

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 671 of 1995

Cuttack this the ^{11th} day of April, 1996

Sarat Chandra Sahu & Others ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *No.*
2. Whether it be circulated to all the Benches of *No.* the Central Administrative Tribunal or not ?

MEMBER *Chairman*
(N. SAHU)
(ADMINISTRATIVE)

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 671 of 1995

Cuttack this the 11th day of April, 1996

C O R A M:

THE HONOURABLE MR.N. SAHU, MEMBER (ADMINISTRATIVE)

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1. Sarat Chandra Sahu, aged about 31 years, S/o.Mayadhar Sahu, working as Accountant, Dhenkanal Head Post Office At/PO/Dist:Dhenkanal
2. Jugal Kishore Dwibedy, aged about 46 years, Working as Sub-Post Master, Khamara P.O. At/PO:Khamara, Dist:Angul
3. Keshab Chandra Pradhan, aged about 40 years, Working as Sub-Post Master, Kosala, Sub-Post Office, At/PO:Kosala, Dist:Angul
4. Banchanidhi Dehury, aged about 36 years, Working as Postal Assistant, Talcher Tharmal Sub-Post Office, At/PO:Talcher Tharmal Dist :Angul
5. Suramani Pradhan, aged about 45 years, Working as Sub-Post Master, Talcher Town, Dist:Angul
6. Rangadhar Kisan, aged about 53 years, Working as Postman, Rengali Dam Site, At/PO:Rengali Dam Site, Dist :Angul
7. Pankaj Lochan Naik, aged about 40 years, Working as Postman Assistant Angul Head Post Office, At/PO/Dist :Angul
8. Baikunthanath Sethi, aged about 40 years, Working as Postman, Rengali Dam Site, Dist:Angul

9. Debaraj Kishan aged about 38 years, Working as Sub-Post Master, Chitrakuta Sub Post Office, At/PO:Chitrakuta Dist :Angul

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Applicants

By the Advocate:

M/s.Ganeswar Rath
S.N.Misra
A.K.Panda

Versus

1. Union of India represented through its Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi - 1
2. Director General of Posts, Dak Bhawan, New Delhi - 1
3. Chief Postmaster General Orissa Circle, Bhubaneswar Dist:Khurda
4. Superintendent of Post Offices, Dhenkanal Division, At/PO:Dhenkanal Dist :Dhenkanal

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Respondents

By the Advocate:

Mr.Ashok Mishra,
Standing Counsel
(Central)

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O R D E R

N SAHU, MEMBER (ADMINISTRATIVE): The applicants worked in different capacities under the Superintendent of Post Offices, Dhenkanal and were transferred to Rengali Dam Site, a Hydro Electricity Project of the Government of Orissa. They worked in the said site in different sections, for different periods from 8 months to

4 years. The Superintendent of Post Offices, Respondent 4, sanctioned project allowance in favour of the applicants. He was authorised to do so by the Government of India Finance Memo No.20011/87-OC 11(b) dated 28.7.1987 and letter of the D.G.Posts dated 6.10.1987. Different rates of project allowance ~~to~~ envisaged to different categories were paid. House rent allowance, as a concommittant was discontinued.

2. On 25.9.1995, Respondent 4, Superintendent of Post Offices, instructed by the Directorate of Communications ordered recovery of project allowances and required the applicants to deposit the amount mentioned against each within 15 days. All the applicants represented for reconsideration before Respondent 4, but their representations were turned down. The project allowance paid from 1.10.1986 - 28.2.1990 is ordered to be recovered on monthly installments. Aggrieved, the applicants are before us. It is contended on their behalf that once the project allowance ~~had~~ been regularly granted/sanctioned, the respondents are estopped from recovering the same.

3. In the counter-affidavit it is stated that the payment of project allowance was sanctioned in accordance with the recommendations of the Fourth Pay Commission. The Ministry of Finance initially sanctioned the same by its communication dated 28.7.1987, but raised objections later. The Chief Post Master General, Orissa Circle, Bhubaneswar, by his letter dated 8.7.1994

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requested for ex-post-facto sanction of the Ministry of Finance so that the employees of the Rengali Project can have their project allowance regularised. It was also mentioned that the I.F.A. had concurred with the payment. But his efforts did not bear fruit.

4. I have carefully considered the rival submissions. The employees were sent on deputation to Rengali Project under the authority of the Government of India. Project Allowances were sanctioned with effect from 1.10.1986 till 28.2.1990 and thereafter H.R.A. was discontinued. The applicants have been drawing this Project Allowance by an order of the Government. Para-4(c) of the counter-affidavit states as under :

" It is submitted that the sanction of the Project Allowance is governed by the O.M. of Ministry of Finance and the instant sanction was issued basing on O.M. No.10011/ 1/87-E (II) (B) dated 28.7.1987, but when this sanction was objected by the Ministry of Finance as contained in Annexure-R/1, the respondents have no other alternative than to order recovery of the amount paid."

Other grounds for declaring the recovery proceedings ab-initio void are :

- i) No justification is given for withdrawing the allowance once granted.
- ii) The applicants were not on notice. They were not asked to show cause. A financial benefit once conferred on them has been arbitrarily withdrawn.
- iii) By the doctrine of estoppel once a posting is given in a Dam Site with the promise of additional allowances for

services rendered in inhospitable terrain and after the services are taken from the employees, it does not behove of an employer to withdraw the additional emoluments.

