

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.143 of 1988.

Date of decision .. 31.1.1989.

1. Raghunath Behera, son of Late Upendra Behera,
Presently working as Motor Driver
All India Radio, Jeypore, Dist-Koraput.
2. Nabaghana Dwari, s/o-late Ghasi Dwari,
Presently working as Peon in All India Radio,
Jeypore, Dist- Koraput.
3. Joshyula Kameswara Rao, s/o- late Ramamurthy,
presently working as Staff Artist, AIR, Jeypore,
Dist- Koraput.
4. A.K. Panda, son of S.C. Panda,
presently working as Senior Engineering Assistant,
All India Radio, Jeypore, Dist- Koraput.
5. Jagannath Majhi, son of late Madhusudan Majhi,
presently working as Safaiwala, AIR, Jeypore,
Dist- Koraput.
6. Pitta Malayya, s/o-late Pitta Kanayya.
presently working as Security Guard, AIR, Jeypore,
Dist- Koraput.
7. Sukru Bhatra, s/o-late Balaram Bhatra.
presently working as Security Guard, AIR, Jeypore,
Dist- Koraput.
8. Tillo Majhi, s/o- late Mansingh Majhi.
presently working as Security Guard, AIR, Jeypore,
Dist- Koraput.
9. Kola Nagaiah, s/o-Kola Musalayya.
presently working as Security Guard, AIR, Jeypore,
Dist- Koraput.
10. Ratan Naik, s/o- late Arjun Naik,
presently working as Security Guard, AIR, Jeypore,
Dist- Koraput.
11. Siboprasad Nag, s/o- late Mukunda Nag,
presently working as Studio Attendant, AIR, Jeypore,
Dist- Koraput.
12. Sodananda Pangi, s/o-late Balaram Pangi,
presently working as Mali, AIR, Jeypore, Dist- Koraput.
13. Bageshudev Bad Naik, s/o-late Dhania Badnaik,
presently working as Motor Driver, AIR, Jeypore,
Dist- Koraput.
14. Ramachandra Panigrahi, s/o-late Simhandri Panigrahi
presently working as Sr. Engineering Assistant, AIR,
Jeypore, Dist- Koraput.

15. Dasrath Rajbansi, s/o-late DharmnarayanRajbansi presently working as Security Guard, AIR, Jeypore, Dist- Koraput.
16. Smt. Savitri Patro, s/o- Sarang Patro presently working as Farash, AIR, Jeypore, Dist- Koraput.
17. Shri Sarang, s/o-late Chaitan Nag, presently working as Security Guard, AIR, Jeypore, Dist- Koraput.
18. Lakshminarayan Mishra, s/o- late Dasarathi Mishra, presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
19. Lakshman Harijan, s/o- Ramachandra Harijan, presently working as Mali , AIR, Jeypore, Dist- Koraput.
20. Neelambar Naik, s/o- late Banamli Naik, presently working as Helper, AIR, Jeypore, Dist- Koraput.
21. Prafulla Kumar Routray, s/o- Sadhucharan Routray, presently working as Staff Artist, AIR, Jeypore, Dist- Koraput.
22. Benupani Pradhan s/o- U.Ch. Pradhan, Presently working as Clerk Grade I, AIR, Jeypore, Dist- Koraput.
23. Basudev Halwa, s/o- late Lalit Halwa. presently working as Farash, AIR, Jeypore, Dist- Koraput.
24. Biswnath Singh s/o-late Gokul Singh, presently working as Transmission Executive, AIR, Jeypore Dist- Koraput.
25. Ratnakar Paschim Kabat, s/o- late Mangulu Paschimkabat, presently working as Dafty, AIR, Jeypore, Dist-Koraput.
26. Bh. Satyanarayana, s/o-late Bh. Venkat Rao, presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
27. S.K. Naik, s/o- Gopinath Naik, presently working as Peon, AIR, Jeypore, Dist- Koraput.
28. Suryanarayana Patnaik, s/o- late Rebati Kanta Patnaik presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
29. Mochiram Sahu, s/o- late Somanath Sahu. presently working as Diesel Engine Driver AIR, Jeypore, Dist- Koraput.

