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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Cuttack the dated 16th day of May, 1995.

CORAM:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

...

O.A. 34 of 1994

Chandramani Jena, 47 years,
son of
Sorting Assistant, H.S.G.II,
S.R.O., R.M.S. 'N' Division,
District-Balasore.

... Applicant

By the Advocate ... M/s. G.K. Misra, B.K. Misra,
G. Misra, Advocates.

Versus

- 1) Union of India represented through
Director General of Posts,
Dak Bhawan, New Delhi.
- 2) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda.
- 3) Director Postal Services (Hqrs.)
Office of C.P.M.G., Bhubaneswar,
District-Khurda.
- 4) Sr. Superintendent of Railway Mails,
R.M.S. Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior
Standing Counsel (Central) ..

O.A. No. 284 of 1994

Bhupati Charan Das,
son of late Bankim Chandra Das,
HSG-II Sorting Assistant,
Railway Mail Service, Balasore

... Applicant

By the Advocate ... M/s. G.K. Misra, G.N. Misra,
K. Swain, B.K. Raj, G. Agrawal,
D. Dash, M. Bisoi, Advocates.

Versus

- 1) Union of India represented through
Director General of posts,
Dak Bhawan, New Delhi.
- 2) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda.
- 3) Director, Postal Services (Head Qr.)
Office of the CPMG, Bhubaneswar,
District-Khurda.
- 4) Sr. Superintendent of Railway Mails,
RMS 'N' Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior
Standing Counsel (Central)

O.A. No. 22 of 1994

Shri Banshidhar Mishra, 57 years,
son of late Dukhei Mishra,
Higher Selection Grade II,
Sorting Assistant Head Record Office,
RMS 'N' Division, Cuttack I. ... Applicant

By the Advocate ... M/s. U.N. Mishra, H.K. Baliarsingh,
S.P. Mohapatra, Advocates.

Versus

- 1) Union of India represented through
Director General of posts, Dak Bhawan,
New Delhi.
- 2) Chief Post Master General,
Orissa Circle, Bhubaneswar-1.
- 3) Director of Postal Services (Head Qr.)
Office of the C.P.M.C. Orissa Circle,
Bhubaneswar-1, Bhubaneswar, Dist-Khurda.
- 4) Senior Superintendent of Railway Mails,
R.M.S. 'N' Division, Cantonment Road,
Cuttack-1, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central).

O.A. No. 417 of 1994

Shri Suresan Acharya,
son of late Sauti Acharya,
At/Po-Brahmansailo,
District-Cuttack.

... Applicant

By the Advocate

... M/s. G.K. Mishra, G.N. Mishra,
K. Swain, B.K. Raj,
G.K. Agrawal, R. Patnaik,
Advocates.

Versus

- 1) Union of India represented through
Director General of Posts,
Dak Bhawan, New Delhi.
- 2) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda.
- 3) Director, Postal Services (Hqrs.)
Office of the Chief Postmaster General,
Bhubaneswar, District-Khurda.
- 4) Sr. Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack.

... Respondents

By the Advocate

... Mr. Ashok Mishra, Sr. Standing
Counsel (Central).

O.A. No. 338 of 1994

Binay Kumar Paul,
H.S.G.-II, Sorting Assistant,
H.R.O, R.M.S. 'N' Division,
Cuttack.

... Applicant

By the Advocate

... M/s. G.K. Mishra, G.N. Mishra,
K. Swain, G.K. Agrawal,
B.K. Raj, D. Das and M. Bisoi,
Advocates.

Versus

- 1) Union of India, represented through
Director General of Posts,
Dak Bhawan, New Delhi.
- 2) Chief postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda.

- 3) Director, Postal Services(Hqrs.)
Office of Chief Postmaster General,
Bhubaneswar, Dist-khurda.
- 4) Sr. Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack.

... Respondents

By the Advocate Mr. Ashok Mishra, Senior
Standing Counsel(Central).

O.A. No. 415 of 1994

Shri Budadev Mallik,
son of late Narendra Nath Mallik,
of village: Kanpur, PO Bagalsahi,
Via-Niali, Dist-Cuttack.
at present serving C/o S.R.O.,
Bhubaneswar RMS, O/o P.M.G.
Orissa, 5th floor, Bhubaneswar.

... Applicant

By the Advocate ... M/s. G.K. Misra, K. Swain,
K. Raj, G.N. Misra, G. Agrawal,
B.K. Mishra, Advocates.

Versus

- 1.) Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi.
- 2) Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
- 3) Director, Postal Services(Hqrs.)
Office of C.P.M.G., Bhubaneswar,
Dist-Khurda.
4. Sr. Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack.

.... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central).

O.A.No.416 of 1994

Shri Gadadhar Satpathy,
son of late Narayan Satpathy
Village-Kurali, PS Sadar,
Dist-Cuttack.

