

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 709 TO 713 OF 1995
Cuttack, this the 16th day of April, 1997

Gopinath Panda and others Applicants

-versus-

Chief Engineer (P) Fy.
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

Jounatham Sam
(S.SOM)
VICE-CHAIRMAN
16.4.97

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 709 TO 713 OF 1995
Cuttack, this the 16th day of April, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

...

In OA 709/95

Gopinath Panda, s/o Dolagobinda Panda,
At-Padmanavapur, Post-Titilagarh,
District-Bolangir,
at present working as F.G.M.,
Fitter General Mechanic,
Garison Engineer, 881 EWS
(Military Engineering Service),
At-Saintala, Badamala,
District-Bolangir

In OA 710/95

Dayasagar Patanaik,
s/o Sasi Ranjan Patnaik,
At-Block Colony,
near Tile Factory, Post-Titilagarh,
District-Bolangir, at present working
as F.G.M. (Fitter General Mechanic),
Garison Engineer, 881 EWS,
(Military Engineering Service),
At-Saintala, Badamal,
District-Balangir.

In OA 711/95

Jagannathm
16.4.97
Dibya Kishore Behera,
s/o Jagannath Behera,
At-Hirakud, Qr.No.F/11/12,
Sambalpur, at present working
as Electrician Garison Engineer,
881 E.N.S. (Military Engineering Service),
At-Saintala, Badamal,
District-Bolangir

In O.A 712/95

Sri Suresh Chandra Pradhan,
S/o Sri Giridhari Pradhan,
At/P.O-Budido, Via-Reamal,
Post-Reamal, District-Sambalpur,
at present working as Electrician,
Garison Engineer,
881 EWS (Military Engineering Service),
At-Saintala, Badamal,
District-Bolangir.

In OA 713/95

Sri Nathniel Lakra,
s/o Sri Thiophil Lakra,
At-Falsakani, Post-Kuthurbahal,
District-Sundergarh, at present working
as Electrician, Garrison Engineer,
881 EWS (Military Engineering Service),
At-Saintala, Badamal,
District-Bolangir

..... Applicants

Advocates for applicants - M/s Budhadev Routray,
A.K. Mohanty, S.S. Kanungo &
B. Dash.

-versus-

1. Chief Engineer (P) Fy., Bolangir,
Ordnance Factory, Badamal, Via-Titilagarh,
District-Bolangir.
2. Commander Works Engineers (P) Fy.,
Bolangir, Post-Kamarlaga,
Via-Saintala,
Dist. Bolangir.
3. Garrison Engineer 881 EWS,
(Military Engineering Service),
At-Saintala, Badamal,
District-Bolangir

..... Respondents

Advocate for respondents - Mr. Ashok Mohanty,
Sr. Central Govt.
Standing Counsel.

O R D E R

S.SOM, VICE-CHAIRMAN

This is a batch of five cases which have been
heard analogously. Facts of these cases are similar and the point for
adjudication is the same. The applicant in OA No. 709/95 was appointed
by order, dated 9.6.1987, as Temporary Driver Engine Static and his
scale of pay was mentioned in the appointment order as Rs.950-1500/-.

*Comm. M. Jm
16.4.97*

9
Similarly the applicant in O.A.No.710/95 was appointed as Temporary Motor Pump Attendant; the applicants in O.A.Nos.711 and 712 of 1995 were appointed as Temporary Wiremen; and the applicant in O.A.No.713 of 1995 was appointed as Temporary Lineman. All the applicants in their appointment orders were given appointment in the scale of pay of Rs.950-1500/- and were ordered to be on probation for two years. Subsequently after eight years in O.A.No.709/95, in order dated 25.7.1995 the original appointment order was corrected and he was offered a scale of Rs.800-1150/-. It was further mentioned in this amendment order of 25th July, 1995 that the applicant, on completion of two years probation in the lower scale of Rs.800-1150/-, would be placed in the skilled category in the pay scale of Rs.950-1500/-. Similar amendments to the original appointment orders were issued on the same terms to the other applicants in the other Original Applications on the same date, i.e., 25.7.1995. In the Memo to the amendment order issued on 25.7.1995 orders were passed for recovery of over-payment made to the applicants from August 1995. The applicants thereupon made representations to the departmental authorities and those not having been accepted, they have come up before this Tribunal. In these applications, the applicants have prayed that the amendment orders dated 25.7.1995 should be stayed, no amount should be recovered from the pay of the applicants, and the current and the arrear salary should be paid to them forthwith.