30. Tusharkanti Dey, s/o-Raghunath Dey, presently working as Announcer, AIR, Jeypore, Dist- Koraput.
31. Kishore Chandra Biswal, s/o-late H.K.Biswal, presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
32. Bhagaban Paik, son of late Narasingha Paik presently working as Studio Guard, AIR, Jeypore, Dist- Koraput.
33. Tophan Nahak, s/o- Bhuyan Nahak presently working as Diesel Technician AIR, Jeypore, Dist- Koraput.
34. Anant Prasad Sutar, son of late Daitary Sutar Presently working as Production Assistant, AIR, Jeypore, Dist- Koraput.
35. Satyanarayan Panda, s/o- late Pitambar Panda, presently working as Peon, AIR, Jeypore, Dist- Koraput.
36. Sarat Kumar Sethi, s/o- Arjun Sethi, presently working as Clerk Grade I, AIR, Jeypore, Dist- Koraput.
37. G.Kristo, s/o-late Khedu Gaudio presently working as Helper, AIR, Jeypore, Dist- Koraput.
38. Ramesh Chandra Hota , s/o- Trilochan Hota. presently working as Engineering Assistant, AIR, Jeypore, Dist- Koraput.
39. Pradip Kumar Dolai, s/o- Ramachandra Daloi, presently working as Daftry, AIR, Jeypore, Dist- Koraput.
40. B.Gopala Rao, s/o-late B. Sriramulu. presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
41. Niranjan Das, s/o- Dhaneswar Das, presently working as Engineering Assistant, AIR, Jeypore, Dist- Koraput.
42. R.R.Muduli, s/o- G.C.Muduli. presently working as Clerk Grade I AIR, Jeypore, Dist- Koraput.
43. Baleswar Khadia, s/o- late Bhagaban Khadia presently working as Clerk Grade I, AIR, Jeypore, Dist- Koraput.

44. Y. Ekka, s/o- late Punai Ekka, presently working as Engineering Assistant in AIR, Jeypore, Dist- Koraput.
45. Sukadev Swain, s/o- late Rajib Swain, presently working as Staff Artist, AIR, Jeypore, Dist- Koraput.
46. Hemanta Kumar Tripathy s/o-Chaitanya Kharan Tripathy presently working as Staff Artist, AIR, Jeypore, Dist- Koraput.
47. Narayan Sethi, s/o- late Dhadi Sethi. presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
48. J.N.R.Sharaff, s/o-late J.R.N.Sharaff presently working as Clerk Grade II, AIR, Jeypore, Dist- Koraput.
49. K.C.Biswas Roy, s/p- late Sadasibo Biswas Ray. presently working as Sr.Engineering Assistant AIR, Jeypore, Dist- Koraput.
50. Nrusinghananda Panda, s/o- late Hrudananda Panda, presently working as Senior Engineering Assistant in the AIR, Jeypore, Dist- Koraput.
51. Prahalad Majhi, s/o- Fakir Majhi, presently working as Clerk Grade I in AIR, Jeypore, Dist- Koraput.
52. Harekrushna Nayak, s/o-late Hrudananda Nayak presently working as Sr. Technician, AIR, Jeypore, Dist- Koraput.
53. L.M.Patnaim, s/o- late Sudarshan Patnaik presently working as Diesel Engine Driver in AIR, Jeypore, Dist- Koraput.
54. P.L.Rao, s/o- late Jagannath Rao, presently working as Stenographer in AIR, Jeypore, Dist. Koraput.
55. Kalikinkar Roy, s/o- late K.N.Roy presently working as Motor Driver in AIR, Jeypore, Dist- Koraput.
56. Udaya Shankar Jani, s/o- Srimukha Jani presently working as Announcer, AIR, Jeypore, Dist- Koraput.
57. P. Veerabhadra Rao, s/o- P.Neelakantham presently working as Clerk Grade II in AIR, Jeypore, Dist- Koraput.
58. Ajit Kumar Das s/o- Jagannath Das presently working as Production Assistant, AIR, Jeypore Dist- Koraput.

59. Binayak Das s/o-late Bhagirathi Das
Presently working as Engineering Assistant
in the AIR, Jeypore, Dist- Koraput.

60. R.Ramakrishna Rao, s/o-late R.Pydithalli
presently working as Engineering Assistant
in AIR, Jeypore, Dist- Koraput.

61. Bhagyabhan Bag, s/o-late Narahari Bag,
presently working as Transmission Executive
in AIR, Jeypore, Dist- Koraput.

62. Premananth Bhatra, s/o-late Nathan Bhatra.
presently working as Accountant in AIR, Jeypore,
Dist- Koraput.

63. Trinath Majhi, s/o- Tankadhar Majhi
presently working as Khalasi in AIR, Jeypore,
Dist- Koraput.

64. Smt. Laxmi Rana w/o- Arjun Rana,
presently working as Safaiwala, AIR, Jeypore,
Dist- Koraput.

..... Applicants.

