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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.375 of 1987.

Date of decision: January 20, 1989.

G.B.Rama Rao Patnaik, son of
G.S.M.Rao, Patnaik, aged about
59 years, at present residing at
Berhampur Town, P.O. Berhampur,
Dist. Ganjam. ...

Applicant.

Versus

1. Union of India,
represented by its Secretary,
Indian Posts, Dak Bhavan,
New Delhi -110001.
2. Director General of Posts,
Sanchar Bhavan, New Delhi.
3. Postmaster General, Orissa Circle,
At, P.O. Bhubaneswar, Dist-Puri.

... Respondents.

For the applicant ...

M/s. Devanand Misra,
Deepak Misra, R.N. Naik,
S.S. Hota, R.N. Hota,
A. Deo, Advocates.

For the respondents ...

Mr. A.B. Mishra, Sr. Standing Counsel
(Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *NO*
 3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to command the respondents to pay the amount which is due to the applicant and withheld on account of reduction in the pay of the applicant and to further direct the respondents to give the applicant the benefit of the pay scale and the pay which was fixed in the pay scale in the year 1974 and accordingly, all retirement benefits should be given to the applicant.

2. Shortly stated, the case of the applicant is that he was working at Jeypore as a Postmaster in the cadre of Higher Selection Grade-II. The Third Pay Commission report was given effect to from 1.1.1973 and thereafter, the applicant was posted as an Assistant Superintendent of Post Offices vide order dated 13.9.1974 and the applicant is said to have joined the post on 4.10.1974. Initially, the pay of the applicant in the cadre of Assistant Superintendent of Post Offices was fixed at the stage of Rs.780/- and he continued as such. In May, 1986 the pay was recalculated and refixed for which there has been a demand on the applicant to pay back about Rs.12,000/- which is said to have been overdrawn. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the posting of the applicant as an Assistant Superintendent of Post Offices, is not by way of promotion but it is purely a case of transfer and therefore, the applicant is not entitled to a higher pay scale than the pay scale which

was drawn in H.S.G.II and accordingly his pay was recalculated because certain mistakes had been committed by the Office for giving him a higher scale and after recalculation and re-fixation of the pay it was found that the applicant had overdrawn about Rs.12,000/- and rightly, a demand has been made over the applicant to refund the amount.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. The moot question that needs determination is as to whether the applicant was given promotion to the post of Assistant Superintendent of Post Offices or his posting was by way of transfer. If the applicant has been given promotion then undoubtedly he is governed under the provisions of the Fundamental Rules 22-C and he is entitled to a higher scale of pay. In case, it is merely a transfer and posting then F.R. 22-C will not come into operation. This position was rightly not disputed at the Bar. After perusing the relevant documents, we are of opinion that the applicant has been given promotion to the post of Assistant Superintendent of Post Offices. To add to all these, we find from Annexure-R 1/2 that the post of Assistant Superintendent of Post Offices carries higher responsibilities and accordingly, the applicant is entitled to a higher scale of pay. In such circumstances, we are of further opinion that the applicant is governed under the provisions contained in F.R. 22-C. Our view gains strong support from the averments made in paragraph 4 of the counter which runs thus :

" That the facts stated in para 6 (d) of the application are not fully correct. The pay of the official

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was fixed in the scale of the Asst. Supdts. ie., 550-900 on 4.10.74 and prior to that his pay was fixed in HSG II cadre of Postmasters in the scale 500-700 both times under FR-22C."

(Emphasis is ours)

Such being the situation, it now requires to be determined ~~is as~~ to the stage at which the applicant's pay should be fixed in the promotional post keeping in mind the provisions contained in F.R.22-C, ^{which} ~~F.R.22-C~~ runs thus :

" Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued :

xx xx xx . "

As H.S.G.II admittedly the applicant was drawing Rs.725/- at the time when he was transferred and posted as Assistant Superintendent of Post Offices contained in Annexure-1. The pay scale of Assistant Superintendent of Post Offices admittedly is Rs.550--25-750-30-900/-. The applicant having admittedly received Rs.725/- in the stage of H.S.G.II at the time of his transfer, his pay should be accordingly fixed by the competent authority keeping in view the provisions contained in F.R.22-C. After computation, if the applicant has to pay back any money to the Government, the applicant should pay back the same within two months from the date of receipt of the communication from the competent authority fixing his pay according to the

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directions given above. In case, there has been a total recovery then, if there is any balance amount after recalculation to be paid back to the applicant it should also be paid back to the application within one month from the date on which final orders are passed on the recalculation.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Sarangi
.....20.1.89.....
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

9 agree.



B.R. Patel
.....20.1.89.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench : Cuttack,
January 20, 1989/S. Sarangi.