... Applicant

By the Advocate ... M/s.G.K. Mishra, G.N. Mishra,
B.K. Raj, B.K. Mishra, M.
Bisoi, Advocates.

Versus

1) Union of India represented through
Director General of posts,
Dak Bhawan, New Delhi.

2) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda.

3) Director, Postal Services (Hqrs.)
Office of C.P.M.G., Bhubaneswar,
Dist-Khurda.

4) Sr. Superintendent of Railway Mails,
R.M.S'N' Division, Cuttack.

... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central).

O.A. No. 25 of 1994

Purna Chandra Naik, aged about 52 years,
son of late Gura Charan Naik,
Sorting Assistant, H.S.G.-II,
S.R.O., Baripada Sorting,
P.O.-Baripada, Dist-Mayurbhanja,

... Applicant

By the Advocate ... M/s.G.K. Mishra, G. Misra, K. Swain,
B.K. Raj, Advocates.

Versus

1) Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi.

2) Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist-Khurda.

3) Director Postal Services (Hqrs.)
Office of Chief postmaster General,
Bhubaneswar-2, Dist-Khurda.

4) Sr. Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior
Standing Counsel (Central).

O.A. No.24 of 1994.

Banamali Behera, aged about 47 years,
son of Narasingha Behera,
Sorting Assistant, H.S.G. II,
S.R.O, R.M.S. 'N' Division,
District-Puri-2. ... Applicant

By the Advocate M/s G.K. Mishra, G. Misra,
K. Swain, B.K. Raj,
M. Bisoi, Advocates.

Versus

- 1) Union of India represented through
Director General of Posts,
Orissa Circle, Bhubaneswar,
District-Khurda.
- 2) Director, Postal Services (Hqrs.)
Office of C.P.M.C. Bhubaneswar,
District-Khurda.
- 3) Senior Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack.
- 4) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
District-Khurda. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior,
Standing Counsel (Central)

O.A. No.23 of 1994

Kamal Kumar Mishra, aged about 52 years,
son of Laxmikanta Mishra, Sorting Assistant,
H.S.G.-II, Office of S.S.R.M. 'N' Division,
Cuttack. ... Applicant

By the Advocate ... M/s. G.K. Mishra, G. Mishra,
K. Swain, B.K. Raj, M. Bisoi,
Advocates.

Versus

- 1) Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi.
- 2) Chief Postmaster General Orissa
Circle, Bhubaneswar, Dist-Khurda.
- 3) Director of Postal Services (Hqrs.)
Office of the Chief Postmaster General,
Bhubaneswar, Dist-Khurda.
- 4) Sr. Supdt. of Railway Mails,
R.M.S. 'N' Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central) .

O:A. No.14 of 1994.

Jagdish Chandra Tripathy, aged about 51 years,
son of late Ganeswar Tripathy,
Sorting Assistant, H.S.G. II,
Head Record Officer,
R.M.S. N Division, Cuttack-I. ... Applicant

By the Advocate ... M/s. G.K. MISHRA, K. Swain,
B.N. Patra, B.K. Raj,
Advocates.

Versus

- 1) Union of India represented through
Director General of Posts,
Dak Bhawan, New Delhi.
- 2) Chief Post-Master General,
Orissa Circle, Bhubaneswar,
District-Khurda.
- 3) Director Postal Services (Hqrs.)
Office of C.P.M.G. Bhubaneswar,
District Khurda.
- 4) Sr. Superintendent of Railway Mails,
R.M.S. N Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central) .

O. A. No. 15 of 1994.

Rangadhar Rath, 53 years,
son of late Ram Chandra Rath,
Sorting Assistant, H.S.G. II
Sub-Record Office, R.M.S. N Division,
Bhubaneswar, Dist-Khurda.

... Applicant

By the Advocate ... M/s. G.K. Misra, G. Misra,
D.K. Nanda, B.K. Raj,
B.N. Patra, Advocates.

- Versus -

- 1) Union of India represented through
Director General of Posts,
Dak Bhawan, New Delhi.
- 2) Chief Post Master General
Orissa Circle, Bhubaneswar
Dist-Khurda.
- 3) Director Postal Services (Hqrs.)
Office of C.P.M.G., Bhubaneswar,
District-Khurda.
- 4) Sr. Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack. ... Respondents

By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central).

O. A. No. 283 of 1994

Gadhadhar Parida, 53 years,
son of
Sorting Assistant, H.S.G. II,
Sub-Record Office, R.M.S. 'N' Division,
Bhubaneswar, Dist-Khurda.

.... Applicant

By the Advocate ... M/s. G.K. Mishra, G.N. Misra,
K. Swain, B.K. Raj, G. Agarwal,
B.K. Mishra, D. Dash, M. Bisoi,
Advocates.

