

O.A. No.260/274/2019.

Draft order is put up for kind perusal and concurrence of Hon'ble Member (J) with authorisation to pronounce the same on my behalf.

Shridhar
(TARUN SHRIDHAR)
ADMINISTRATIVE MEMBER

I agree

SS 12-9-21
HON'BLE MEMBER (J) pl.

MR SWARUP KUMAR MISHRA

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A. No.260/274/2019.

Date of Decision: .2021

Santosh Kumar Parida

PETITIONER(S)/APPLICANT(S)

Mr N.R.Routray

ADVOCATE(S) FOR THE
PETITIONER(S)/APPLICANT(S)

-Versus-

Union of India & Others

RESPONDENT(S)

Mr S.B.Das

ADVOCATE(S) FOR THE
RESPONDENT (S)

CORAM:

THE HON'BLE MR SWARUP KUMAR MISHRA, JUDICIAL MEMBER

THE HON'BLE MR TARUN SHRIDHAR, ADMINISTRATIVE MEMBER

1	Whether reporters of local newspapers may be allowed to see the Judgment?	Yes/No
2	Whether to be referred to the Reporter or not?	Yes/No
3	Whether the Judgment is to be circulated to other Benches of the Tribunal?	Yes/No

—A.

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK**

O.A. No.260/274/2019.

Date of order : This the 13th Day of January, 2021.

Hon'ble Mr Swarup Kumar Mishra, Judicial Member

Hon'ble Mr Tarun Shridhar, Administrative Member



Shri Santosh Kumar Parida,
Aged about 47 years,
Son of late Sricharan Parida
At present working as Secretary to the
Court, CGIT-Cum-Labour Court,
Bhubaneswar, Dist.Khurda-751002,
Resident of Quarter No.II/ 247, Old A.G.Colony,
Unit IV, Bhubaneswar-751001,
District Khurda, Odisha.

.....Applicant

By Advocate : Mr N.R.Routray

-Versus-

1. Union of India,
Represented through Secretary,
Govt. of India,
Ministry of Labour & Employment,
Srama Shakti Bhawan,
Rafi Marg, New Delhi-110001.
2. Presiding Officer,
Central Govt. Industrial Tribunal-Cum-Labour Court,
H-24, Jayadev Nagar, Nageswar Tangi,
Lewis Road, Bhubaneswar-751001,
Dist. Khurda, Odisha.

.....Respondents

By Advocate : Mr S.B.Das

ORDER

Mr Tarun Shridhar, Member(A)

The applicant Shri Santosh Kumar Parida is aggrieved by a
 memo dated 11.12.2018 by way of which the Presiding Officer of

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Central Government Industrial Tribunal cum Labour Court, Bhubaneswar has directed him to refund an amount of Rs.88,227/- which was paid as excess salary to him. This memo is a result of an audit objection which points out this irregular/excess payment. The applicant further assails 09.04.2019 order passed by the Secretary, Ministry of Labour & Employment, Government of India in which the applicant's appeal against the order of recovery has been rejected.



3. Briefly stated the facts of the case are as follows :

The applicant who was a UDC in the office of Central Government Industrial Tribunal cum Labour Court was promoted and appointed as Secretary to the Court in an officiating capacity on 08.01.2015. He held this position in this capacity till 03.06.2016. Since he did not fulfil the requirement of the recruitment rules which stipulated the qualifying service for 5 years as UDC to be eligible for promotion to the post of Secretary to the Court, the audit pointed out that the salary in the higher scale paid to him for officiating in this position is liable to be recovered. Hence the impugned order.

3. Ld. Counsel for the applicant argues that since the applicant was assigned the responsibility of higher post he deserves the salary of that post which is clearly mentioned in the order of appointment itself. He further draws his argument from the Hon'ble Apex Court observation in the case of **State of Punjab & Another vs. Dharampal, 2017(II) ILR-CUT-728(SC)** that "if a person is put to officiate on a higher post with greater responsibility, he is normally entitled to salary of that post." In another case **State of Punjab vs. Rafiq Masih & Ors., AIR 2015 SC 696**, it was held as under :

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"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

Moreover, he points out that he was assigned higher responsibility by the competent authority and it was not at his own behest that he came to hold this higher position.

4. Ld. Counsel for the respondents on the other hand refutes the contention of Ld. Counsel for the applicant and categorically states that applicant was not eligible for promotion as such the emoluments drawn by him are irregular. He also draws attention to the fact that applicant had himself, on the dismissal of the incumbent holding the post of Secretary to the Court, initiated a note to the Presiding Officer for sending a proposal to the Ministry for relaxation of the qualifying



years for eligibility to his higher position. We find this contention to be correct as the note to this effect dated 10.10.2014 signed by the applicant and submitted to the Presiding Officer is on record. In fact the record also shows that the applicant, along with this note also submitted a draft letter to Government of India seeking this relaxation. Accordingly a communication was sent on the same date but vide letter dated 09.12.2014 the Government of India conveyed that this proposal of relaxation of recruitment rules in respect of Shri Santosh Kumar Parida, UDC cannot be acceded to. A further advice was given that the post be filled up on deputation basis. However, ignoring this advice and also ignoring the facts that the proposal of relaxation of rules had been rejected, the Presiding Officer suo moto issued orders for promotion of Shri Santosh Kumar Parida, the present applicant as Secretary to the Court and Shri Parida himself put up the draft office order which also granted him a higher pay band.

5. In view of the above circumstances and the documents on record of the case, it is unambiguously clear that on the date the applicant was given promotion he did not fulfil the requirement of the recruitment rules. Further, he himself had initiated the note for seeking relaxation and hence it was within his knowledge that the relaxation sought has not been agreed to by Government of India and as per their advice the post should have been filled up on deputation basis. So the benefit of innocence cannot be accorded to the applicant. Moreover, the draft giving him salary in the higher pay band was also submitted by him. So the conditions set out in **State of Punjab & Another vs. Dharampal, 2017(II) ILR-CUT-728(SC)** and **State of Punjab**

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vs. Rafiq Masih & Ors., AIR 2015 SC 696 are not met in the case of the applicant. Further, this case also fails to satisfy the test of "hardship" on account of this recovery.

6. In view of the discussion above the applicant's case does not have a leg to stand on. Enjoying the benefit of a position for which he was not deserving, and the promotion which was not in accordance with the Rules cannot be condoned. Moreover, the entire exercise was in violation of the specific direction issued by Government of India.

7. The O.A is accordingly dismissed and the interim relief, the applicant has been enjoying stands vacated. No order as to costs.



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(TARUN SHRIDHAR)
MEMBER (A)

A handwritten signature in blue ink, appearing to read "Swarup Kumar Mishra".
(SWARUP KUMAR MISHRA)
MEMBER (J) 13-01-2021

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