higher post. It is further contended that similar question had come up for consideration before the Central Administrative Tribunal, Ernakulam Bench in O.A. No.725 of 2011 and O.A. No.1076 of 2011, which were disposed of vide common judgment dated 13.08.2012, wherein the applicants of those cases, with whom the petitioner herein stands on equal footing, were joined as Accounts Clerk-cum-Typists. The services of the applicant in O.A. No.725 of 2011 were transferred to

Nehru Yuva Kendra, Kavaratti, Lakshadweep and the said applicant was discharging the duties and responsibilities of In-charge District Youth Coordinator, but, however, he was not paid any salary attached to the post of District Youth Coordinator and retired from service on 31.05.2011. The Central Administrative Tribunal, Ernakulam Bench, vide judgment dated 13.08.2012, allowed the said O.As. in part to the extent that the applicants shall be paid the pay and allowances applicable to the post of District Youth Coordinator for the period they were discharging the functions of the said post as in-charge and the differential amount in the pay and allowances shall be paid within a period of six months from the date of communication of the order. Aggrieved thereby, the Union of India and its functionaries filed OP (CAT) No.2253 of 2013 (Z) before the High Court of Kerala at Ernakulam, which was dismissed vide judgment dated 31.07.2013, against which SLP (C) ..../2013 CC 22907 of 2013 was preferred and the apex Court, vide order dated 06.01.2014 dismissed the same directing the authorities to grant

four months' time to do the needful and the needful shall accordingly be done within four months failing which the applicants shall be free to pursue the contempt petition, if any filed by them, before the High Court. Therefore, it is contended that the case of the present petitioner is fully covered by the ratio decided by the Central Administrative Tribunal, Ernakulam Bench, which has been confirmed by the High Court of Kerala as well as by the apex Court. Without appreciating the same, the Central Administrative Tribunal, Cuttack Bench, Cuttack passed the impugned orders dated 14.02.2019 and 10.07.2019 in O.A. No.260/543 of 2012 and R.A. No.260/0019 of 2019 respectively which cannot be sustained in the eye of law and are liable to be quashed.

4. Mr. C. Pradhan, learned Senior Panel Counsel, Government of India, relying upon the judgments of the apex Court in **D.N. Agrawal v. State of M.P.**, (1990) 2 SCC 553 and **R.K. Mobisana Singh v. Kh. Temba Singh**, (2008) 1 SCC 747, contended that the ad hoc promotion without following the recruitment

rules would not lead to any right for computation of seniority. Thereby, it is contended that since the petitioner was not given any promotion and the order was passed, due to exigency of service, to remain in-charge without following any Recruitment Rules, he is not entitled to get the benefit, as claimed in the writ petition. He also placed reliance on the NYKS Recruitment Rules, 1998, wherein there are two channels of promotion for the Accounts Clerk-cum-Typist or otherwise also one can get promotion by way of Assured Career Progression Scheme. He also admitted the fact that the petitioner was also granted 1<sup>st</sup> and 2<sup>nd</sup> financial up-gradations under the ACP Scheme and had reached the pay scale of Rs.6500-200-10500/- with effect from 16.05.2001 while continuing to be an Accounts Clerk-cum-Typist. It is contended that due to exigencies of service, vide order dated 29.01.2007, the petitioner was transferred to NYK, Balasore and was directed to hold charge of District Youth Coordinator on temporary arrangement, till further orders. He was reverted to his substantive post vide order dated

09.07.2012, against which he approached the Tribunal by filing O.A. No.260/543 of 2012 and the Tribunal, vide order dated 06.08.2012, stayed the said order while continuing in the post of District Youth Coordinator as an in-charge. Thereafter, on attaining the age of superannuation, he retired from service on 28.02.2014. Since O.A. No.260/543 of 2012 and R.A. No.260/0019 of 2019 have been dismissed by the Tribunal, the petitioner is not entitled to get any benefit, as claimed in the writ petition, and consequentially seeks for dismissal of the writ petition.

5. This Court heard Mr. M. Basu, learned counsel appearing for the petitioner and Mr. C. Pradh, learned Senior Panel Counsel, Government of India appearing for the Union of India-opposite parties in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. On the basis of factual matrix, as delineated above, the only question that arises for consideration is, whether the petitioner is entitled to get any benefit for discharging his duty and responsibility as District Youth Coordinator In-charge?

7. It is the admitted fact that the petitioner was initially joined in the post of Accounts Clerk-cum-Typist on 25.01.1974. After establishment of Nehru Yuva Kendra Sangathan (NYKS), he was transferred and subsequently absorbed in the Sangathan in the year 1996 and his services were regularised w.e.f. his initial date of joining, pursuant to order dated 6/7.08.2008. By virtue of office order dated 29.01.2007, he was transferred to NYK, Balasore and was directed to hold the post of District Youth Coordinator In-charge in the pay scale of Rs.6500-10500 and, as such, he discharged his duty and responsibility. But, vide order dated 09.07.2012, he was reverted to his substantive post and by virtue of interim order, he was discharging his duty and responsibility as District Youth Coordinator In-

charge and on attaining the age of superannuation, he retired from service on 28.02.2014.