I am surprised that such an action is contemplated. Once a financial benefit accrued and has been enjoyed by the recipient, Courts are reluctant to direct repayment. In a number of cases, Apex Court regulated future payments by prohibiting a wrong payment or correcting an error, but rarely directed withdrawing past payment. These are cases where the legality of the payment is questioned. A fortiori in cases of this type where payment has been made on proper authority and on valid grounds, recovery is not legal.

5. A similar matter came up before this Bench in Original Application 648 of 1993. The facts of the case adjudicated upon by the Division Bench are different. But the principle involved is same. This was a case where the applicant was on deputation in the Office of the Orissa Lift Irrigation Corporation Ltd., at Dhenkanal as Divisional Accountant. He was on deputation for a period of one year. But subsequently the deputation was extended for six more years. He was paid deputation allowance of 20 per cent of his basic pay and D.A. Suddenly after six years, the Audit Officer of his parent department wrote to him that a sum of Rs.29,080 was overdrawn by him on the ground

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that he was not entitled to deputation allowance of more than 10 per cent of his basic pay. While quashing the order of recovery, the Division Bench of this Tribunal held that once a payment is made and utilised, he cannot be faulted for this purpose. Even though the payment was made by mistake, he cannot be compelled to refund what was paid. The next case relied upon on behalf of the applicant is the case of T.R.Sunderraja Iyenger v. The Post Master General, Karnataka Circle 1989(1) SLJ (CAT) 238 before the Bangalore Bench of Tribunal. That was a case of payment on account of wrong stepping up of pay. It was held that the same could not be withdrawn unilaterally after nearly 12 years. Such recovery had a punitive effect and was declared to be bad in law. Smt. Pushpa Bhide v. Union of India Others (ATR 1989 (2) CAT 397) was a case before the Jabalpur Bench of the Tribunal. The applicant was appointed as a stop-gap measure as an untrained teacher and was not entitled to count her seniority from the date of initial appointment. By an error she was given seniority on an assumption that she was a trained teacher and she was also given the benefit of Selection Grade. On the question of withdrawal of emoluments on the basis of seniority earlier given the Tribunal held that even if the respondents' contention is accepted the matter had become irreversible. The respondents were estopped

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after several years from correcting what they claimed to be mistake committed by them. The order modifying the seniority of the applicant and withdrawing the Selection Grade awarded to her was quashed. The next decision is C.S.Bedi v. Union of India and Others ATR 1988 (2) CAT 510). The applicant in that case had drawn on promotion certain rate of pay fixed to higher post and he continued to draw salary on that basis until 1986 when the mistake was detected after several years. The recovery of excess payment after long lapse of time was declared unjust, illegal and inequitable. The above are instances of mistake or wrong interpretation or wrong understanding, but in the present case there is no justification as to why what had been given earlier on proper authority was peremptorily withdrawn. The error in the earlier payment has not been spelt out.

1990 (1) SLJ CAT 74, Gobinda Sinha and Others v. Garrison Engineer and Others, is a case of wrong interpretation of a Government letter on the basis of which a vehicle mechanic was paid the revised scale. It was not correct. On the ground that the said recovery would cause great hardship to the applicant, the Tribunal directed that the rectification of an administrative error was incorrect as it would cause undue hardship to the employee. On the ground that the applicant was not responsible either for the earlier payment or for the non-rectification of the

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mistake of the Department for a long period, the proposed rectification was cancelled. In Satyanand Sinha 1989(4) SLJ CAT, Patna Bench considered the case of the employees who were stepped up by mistake in 1972 and the mistake was detected in 1986 when the amount paid was sought to be recovered. It was held that the applicant while drawing the higher pay did not know about the same. //

6. To repeat, these are cases where mistakes were admitted and yet the Tribunal directed that excess amount paid should not be recovered. Here is a case where there is no question of any mistake. With their eyes wide open and on the basis of Fourth Pay Commission's report certain project allowance was paid. Payment of additional allowances for certain specific jobs at project side is something very familiar in the service conditions prevailing in India. There is nothing illegal or unconstitutional about this payment. The postal authorities suddenly became panicky and withdrew the allowances simply because of the ipsi dixit of Ministry of Finance. As far as the applicant is concerned, Government of India is one entity. The Ministry of Finance and the Department of Communications are parts of the same Central Government. This is absolutely a case of unjust and illegal recovery.

7. The order or recovery is arbitrary and illegal. The project allowance was paid for working

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in in inhospitable terrain by sending people from Dhenkanal to Rengali. The allowance was not only a promise but a settled right for certain specific services rendered. It is immaterial whether the Ministry of Finance had approved the sanction of project allowance in a regular manner. As far as the employees are concerned they have drawn the money under an order of the Government of India. They have rendered services before drawing the project allowance as a part of their salary and remuneration. There is no averment on behalf of the respondents that earlier grant of allowance was against law or was something unconstitutional. It is clearly stipulated that the amounts were paid in accordance with the recommendations of the Fourth Pay Commission. The Commission's recommendations were translated into decisions and orders. Such payments cannot be simply withdrawn at the sweetwill and pleasure of the employer. This amounts to nullifying a vested right. The orders of the respondents under Annexure-2 and Annexure-4 are hereby declared null and void. The respondents shall desist from further proceeding in the matter. The earlier stay is made absolute and recovery proceedings are declared invalid. The application is allowed.

Respondents to pay cost of Rs.500/- to each of the applicants.

N. Sahoo
(N. SAHU) (1. 4. 96,
MEMBER (ADMINISTRATIVE)