

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 648 OF 1995

Cuttack, this the 14th day of July, 1997

Shri Haribandhu Mohanty

Applicant

Vrs.

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? No

Somnath Sam.
(SOMNATH SAM.
VICE-CHAIRMAN
16.7.97)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 648 OF 1995
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C O R A M:

HONOURABLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Shri Haribandhu Mohanty,
aged about 70 years,
son of late Harekrushna Mohanty,
resident of village/PO-Panchapalli,
Via-Borikina, Dist.Jagatsinghpur-754 110 ... Applicant

Vrs.

1. Union of India, represented by the Secretary, Ministry of Defence, New Delhi.
2. Chief Engineer, Headquarters Eastern Command, Forte William, Calcutta-700 021.
3. Garrison Engineer, Tezpur, P.O-Dekargaon, District-Sonitpur, Assam.
4. Chief Controller of Defence, Accounts (Pension), Draupadighat, Allahabad, Uttar Pradesh ... Respondents

Advocates for applicant - M/s Pradipta Mohanty & D.N.Mohapatra.

Advocate for respondents - Mr.Ashok Mohanty, Sr.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 12.7.1995, in which a letter dated 19.6.1995 has been enclosed ordering recovery of excess amount paid to him by way of pension from his relief on pension. This letter dated 19.6.1995 has not been enclosed to Annexure-6. The petitioner has also prayed for quashing Annexure-7 which is another

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letter to the Treasury Officer from the departmental respondents enclosing a copy of the corrigendum dated 19.6.1995. This enclosure has also not been annexed to the O.A. The third prayer is to quash the showcause notice at Annexure-4 in which the petitioner has been asked to explain why the excess amount paid to him by way of pension should not be recovered from him. The applicant has also prayed that the respondents should be restrained from recovering the excess amount paid to him.

2. Facts of this case are that the applicant retired on 31.7.1985 as Supervisor, Grade-I and is a pensioner. He joined service as a Packer under the respondents on 10.9.1945 and was promoted to the post of Storekeeper Grade-II in 1946. In 1948 a criminal case was started against him in which he was acquitted. In the departmental proceedings initiated against him, he was dismissed on 27.5.1951. The petitioner challenged the dismissal in a suit which was decreed and the appeal by the Department against the decree was also disallowed. The Department carried a Second Appeal to the Hon'ble High Court at Calcutta which was also dismissed on 29.6.1962. Thereafter the petitioner was reinstated in service on 16.7.1963 in the post of Storekeeper, Grade-II. After his retirement on 31.7.1995 initially his pension was fixed without taking into consideration his service from 1946 to 1963 and accordingly, his pension was fixed at Rs.570/-.

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Against such action, the petitioner approached the Tribunal in O.A.No.93 of 1986 which was allowed on 15.12.1988 and a direction was given to count his previous service from 10.9.1945 to 16.7.1963 for the purpose of calculating his pension. He was also allowed the arrear emoluments. Accordingly,

his pension was re-fixed at Rs.698/- from 1.8.1985 to 31.12.1985. Subsequently, on the basis of circular dated 16.4.1987 issued by Ministry of Personnel, Public Grievances & Pension, laying down detailed instructions for rationalisation of pension structure for pre 1.1.1986 pensioners, his pension was consolidated and his pension was wrongly fixed at Rs.1261/-.

The point to note here is that according to ^{Clause (D)} paragraph 4.1 of the circular dated 16.4.1987, dealing with additional relief for existing pensioners, in case of government servants who retired on or after 31.3.1985 no additional relief would be admissible corresponding to the increases sanctioned in Clauses (A), (B) and (C) of paragraph 4.1. But by a clerical error his pension was fixed at Rs.1261/- per month from 1.1.1986 and retirement gratuity of Rs.29,510.25 was sanctioned in his favour. On the mistake coming to the notice, departmental authorities intimated the petitioner in the letter dated 13.7.1992 for recovery of the excess payment of pension already made to him. Thereupon the applicant came up before the Tribunal in O.A.No. 457/92 on the ground that pension already fixed could not have been reduced and the order of recovery had been passed in violation of the principles of natural justice as no opportunity was given to him to show cause against the order of recovery. O.A.No. 457/92 was disposed of in order dated 12.4.1993 with a direction that the question of recovery should be decided following the principles of natural justice by giving an opportunity to the applicant to show cause against recovery and till that was decided, the applicant should get pension at the undisputed rate of Rs.929/- per month and not at the rate of Rs.1261/-. Thereupon in Annexure-4

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the petitioner was asked to show cause and he submitted an elaborate explanation under Annexure-5, in ~~view~~ consideration of which the order of recovery was confirmed.

3. I have heard the learned lawyer for the petitioner and learned Senior Standing Counsel appearing on behalf of the respondents. Learned lawyer for the petitioner in course of his submission did not contest the fixation of pension at Rs.929/- per month which the petitioner is currently getting and he did not make any claim for getting the higher pension at Rs.1261/- per month. It is also clear from the circular dated 16.4.1987 referred to earlier that mistake was actually committed in increasing the pension of the petitioner to Rs.1261/-. In view of this, the prayer of the petitioner in the application for getting pension at the higher rate does not survive and is rejected. Annexure-4 which is a showcause notice to the petitioner was issued in compliance of the order of the Tribunal in OA No.457/92 and the notice cannot be said to be without any legal authority and therefore, the prayer to quash the same is also rejected.

4. The only other prayer which remains is about recovery of the excess amount paid to the petitioner. Learned lawyer for the petitioner has stated that the petitioner is a retired person aged above 70 years and it will be of considerable hardship to him if the excess amount paid to him is ordered to be recovered from him. He has also referred me to certain decisions in which

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it has been held that where excess payment has been made not because of any fault of the payee, the amount should not be recovered. There are also other decisions that any amount paid by Government incorrectly under any mistake can be recovered. In the case of A.K.Ravi v. Union of India and others, (1996) 33ATC 785, a Single Bench of Central Administrative Tribunal, Bombay Bench, had gone into different decisions of other Benches of the Tribunal in the case of recovery. In consideration of different decided cases, the learned Member had come to the conclusion that a period lasting over a decade could be regarded as a long enough period disentitling the Government to effect recovery.

In OA Nos.709 to 713 of 1995 (Gopinath Panda and others v. Chief Engineer (P) Fy. and others), decided by me on 16.4.1997, I have agreed to the ratio of the decision of the Bombay Bench. I have given this aspect of the matter my anxious consideration. The fact of the matter is that the applicant did receive excess amount as pension, because of incorrect application of the circular dated 16.4.1987. When the amount was sought to be recovered, he approached the Tribunal initially in OA No.457/92 and the recovery was postponed for giving him a showcause notice. After the showcause notice, when once again recovery order was confirmed, he approached the Tribunal in this application and obtained an order on 10.11.1995 staying recovery. In view of the above, it is seen that the delay in recovery of the excess amount of pension paid to him is largely attributable to the action of the petitioner himself. I do not find any reason why the amount which admittedly has been paid to the petitioner in excess of his entitlement should not be recovered. The prayer for quashing the order of recovery is, therefore, rejected.

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5. In the result, therefore, the application fails and is dismissed, and the stay granted in order dated 10.11.1995 is vacated. There shall be no order as to costs.

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(SOMNATH SOM)
VICE-CHAIRMAN 14.7.97

ANN/PS