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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.648 OF 1993

Cuttack, this the 12th day of May, 1995

Padmalochan Behera Applicant.

-versus-

Union of India and others..... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?
yes.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

12 MAY 95


(D.P. HIEMATH)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.648 OF 1993

Cuttack, this the 12th day of May, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

....

Padmalochan Behera,
aged about 45 years,
son of Chandra Mohan Behera,
at present working as Audit Officer
in P & T. Audit Office, Barabati Stadium,
Cuttack

Applicant.

By the Advocates

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M/s Ganeswar Rath,
P.K.Mohapatra,
A.K.Patnaik,
J.C.Sahoo, &
S.Mishra.

-versus-

1. Union of India, represented by
Controller & Auditor General of India,
10, Bahadurshah Jafar Marg,
New Delhi-2.
2. Dy. Director, P. & T. Audit Office,
7, Koilaghat Street,
Calcutta-700 001.
3. Audit Officer-in-charge,
P & T Office, Barabati Stadium,
Cuttack-753 005.
4. Managing Director,
Orissa Lift Irrigation Corporation Ltd.,
Priyadarshini Market, C.R.P. Square,
Bhubaneswar, Dist. Khurda ...

Respondents

By the Advocate

-

Mr. Akhaya Kr. Misra.
(For R.1, 2 & 3)

..

M/s J. Mohanty,
A.K. Panigrahi
P.Kr. Misra
(For Respondent 4)

O R D E R

D.P. HIREMATH, VICE-CHAIRMAN

The applicant was working as Assistant Audit Officer in the P.& T. Audit Office, Cuttack. Orissa Lift Irrigation Corporation Ltd. ('O.L.I.C.' for short) sought his consent for working on deputation in their office at Dhenkanal as a Divisional Accountant. On his consent, his parent Department by the order dated 30.10.1986 (Annexure-2) spared his services for utilisation by O.L.I.C. in its Dhenkanal office as proposed stipulating deputation for a period of one year initially and accordingly relieved him from their office on the afternoon of 31.10.1986. That deputation was "on usual foreign service terms and conditions". He was to report to the Executive Engineer, O.L.I.C. at Dhenkanal. The deputation period was extended till 6.1.1992. Thereafter it appears that he was brought back to his parent Department.

2. His deputation allowance, according to the terms and conditions, prevailing at the time of deputation was payable at 20% of his basic pay and dearness allowance was also payable on pay and deputation allowance. He had joined the office of O.L.I.C. on 10.11.1986. The H.R.A. was to be paid by the borrowing Department in accordance with the Rules governing the Department. Therefore, 20% deputation allowance on pay and the H.R.A. according

to the Rules were paid by O.L.I.C. and received by the applicant.

3. By the letter dated 14.12.1992 the Audit Officer of his parent Department wrote to him that Rs.22,080/- was overdrawn by him during the period of deputation and that he should re-credit the amount so overdrawn to O.L.I.C., Dhenkanal (Annexure-3). A tabular statement showing the excess drawals was also appended to it. The reason for such recovery, as stated by the Audit Officer, was that he was not entitled to deputation allowance of more than 10% of his basic pay and also enhanced H.R.A. It is against this order for recovery of the excess amount said to have been paid, that the applicant has moved this Tribunal contending that such a demand is wholly unsustainable in law and equity and at any rate such a demand could not have been made without affording him reasonable opportunity to explain. Soon after receipt of this letter he made a representation to the Audit Officer in charge, Cuttack, on 16.12.1992 but no reply was received by him till the application was filed.

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4. While challenging this recovery, he maintains that he gave his willingness for deputation keeping in view the terms and conditions prevailing at the time of giving his willingness and 20% of the basic pay and dearness allowance was the deputation allowance stipulated while taking his willingness. Extension of period of deputation was made without intimation to him and till his relief at the borrowing Department, he continued to draw his deputation allowance at the same rate. At no time he was informed that he was not entitled to the deputation allowance at that rate. According to F.R. I (21) (a) (ii) deputation allowance is treated as pay and dearness allowance was also payable on the deputation allowance. Even H.R.A. is to be governed by the Rules applicable in the lending Department and as such there could not be overpayment of Rs.5449/-. The main plank of his objection is that at no time respondent no.4 O.L.I.C. objected to this alleged excess payment and, therefore, such a claim for refund cannot be made after six years. He was not aware that he had to pay back any excess amount drawn by him, and he had spent the same and enjoyed the facility. It would cause serious financial

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hardship to him if recovery is now made. He also attributes mala fides to respondent nos.2 and 3 in initiating such an action. If at all they were interested in conforming to the Rules with regard to such allowance and especially deputation allowance at a reduced rate of 10%, they could have informed the applicant before extending his term of deputation unilaterally on their own. By so acting and allowing him to spend the money that he received, they have put the applicant into financial hardship by enforcing recovery.