-Versus-

1. Union of India, represented by the
Secretary, Ministry of Information & Broadcasting,
New Delhi.

2. The Director General, All India Radio, Akashvani Bhavan
New Delhi-110 001.

3. The Station Engineer, All India Radio, Jeypore-764 001
Dist-Koraput.

..... Respondents.

M/s B.L.N.Swamy & B.V.Das,
Advocates For Applicants.

Mr. Ganeswar Rath, Addl. Standing
Counsel (Central) For Respondents.

- - - - -
C O R A M :

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

- - - - -
1. Whether reporters of local papers may be
permitted to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether His Lordship wishes to see the fair
copy of the judgment ? Yes.

- - - - -

JUDGMENT

B.R PATEL, VICE-CHAIRMAN All the applicants, 64 in number, are employees of the Jeypore Station (Koraput) of the All India Radio. They were getting project allowance which was sanctioned from time to time till 5.6.1987, when the Director General, All India Radio, New Delhi instructed the Station Engineer, A.I.R.Jeypore by his letter No.3/1/77-A&G dated 5.6.1987 to recover the amount paid to the staff on account of project allowance with effect from 1.8.1982, vide Annexure-15. Thereupon the Administrative Officer issued orders dated 20.4.1988 for recovery of the project allowance paid to the staff and staff artists from March 1981 to February, 1987, vide Annexure-16. The applicants have sought orders quashing Annexures -15 and 16.

2. The respondents in their counter affidavit have maintained that the applicants are not entitled to both project allowance and house rent allowance as per the Office Memorandum No.20011/5/73-E IV(B) dated 17.1.1975 (Annexure-1) and since they were paid both with effect from 1.3.1981 the project allowance which was less than the house rent allowance was ordered to be recovered by monthly instalments as indicated in the statement attached to Annexure-16.

3. I have heard Mr B.L.N.Swamy, learned counsel for the petitioners and Mr.Ganeswar Rath, learned Addl. Standing Counsel for the Central Government and have gone through the records. Mr.Swamy has argued that the

Rehman

applicants were given project allowance like the staff of Dandakaranya Development Authority ('DDA'). The staff of the DDA still continue to get project allowance and to deny the staff of the A.I.R, Jeypore station the project allowance would be discriminatory. He has also cited the cases of the staff of Kolab Irrigation Power Project located at Koraput and Jeypore who are getting project allowance. Mr.Rath has countered this argument by referring to the order of the Ministry of Finance dated 17.1.1975(Annexure-1) which lays down conditions for grant of project allowance. Para VIII specifically prohibits grant of project allowance where compensatory city allowance and/or house rent allowance(H.R.A for short) or any other special compensatory allowance are admissible.

4. Para VIII of the aforesaid office memorandum reads as follows:-

" If the project is located at a place where compensatory city allowance and/or house rent allowance or any other special compensatory allowance are admissible, no project allowance will be admissible. Where, however, the project is situated in the proximity of such a place, a project allowance may be sanctioned if justified, but the ceiling for the project allowance for such cases would be limited to 50% of the ceiling mentioned below. In such a case, the individuals will have an option to draw either the project allowance or C.C.A/H.R.A., as may be admissible. In cases where rent free accommodation or H.R.A. in lieu is given to employees as a condition of service or as a project concession, the project allowance will be reduced by 25%. "

In view of this, it is not possible for me to accept

Arul

the contention of Mr. Swamy that the payment of compensatory allowance to the applicants has been justified even though they were given house rent allowance at the prescribed rate. There is no doubt whatsoever that in terms of the Office Memorandum of the Finance Ministry dated 17.1.1975 the staff are entitled to either the project allowance or the house rent allowance. It is, however, surprising that the applicants continued to be paid project allowance even after the sanction of H.R.A. In this connection Mr. Rath has drawn my attention to para -13 of the counter which reads as follows:-

" . . . That in reply to sub-para xxiii of para 6, it is submitted that the employees of AIR, Jeypore were not asked to exercise their option in 1982 probably because of oversight. The project allowance was being drawn right from 1975 and HRA was sanctioned only in 1982. Therefore because of passage of time the authority failed to link up HRA with project allowance and to ask for option. In this case, however, the orders of the Government were not probably implemented, but failure to implement the orders in time does not necessarily make the orders retrospective ".