Versus

- 1) Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi.
- 2) Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist-Khurda.

3) Director, Postal Services (Hqrs.)
Office of C.P.M.C., Bhubaneswar,
District-Khurda.

4) Senior Superintendent of Railway Mails,
R.M.S. 'N' Division, Cuttack. ... Respondents.

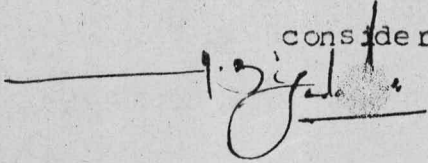
By the Advocate ... Mr. Ashok Mishra, Senior Standing
Counsel (Central).

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O R D E R

H. RAJENDRA PRASAD, MEMBER(ADMN.): In these applications,
which were heard successively, the following are the facts:

- 1) The applicants, all working in R.M.S.
'N' Division, were promoted to L.S.G.
under 20 per cent quota with effect from
1.6.1974 in accordance with a scheme
approved by the D.G. (Posts).
- 2) In the gradation list issued on 1.1.1977,
1.7.1982, 1.7.1986 and 1.7.1990, these
applicants have been ranked senior
to S/Shri K.C. Jhoi, R.C. Sethi and
Gopinath Behera. (These three officials
are said to have been promoted on the
basis of local seniority.) It may be
mentioned that the said gradation lists,
reflecting the seniority as indicated
above, had been issued after taking into
consideration the decision of Hon'ble



High Court of Orissa in the years 1975-76.

The seniority of the applicants, as being above that of S/Shri K.C. Bhoi, R.C. Sethi and Gopinath Behera, is not now disputed any longer.

- 3) Consequent on their promotion, the applicants were given the L.S.C. scale of pay and are still in the receipt of the same scale.
- 4) The Senior Superintendent R.M.S. 'N' Division Cuttack issued orders stepping-up the pay of the applicants on par with S/Shri Bhoi, Sethi and Behera in the year 1986. Consequently, the arrears arising from the decision were calculated on the basis of their stepped-up pay, drawn and paid to the applicants.
- 5) In July, 1993, the Deputy Director, Postal Accounts, Cuttack, during an internal check and inspection of S.R.O. 'N' Division, made an observation that the stepping-up of the pay in respect of some of these applicants on par with the pay drawn by Shri Bhoi, Sethi and Behera was incorrect and should not have been allowed.
- 6) Thereupon, the Director Postal Services issued orders cancelling the earlier memos of stepping-up of pay issued in favour of the applicants in October, 1986, by SSRM, N Division.

4.2.93

Resultantly, it became necessary to recover 'the over payments' made to these applicants. The present applications are against this decision of recovery.

The contemplated recovery of the so-called over payments was stayed by this Tribunal on admission.

All these cases were heard and the contentions and arguments of the parties have been noted.

- 6.1) The question as to whether FR 22(C) is applicable to the present applicants, justifying the stepping-up of pay as decided in 1986, has yet to be examined in detail. Conversely, whether FR 27 is applicable, and if so, to what extent it shall be applicable, does not seem to have been examined in depth. This is now required to be done, since routine corrective administrative action, based solely on an audit observation, but without independent scrutiny of the entire position, is not a correct course.
- 6.2) It is seen that the decision to recover the so-called over-payments was taken and sought to be enforced against the applicants without any notice whatsoever to them.

6.3) It was indeed necessary to give a fair notice to the applicants since the amounts involved were fairly considerable and also the number of applicants involved was itself large. This was not done. Inasmuch as no opportunity was provided to the applicants to project their view-point, before attempting to enforce the decision of recovery, it has to be held that the contemplated action was against the principles of natural justice.

6.4) The stepping-up of the pay of the applicants having been decided and ordered by a Competent Authority as long ago as 1986, the recipients and beneficiaries can be regarded as having acquired a certain civil right and interest in their present entitlements. Such interests and entitlements cannot be abruptly withdrawn without prior notice to them.


7. In view of what has been discussed in the preceding paras, the orders contained in CPMG Memo No. ST/36-2/93 dated 15.6.1993 cannot be sustained. These orders are therefore, set aside.

8. The respondents shall be free to examine the facts and circumstances of these cases in detail in the light of the relevant rules and take a fair and judicious decision in the matter.

9. It has also come to the notice that Shri Gadadhar Satpathy, applicant (in Original Application No. 416 of 1994) has retired during the progress of this case and his pension has not been finalised owing to the pendency of this case. Likewise, Shri B.D. Mishra, (Applicant in OA No.22 of 1994) retired on 31st March, 1995.

It is directed that their pension may be provisionally settled on the basis of the last pay drawn on the date of their retirement, in view of the fact that the impugned order of recovery has been set aside.

10. Thus, the applications are disposed of.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

16 MAY 95

KN Mohanty, CM.