8. In **Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma & Ors**, AIR 1998 SC 2909 and **State of Punjab & Anr. v. Dharam Pal**, AIR 2017 SC 4438, the apex Court came to a definite finding that if the Rules do not prohibit grant of pay scale, by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position and the employee is entitled to get salary and other benefit of promotional post. Accordingly, the SLP preferred by the State of Punjab was dismissed. Consequentially, the respondent therein was allowed to receive the benefit of scale of pay holding the post on officiating basis. In view of the principle enunciated by the apex Court, extension of benefit as claimed by the petitioner herein remains no more res integra.

9. During course of hearing, it is brought to our notice that one K. Devaraj (Applicant in O.A. No. 725 of

2011) and A.V. Molly, M.C. Jayasree and M.K. Valsala (Applicants in O.A. No. 1076 of 2011), who were working as District Youth Coordinator In-charge of NYKS at different places in the State of Kerala, had approached the Central Administrative Tribunal, Ernakulam Bench, Ernakulam by filing the above noted O.As. claiming similar benefit, as claimed by the petitioner herein. The Central Administrative Tribunal, Ernakulam Bench, Ernakulam, for the purpose of an effective adjudication of those Original Applications, relied upon the following judgments of the apex Court:-

**“(a) Jeet Singh v. M.C.D., 1986 Supp SCC 560**

We understand that the services of the petitioners have been regularized recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances which are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos.3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis as are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly.

**(b) Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291**



It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of Rs.1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

**(c) Jaswant Singh v. Punjab Poultry Field Staff Assn., (2002) 1 SCC 261**

“... while the appellant’s promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.”

Having relied upon the above cited principles settled by the apex Court, the Ernakulam Bench of the Central Administrative Tribunal allowed the aforementioned O.As. in part to the extent that the applicants shall be paid the pay and allowances applicable to the post of District Youth Coordinator for the period they were discharging the functions of the said post as in charge and directed that the difference in the pay and allowances be made within a period of six months from the date of communication of the order. Aggrieved thereby, the Union of India and its functionaries, along with the Zonal Director, Nehru Yuva Kendra Sangathan

approached the High Court of Kerala by filing OP (CAT) No.2253 of 2013(Z). The High Court of Kerala, relying upon the judgment of the apex Court in **Secretary-cum-Chief Engineer V. Hari Om Sharma**, AIR 1998 SC 2909 dismissed the said OP (CAT) No.2253 of 2013(Z) vide judgment dated 31.07.2013 confirming the judgment and order of the Ernakulam Bench of the Tribunal. Against the said judgment and order of the Ernakulam Bench of the Tribunal, the Union of India and Nehru Yuva Kendra Sangthan preferred SLP(C) ..../2013 CC 22907/2013 and the apex Court, vide order dated 06.01.2014, dismissed the said SLP with the following order:-

*"Heard.*

*Delay condoned.*

*We see no reason to interfere with the order impugned. The special leave petitions are accordingly dismissed.*

*At this stage, Mr. Harin P. Raval, learned senior counsel appearing for the petitioner, seeks six months' time for the petitioner to comply with the direction issued by the High Court.*

*In the circumstances of the case, However, we are inclined to grant four months' time to the petitioner to do the needful.*

*The needful shall accordingly be done within four months failing which the respondents shall*

*be free to pursue the contempt petition, if any filed by them, before the High Court.”*

10. With the dismissal of the aforesaid SLP, the order of the Ernakulam Bench of the Tribunal has been confirmed. Meaning thereby, the applicants therein, who were continuing in the post of District Youth Coordinator In-charge, were allowed to get the pay and allowances applicable to the said post for the period they were discharging the functions of the said post. As such, in respect of the present petitioner, who stands on similar footing, this Court cannot take a different view than the view taken by the Central Administrative Tribunal, Ernakulam Bench, which has been confirmed by the High Court of Kerala as well as the apex Court. Consequentially, this Court holds that the petitioner is entitled to get the pay and allowances applicable to the post of District Youth Coordinator In-charge for the period he had discharged the functions of the said post.

11. In view of such position, the order dated 14.02.2019 passed in O.A. No.260/543 of 2012 and the order dated 10.07.2019 passed in R.A. No.260/0019 of

2019 (arising out of O.A. No.260/543 of 2012 disposed of on 14.02.2019) by the Central Administrative Tribunal, Cuttack Bench, Cuttack are liable to be quashed and are hereby quashed. Accordingly, this Court directs the authorities to sanction the pay and allowances, as due and admissible to the petitioner, for the period he was discharging the functions of the post of District Youth Coordinator, and difference thereof be paid within a period of three months from the date of communication of the order.

12. In the result, the writ petition stands allowed to the extent indicated above. But, however, in the circumstances of the case, there shall be no order as to costs.

**(DR. B.R. SARANGI)**  
**ACTING CHIEF JUSTICE**

**M.S. RAMAN, J.** I agree.

**(M.S. RAMAN)**  
**JUDGE**