It is, however, strange that it has taken six years for the Director General of A.I.R. to detect the double payment. It is noticed that all the sanction orders vide Annexures 4, 6, 9 and 11 stipulate that the grant of project allowance will also be subject to the fulfilment of other conditions stipulated in the Ministry of Finance O.M No.20011/5/73-IV(B) dated 17.1.1975. The oversight has occurred at the operational level i.e, at the level of the Station Engineer. In other words, the applicants have been given project allowance in violation of the instructions issued by the Finance Ministry

Prabhat

in the aforesaid Office Memorandum and as Head of the Department, it is the duty of the Director General, AIR to take remedial measure when the irregularities came to his notice in 1987. He has done it by issuing the instructions to the Station Engineer, vide his letter dated 5.6.1987 (Annexure-15). After quoting paragraph VIII of the Ministry of Finance O.M No.20011/5/73-R-IV(B) dated 17.1.1975 he has stated in his letter as follows:

" This condition has not been fulfilled by the Station. Even then with effect from 1.8.1982 project allowance and HRA have been simultaneously drawn. Therefore, drawal of both HRA and project allowance has been irregular and unauthorised. However, the staff of AIR, Jeypore have an option to draw either the Project Allowance or HRA/ CCA as may be admissible with effect from 1st August 1982. "

The order at Annexure-16 however makes the recovery effective from March 1981 (vide Annexure-16). In this connection Mr. Rath drew my attention to para-20 of the counter which is as follows:-

" That in reply to sub-para xxix of para-6 it is submitted that as per the Ministry of Finance O.M dt. 10.3.87, the President sanction that the classification and reclassification of the cities on the basis of population figures of 1981 census shall be effective from 1.3.81 instead of 1.8.1982 and, therefore, as the arrears of HRA from 1.3.1981 to 1.8.82 have also been paid to the staff of AIR, Jeypore the recovery of the HRA and the Project Allowance whichever is less has been given effect from 1.3.81 and not from 1.8.82. "

5. Mr. Swamy, learned counsel for the applicants very strenuously argued that benefits once granted should not be taken away. To substantiate his point, he drew my attention to para 7 of the judgment of the Hon'ble High Court of Orissa in O.J.C No.808 of 1971 decided on 12.7.1973

[Signature]

which has been reported in 1973 C.L.T 801 and 1973(2) S.L.R 499 (Banchhanidhi Das vs. State of Orissa and ors.). In that case the petitioner was a Lower Division Clerk under the Notified Area Council ('NAC'), Bhubaneswar and was later promoted to the rank of Upper Division Clerk. Under Rule 427 of the Municipal Rules under the Orissa Municipal Act, the minimum educational qualification required for the post of Lower Division Clerk was matriculation. On the recommendation of NAC, the State Government waived the requirement of educational qualification and on his promotion, the Government also exempted the petitioner from the requirement of passing the preliminary accounts test. Much later on 27.10.1970 (The petitioner had been working prior to 30.9.1952), while the petitioner was continuing in the promotional post, the State Government withdrew the previous orders exempting the petitioner from being a matriculate and passing the accounts test. This was done because one P.C Nanda who was a Head Clerk was reverted to the post of Lower Division Clerk on ground of unsatisfactory work and the Government withdrew the exemption orders with a view to treating the said Shri Nanda equally with the petitioner. The learned Advocate for the petitioner made a plea of estoppel amongst other grounds on which he based his argument and this plea has been considered by the Hon'ble High Court on paragraph 7 of the judgment quoted above. After analysing the various judgments including the judgments of the Hon'ble Supreme Court, the High Court came to the following conclusion:-

Banerjee

" If Government and the Notified Area Council were of the view when the Rules came into force with the prescribed qualifications that the petitioner could not continue in employment in view of his not satisfying the requirements of qualifications, the petitioner could have found out some alternate employment. Having continued in service almost two decades by now and having reached an advanced age near about superannuation, if on the plea of lack of qualification which once stood waived, the petitioner is demoted it is certainly to his prejudice. He is made to face a situation where he has no scope for obtaining relief. The principles upon which the plea of estoppel is allowed to be raised are fully satisfied in this case. Government having once rightly or wrongly passed an order of exemption at this belated stage should not be permitted to withdraw the order of exemption and force the petitioner to face the consequences of the situation. It is not a case where Government are being forced by some other agency to withdraw the exemption. The withdrawal order is by them at their own instance. The reason given in the order of withdrawal, namely, placing the petitioner at par with Shri Nanda, the other demoted employee, does not seem to be germane also to the dispute raised over the petitioner's qualification. The third contention of Mr.Rath, therefore, must succeed. "

In the present case the sanction orders issued for the project allowance from time to time have categorically stated that the sanction is subject to the conditions laid down in the Office Memorandum No.20011/5/73-E IV(B) dated 17.1.75, copy of which is at Annexure-1 and ~~xxxixxxxhavexxindicatedxxabove~~ the employees are entitled either to a project allowance or house rent allowance and not to both the allowances. In this case, therefore, there is no question of Government withdrawing any concession or benefit given earlier. The employees were in fact not entitled to both HRA and the project allowance. and the applicants will have to exercise their option whether they would like to have the project allowance or the house rent allowance. Since they have taken both, they will have to refund one of the allowances.

