Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **31st** day of **October** 2011

Original Application No. 1414 of 2005

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

1. P.S. Shukla, S/o Shri R.K. Shukla, R/o TB-II, 180 C, North Railway Colony, Agra Cantt.

2. Neelesh Kumar Sharma, S/o Sri Dhanpal Singh, R/o MAP 159 AB, South Railway Colony, Agra Cantt.

. . .Applicants

By Adv : Sri S.K. Om

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.

2. Senior Divisional Personnel Officer, North Central Railway, Agra.

3. Divisional Railway Manager (P), North Central Railway, Agra.

. . .Respondents

By Adv: Shri S.K. Rai and Sri D. Awasthi

O R D E R
By Hon'ble Mr. Sanjeev Kaushik, Member-J

We have heard Shri S.K. Pandey brief holder of Sri S. K. Om, learned counsel for the applicant and Sri R.K. Dixit brief holder of Sri D. Awasthi, learned counsel for the respondents.

2. The applicant is aggrieved against the order dated 14.11.2005 passed by the respondent No. 3 whereby the benefit of ACP granted to the applicant w.e.f. 04.01.2005 has been withdrawn in pursuance of Railway Board's circular dated 13.12.2004. The applicant seeks the following reliefs:-

> ***"i. issue a writ, order or direction in the nature of certiorari quashing the letter dated 13.12.2004 and 14.11.2005 passed by the respondent No. 3.***

ii. ***issue a writ, order or direction in the nature of mandamus commanding the respondents not to withdraw the financial upgradation granted to the petitioners in pursuance to the ACP Scheme dated 1.10.99.***

iii. ***issue a writ, order or direction in any nature to grant all the consequential reliefs including salary etc. for petitioner are entitled for.***

iv. ***to grant any other suitable relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.***

v. ***Award the cost of present petition to the petitioners."***

3. Before arguing the matter learned counsel for the applicant made a statement at bar that the applicant restricts his claim for only recovery part in pursuance of the order dated 14.11.2005.

4. Sri S.K. Pandey submitted that the impugned order has been passed by the respondents in violation of principal of natural justice as no opportunity has been granted to the applicant before passing the order of recovery and straightaway the impugned order has been passed effecting recovery from the applicant. He has also cited judgment passed in the case of ***State of Orissa Vs. Binapani Det : AIR 1967 SC 1269*** and submitted that before passing order effecting right, the respondents have to comply with the principle of natural justice.

In which the Hon'ble Supreme Court has observed as under:-

"***9.....An order by the Sate to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence is support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our consequential set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act***

judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

.....

.....

12. It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even a administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

He cited the judgment of ***Sahib Ram Vs. State of Haryana*** reported in ***1995 Supp (1) SCC 18*** to the effect that the recovery cannot be effected from an employee if he was not found at fault for grant of any financial benefit.

5. On the other hand, Sri Dixit brief holder of Sri D. Awasthi, learned counsel for the respondents is not in a position to support the impugned order to the effect that before passing the impugned order of recovery any opportunity of hearing was afforded to the applicant.

6. We have considered the rival submissions of counsel for the parties and we are of the view that the impugned order deserves to be quashed and set aside to the extent as the respondents have affected the recovery without complying with the well established principle of natural justice. It is no where pleaded by the respondents that the applicant was in any way associated in misleading the respondents for grant of the benefit. Secondly, in view of the settled law laid down by Hon'ble Supreme Court, recovery cannot be effected if employee is not at fault. Reliance is placed

on the judgement of Hon'ble Supreme Court in the case *of* ***Sahib Ram vs. State of Haryana*** **1995 SC (L&S) 248** which has considered the similar preposition and which was subsequently followed in the case of *Purshottam Lal Das (Supra)* wherein it is held as under:

> ***"8. In Bihar SEB case it was held as follows:***
>
> > ***"9. Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotion in due course of service and have been asked after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees' salaries which were paid to them since the year 1979. It is on this score the High Court observed that as both the petitioners have passed the examination though in the year 1993, their entitlement for relief cannot be doubted in any way. The High Court has also relied upon the decision of this Court in Sahib Ram vs. State of Haryana wherein this Court in para 5 of the Report observed: (SCC p.20)***
> >
> > > ***5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Gants Commission. The appeal is allowed partly without any order as to costs."***
> >
> > ***10. The High Court also relied on the unreported decision of the learned Single Judge in Saheed Kumar Banerjee vs. Bihar SEB. We do record our concurrence with the observations of this Court in Sahib Ram and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possible be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order however be restricted to the facts of the present writ petitioners. It is clarified that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except however in the case or cases which has/have attained finality."***
>
> ***9. In Mangalore University Non-Teaching Employees' case it was held as follows:***
>
> > ***"12. Though the above discussion merits the dismissal of the Writ petitions and the denial of relief to the respondents, we are of the view that on the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments upto 31.3.1997. When the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not be penalized for no fault of theirs. It would be totally unjust***

to recover the amounts paid between 1.4.1994 and the date of issuance of GO No.42 dated 13.2.1996. Even thereafter, it took considerable time to implement the GO. It is only after 5.3.1997 the Government acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed on 25.3.1997, as already notice. The Vice- Chancellor of the University also made out a strong case for waiver of recovery upto 31.3.1997. That means, the payments continued upto March, 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the university employees who were compelled to take rental accommodation in Mangalore City limits for want of accommodation in the university campus upto 31.3.1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decision, as we already indicated above."

10. The High Court itself noted that the appellants deserve sympathy as for no fault of theirs, recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted (sic) had committed gross irregularities.

11. While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we dire that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the period concerned."

The same view was subsequently reiterated by the Hon'ble Supreme Court in the case of Babulal Jain (supra) in which it is held as under:

"15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentations. The mistake, if any, took place on a misconception of law. He was at least entitled to some allowances. In refixing his pay, his claim to that effect has not been considered. He has since retired. A sum of Rs. 22,000/- has been recovered from him. Such recovery has been effected without issuing any show-cause notice. His case on merit in this behalf had not been considered by the Government and even by the Tribunal."

The reliance is also placed on the Full Bench judgment of the Hon'ble Punjab and Haryana High Court in case reported as ***2009(3) PLR 511 titled as Budh Ram Vs. State of Haryana and others***. Operative port for consideration of the issue raised in this application reads as under:-

"It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employees on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would

induce in him the belief that the same was indeed due to payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had know that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on the true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them."

7. In view of the above the impugned order dated 14.11.2005 is quashed and set aside to the extent that the amount recovered in pursuance to order dated 14.11.2005 be refunded. Accordingly, the instant OA is partly allowed. If any recovery has been made from the applicant in pursuance to the impugned order, it is to be refunded to the applicant within a period of six months from the date of receipt of a certified copy of this order. No cost.

Member (A) Member (J)

/pc/