5. Even according to O.L.I.C. deputation allowance rules which are the same as are contained in Orissa Service Code, the employees on deputation get 20% of their basic pay as deputation allowance and hence O.L.I.C. acted bona fide and made payment of this allowance. Without giving showcause notice, Rs.1000/- per month is being deducted from his salary from October, 1993. Therefore, he prayed for a direction against respondent no.3 not to recover any amount towards deputation allowance, D.A. and H.R.A. drawn by him during the period of deputation and to refund the entire amount recovered till the date of the application.

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6. Respondent nos.1 to 3 have justified their action referring to certain provisions in the Rules. They admit that when the applicant was sent on deputation, the deputation allowance was 20% of his basic pay subject to a maximum of Rs.250/- per month, provided that the basic pay plus the deputation (duty) allowance did not exceed Rs.3000/- per month. This was the position before the Report of the Fourth Pay Commission. After issue of revised pay scale recommended by the Fourth Pay Commission, the Government of India issued instructions (Annexure-R/3) for payment of deputation allowance as below :

- (a) 5% of employee's basic pay subject to a maximum of Rs.250/- per month when the transfer is within the same station;
- (b) 10% of the employee's basic pay subject to a maximum of Rs.500/- per month in all other cases; provided that the basic pay plus deputation allowance shall not exceed Rs.7300/- per month.

 It was also clarified therein that the new rates would be applicable with effect from the date an

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employee drew pay in the revised scale of pay applicable in accordance with the C.C.S.(Revised Pay) Rules,1986. When the applicant opted for the revised pay scale he was entitled to only 10% deputation allowance and it was respondent no.4 who made over-payments. Though the applicant contended that his extension of deputation was without his consent or knowledge, they maintain that the deputation period was extended as per requests received from borrowing Department and the applicant was willing to continue as he never objected to it.

7. Sufficient opportunity was given to him as he was advised to pay the amount on 14.12.1992 (Annexure-R/5) and the applicant never represented to his higher officers.

8. Respondent no.4 has averred in its counter that extension of deputation was made on yearwise basis and even if it was unilateral, the applicant never desired to go back to his parent Department. It pleads ignorance with regard to reduction of rate of deputation allowance and house rent allowance,etc. of Central Government employees and it was only

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after receiving the letter from the office of the Accountant-General dated 5.8.1992 that the applicant had wrongly drawn deputation allowance at 20% of his basic pay, this respondent came to know about this fact. The excess amount was paid out of inadvertence and therefore steps were taken to recover the same. Similarly house rent allowance drawn in excess deserves to be recovered from him.

9. There is practically no controversy on the facts, namely, that the applicant did draw from the commencement of the deputation period till its end deputation allowance at 20% of his basic pay and also house rent allowance that was calculated along with basic pay and deputation allowance. The chart of recovery (Annexure-3) served on the applicant shows the particulars of payments made as well as the particulars regarding the overdrawal. If the contentions of the respondents prevail, then there is no mistake in calculation. Undisputedly the applicant was not a drawing officer while working on deputation and the learned counsel for respondent no.4 informed us, when we sought clarification regarding it, referring to his records that it was the

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Executive Engineer who was the drawing officer. Therefore, the applicant did not by himself wilfully draw allowance at this rate. In other words, even respondent no.4 admitted that the payment was through inadvertence or ignorance of the Rules and but for the objection raised by the Accountant-General, Orissa, they could never have thought of it. Appendix 5 as per F.R.9(25) relating to deputation (duty) allowance, while specifying the old rates, i.e. the rates prevailing before the revised pay scales came into force and the new rates that were prescribed on the new revised pay scales coming into force, clarifies that the new rates would be applicable with effect from the date an employee draws pay in the revised scale of pay applicable in accordance with the C.C.S. (Revised Pay) Rules, 1986. That means with effect from 1.1.1986 they came into force. It is, however, noteworthy that the applicant went on deputation having been relieved from his parent Department on 30.10.1986, i.e. long after the revised scales of pay came into existence. Even then respondent no.4 paid deputation allowance as prevailing under the old rates. It cannot be gainsaid that strictly gone by the Rules, the