Amritpal

The judgment of the Hon'ble High Court, cited by Mr Swamy, is therefore, not applicable to the present case.

6. It is not the case of the applicants that they did not get the house rent allowance with effect from 1.3.1981. The recovery will be effective only from the date they got house rent allowance. The Director General of AIR has, however instructed the Station Engineer in his letter referred to above that the staff will have the option either to draw the project allowance or the house rent allowance. Mr. Swamy contended that the applicants were never asked to exercise their option and the action of recovery is unilateral. There is no record available to indicate that the staff were in fact asked to exercise their option whether they would like to have the project allowance or the house rent allowance. The fact that the staff have the right to exercise their option has been conceded by the respondents in para-11 of their counter which says " that the staff may opt for either house rent allowance or project allowance ". Since the staff were getting project allowance for long six years they must have the right to exercise their option. Failure on the part of the Station Engineer to obtain the option of the applicants has vitiated his order for recovery of the project allowance paid vide Annexure-16. The order dated 20.4.1988(Annexure-16) is therefore, quashed and Respondent No.3 is directed to ask the

Redacted

applicants to exercise their option within one month. After considering their options, the Station Engineer should calculate the amount due from each of the applicants and recover the amount by monthly instalments. Each monthly instalment should not exceed the amount each of the applicants has drawn in a month either on account of project allowance or house rent allowance, as the case may be, except when there is not sufficient time to recover the full amount before the retirement of the officer in which case a suitable amount should be fixed to be recovered or order should be passed to recover the balance amount from the death-cum-retirement gratuity. The application is accordingly disposed of. The parties should bear their own costs.



.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack
31, January, 1989 /N.J.Joseph, SPA.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Suo motu Review Application No.18 of 1989.
(Arising out of O.A.No. 143 of 1988)
(Decided on 27th July, 1989)

Raghunath Behera and 63 others

(who are the applicants in
O.A.No.143 of 1988) ... Applicants.

Versus.

Union of India and two others

(who are the respondents in
O.A.No.143 of 1988) ... Respondents

M/s. B.L.N.Swamy & B.V.Das,
Advocates ... For Applicants

Mr. Ganeswar Rath,
Addl.Standing Counsel
(Central). ... For Respondents.

CORAM.

The Honourable Mr. B.R.Patel, Vice-Chairman.

1. Whether reporters of local papers may be permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

Judgment.

B.R.Patel, Vice-Chairman.

Non-payment of project allowance

to the employees of All India Radio in Jeypore Station in the district of Koraput and the recovery of the amount already paid on this account has given rise to two cases registered as Original Application Nos.131 and 143 of 1988 before this Bench. Judgments in both the cases were delivered

[Signature]

on 31.1.1989. As the facts and issues involved in both the cases were the same, the judgments though separately delivered were mutatis mutandis the same. One of the applicants in O.A.No.131 of 1988 filed a Review application which was registered as Review Application No.6 of 1989. The judgment in O.A.No.131 of 1988 has been reviewed in the aforesaid application for review. The order passed on review in that case is as follows :

" 5. The letter at Annexure-18 has been issued by the Government of India and the letter No.3/1/77-A & G dated 5.6.87 has been issued by the Director General, All India Radio, New Delhi (D.G.,A.I.R.) who is a subordinate authority. The order issued by the D.G.,A.I.R. cannot supersede the letter of the Government of India at Annexure-18. In the light of the instructions dated 8th June, 1978 issued by the Ministry of Information and Broadcasting (Annexure-18) it is hereby directed that the applicants in O.A. No.131/88 should get the project allowance at the same rate and on the same conditions on which the other Central Government employees posted at Jeypore are getting, and if they have been paid more on account of project allowance, than the other Central Government employees, the excess amount should be recovered from them by suitable monthly instalments. Accordingly the judgment in O.A.No.131 of 1988 stands modified to this extent."

2. Since the facts and issues involved in Original Application No.143 of 1988 are the same as in Original Application No.131 of 1988, the judgment in O.A.No.143 of 1988 is reviewed suo motu and on such review, it is hereby directed that the judgment passed in Review Application No.6 of 1989, the relevant portion of which has been quoted above, will apply to this case mutatis mutandis and the judgment in O.A.No. 143 of 1988 shall stand modified to this extent.