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applicant is entitled to 10% of pay as deputation allowance. But the payment is already made and the amount is utilised by him and he cannot be faulted for this and no motive can be attributed to him. What could be the position has been considered time and again by the Courts.

10. The applicant's counsel has urged that without giving him any opportunity, suddenly this order of recovery came to be passed by respondent nos.3 and 4. Even if it is out of mistake, at this point of time he cannot be compelled to refund whatever was paid by respondent no.4 which has utilised his services when on deputation. He also pointed out that there was no move from respondent no.4 to recover this money. Respondents the letter have, however, produced/at Annexure-R/4 dated 4.12.1992 from the Executive Engineer of O.L.I.C. by giving particulars of the amounts drawn, to recover excess amount and to send it to their office. It appears that after this letter, steps were taken to recover the same by writing Annexure-R/5 to the applicant.

11. In the decision relied upon by the applicant in the case of T.R.Sundarraja Iyengar v. The Post Master General, Karnataka Circle (1989(1) SLJ (CAT) 238) Bangalore Bench of the C.A.T. had before it a case of recovery of the amount paid to the applicant on account of wrong stepping up of his

pay. The benefit, according to the applicant, was given to him after due consultation with the Directorate and the same could not have been withdrawn unilaterally after nearly twelve years without consulting the Directorate and without notice to the applicant. This was violative of the principles of natural justice. The Tribunal found that it ill-behoved the Department that it should have directed recovery of the alleged overpayment from the applicant after as long as over a decade and that too without giving him notice to explain his case, specially when such recovery had a punitive effect.

12. In the case of Smt. Pushpa Bhide v. Union of India and others (ATR 1989(1) C.A.T.397) the Division Bench of the C.A.T., Jabalpur Bench, had before it the case of the applicant therein appointed as a stop gap measure. She was not a trained teacher and not entitled to count her seniority from the date of initial appointment, but she was given seniority on the assumption that she was a trained teacher. She was also given the benefit of Selection Grade. The question was whether seniority, emoluments and rank conferred could be withdrawn or reversed even if they were given prematurely by mistake or oversight. The Tribunal held that even if

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for arguments' sake the contention of the respondents is accepted that certain errors took place owing to oversight in giving higher seniority to the applicant, the matter had become irreversible notwithstanding the contention of the respondents. It was not the case of the respondents that the initial appointment of the applicant was fortuitous or her promotion as Selection Grade Teacher in the cadre of Assistant Teacher was ad hoc or temporary. Consequently the respondents were estopped after several years from correcting what they claimed to be mistake committed by them and withdrawing the benefits given in the past to the applicant retrospectively at the expense of the applicant. The order modifying the seniority of the applicant and withdrawing the Selection Grade awarded to her with retrospective effect, i.e. from 1.4.1976, was quashed. Reference was also made to the decision of the Principal Bench in the case of C.S. Bedi v. Union of India and others (ATR 1988(2) CAT 510) in which it was held that certain payments which were received by the applicant in that case on the basis of fixation of pay in 1981 on promotion to a higher post and the applicant had continued to draw salary on that post until 1986 when the mistake was detected after several years were irreversible and any recovery of excess payments after a long lapse of time would be unjust, illegal and inequitable.

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13. In the case of Gobinda Sinha and others v. Garrison Engineer & ors (1990 (1) SLJ (CAT) 74) by a wrong interpretation of the Government letter dated 16.10.1981 the applicants who were working as refrigerator mechanic and vehicle mechanic were fixed in the revised scale of Rs.330-480/- (highly skilled grade II) with effect from 16.10.1981. Their previous pay scale was Rs.260-350/- and all these applicants were fixed from the old scale of Rs.260-350/- to the scale of Rs.330-480/-. In respect of the trades refrigerator mechanic and vehicle mechanic, Government of India had not yet finalised their decision whether to grant them the scale of Rs.330-480/- or to merely give them the replacement scale of Rs.260-400/-. However, the immediate controlling authority was ordered to rectify the error and freshly fit the applicants in the scale of Rs.260-400/-. This did not take effect till 28.3.1989 on which date the Chief Engineer, HQ Eastern Command ordered not only refixation of pay scales of the applicants but also recovery on account of incorrect fitment in the higher scale of the applicants. The applicants resisted it. The Tribunal observed that although the respondents claimed that this earlier fitment was done due to an error, there is no doubt that the recovery, if made now, would cause great hardship to the applicants.

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The Tribunal has consistently set its face against rectification of an administrative error if it caused undue hardship to the employees. Referring to a decision of the Calcutta Bench in the case of Nilkanth Sinha v. Union of India (1987(3) SLJ (CAT) 306) the Division Bench extracted the following observation:

"When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years."

Referring to C.S.Bedi's case (supra), it was pointed out that rectification of an order resulting in adverse civil consequence to an employee cannot be done without issuing him a showcause notice. An administrative error can always be rectified subsequently, provided it does not cause unjustified hardship to the employees and deny them natural justice. In the result, the Tribunal decided that recovery from the applicants' pay and allowance at that distance of time would be wholly unjustified.

14. In the case of Satyanand Sinha v. Union of India and another (1989(4) SLJ (CAT) 272) the Patna Bench considered the case of some of the employees who were stepped up by mistake in 1972 and the mistake was detected in 1986 when the

amount so paid was sought to be recovered. It was held that the applicant did not know while drawing higher pay that it would be recovered from him. It would result in great hardship to the applicant and, therefore, recovery could not be enforced.

15. The learned counsel for the Central Government produced a certain undertaking given by the applicant and hence urged that he is liable to pay back the amount. But Shri Ganeswar Rath for the applicant read from office memorandum dated 22.9.1986 issued by the Fourth Pay Commission which required such an undertaking to be given only to guard against absence of pre-check resulting in likelihood of some of the arrears being wrongly calculated. At paragraph 4 of the office memorandum, it was pointed out that in the absence of pre-check there is likelihood of some of the arrears being wrongly calculated resulting in over-payments which might have to be recovered subsequently. The disbursing officers should make it clear to the Government servants under them while paying the arrears, that the payments are being made subject to adjustment from any amounts due to them subsequently in the light of discrepancies noticed earlier. For this purpose every employee

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will be required to give an undertaking in writing, while receiving salary for the month of October, 1986 to the effect that any excess payment that may be found to have been made as a result of fixation of pay will be refunded by him to Government either by adjustment against future payments or otherwise. As rightly contended by him, such an undertaking given for the purpose intended ^{by} ~~at~~ the Fourth Central Pay Commission cannot be used in the instant case to effect recovery from the applicant as nobody conceived at that time that the applicant may have to refund the alleged excess payment of deputation allowance.

16. The ratio decidendi of the decisions cited above only goes to show that even if payment was made wrongly or ⁱⁿ misinterpretation of any provisions granting such payment, after a length of time when the Government servant had utilised the money and which payment was not on account of his fault or due to his deliberate act, the Government servant cannot be compelled to refund the same suddenly and without giving him an opportunity to explain against the action sought to be taken.

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If it works hardship to refund the money which he might have spent after receiving the same, the principles of natural justice only require that he should not be compelled to make repayment of the same. What we said with regard to deputation allowance is equally applicable to house rent allowance drawn basing on the pay and deputation allowance. We therefore hold that the respondents are not justified in requiring the applicant to refund the money that was already paid as deputation allowance and house rent allowance. *Repayment is not required for money of the same.*

17. The other prayer of the applicant is that by the time he filed this application, the respondents had started recovering from his pay at the rate of Rs.1000/- per month from October 1993. For the reasons that we have discussed above and in the conclusion that we have arrived at, this recovery at the rate of Rs.1000/- per month from his salary was wholly unjustified and the applicant is entitled to refund of whatever is recovered from his salary in pursuance of the impugned order dated 14.12.1992. This refund shall be made within 60 (sixty) days from the date of receipt of copy of this order.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D. P. HIREMATH)
VICE-CHAIRMAN

12 MAY 95

A. Nayak, P.S.