2. From the counter filed by the respondents and also from the submissions of the learned lawyers for both sides, it appears that in the Ordnance Factory, where these applicants were appointed, the pay scale for the semi-skilled category of employees was Rs.800-1150/- and that of the skilled category of

employees was Rs.950-1500/-. On the basis of the recommendation of the Anomalies Committee set up after the Fourth Pay Commission, it was decided that direct recruitment should be made only in the semi-skilled category in the scale of Rs.800-1150/- and after two years, they would go over to the higher scale. This position is not challenged by the learned lawyer for the applicants in these Original Applications, and it is clear from this that by mistake of the departmental authorities at the time of initial appointment, these applicants were wrongly offered the pay scale of Rs.950-1500/-.

3. It is strenuously urged by the learned lawyer for the applicants that higher scale was given to the applicants without any action on their part and because of the mistake of the departmental authorities and, therefore, after eight years the amount of over-payment should not be recovered from their salary. From an analysis of the original appointment order and its corrigendum, it is clear that over-payment relates only to the first two years of the service of the applicants and not thereafter. This has to be explained. In the original appointment orders, the applicants were placed in the scale of Rs.950-1500/- on probation for a period of two years. During the period of probation they were not entitled to any increment and therefore, they got their first increment in the scale of Rs.950-1500/- only on completion of the third year. By virtue of the corrigendum the applicants have been put in the lower scale of Rs.800-1150/- and it has been ordered that on completion of two years, they

*Submitted
16.4.97*

11

would go over to the scale of Rs.950-1500/-. In that new scale, they would be entitled to the first increment only after completion of the third year of service and after the first year in the scale of Rs.950-1500/-. Therefore, the applicants' position would become the same with or without the corrigendum order on completion of their three years of service. The sole issue to be considered is, therefore, of recovery of the excess amount paid to them for the first two years of their service. During these two years they got basic pay of Rs.950/- and other allowances on that without any increment as they were to be on probation for two years according to the original appointment orders. According to the corrigendum orders, they were put in the scale of Rs.800-1150/- in which scale for the first two years they got the basic pay of Rs.800/- plus the allowances on that. Thus difference in the basic pay is Rs.150/- per month for these two years plus the allowances on that in respect of which the order of recovery would operate because, as I have earlier explained, from the third year the pay drawn by the applicants would be the same even in accordance with the corrigendum order. The issue for consideration is whether this amount should be recovered from their salary.

16.4.97

4. The first point to be noted in this connection is that for this over-payment for two years the applicants are in no way responsible. For inducting direct recruits only at the level of semi-skilled category orders were issued in October 1984, whereas the applicants were wrongly offered the higher pay scale sometime in 1987. The second point is that the

applicants are all I.T.I. certificate holders who, according to the instructions, have to be inducted only in semi-skilled category. This matter had been taken by the Employees' Association to the Hon'ble Supreme Court in Writ Petition No.40 of 1991 in which their Lordships had ordered on 31.7.1991 that those employees who were in position as on 16th October, 1981, should go over to the skilled category with the earlier corresponding scale of Rs.260-400/- from the lower scale of Rs.210-290/-. Thus, it is clear that even as I.T.I. certificate holders they should have been correctly given the scale of Rs.800-1150/-. On the question of recovery, the learned Senior Standing Counsel, appearing on behalf of the respondents, has brought to my notice a decision of the Single Bench of Central Administrative Tribunal, Bombay Bench, in the case of A.K.Ravi v. Union of India and others, (1996) 33 A.T.C. 785, where the Hon'ble Member has gone into different decisions of other Benches of the Tribunal in the case of recovery. That was a case of wrong fixation of pay of an officer under the Railways. In that case, while fixing his pay according to the recommendation of the Fourth Pay Commission, the applicant's pay was wrongly fixed by including 15% special pay which he was enjoying. The Hon'ble Member held that if recovery is sought to be made after several years, then such recovery must be held to be bad in law. In consideration of different cases decided by the other Benches of the Tribunal, the Hon'ble Member felt that a period lasting over a decade could be regarded as a long enough

omnith Jm
16.4.97

period disentitling the Government to effect recovery. I agree with the ratio of the above decision that basically the Government have a right to recover over-payment inadvertently made to a Government servant. But the power to order such recovery must be exercised by the Government in a reasonable manner and one of the elements of such reasonableness is that such power must be exercised within a reasonable period of time. What could be a reasonable period of time cannot be a priori laid down irrespective of facts and circumstances of each case. In this case, the fact that the applicants should have been inducted in the pay scale of Rs.800-1150/- and not in the higher pay scale of Rs.950-1500/- was known to the departmental authorities because as a result of the recommendation of the Anomalies Committee the matter had been settled and orders issued in 1984. In spite of that wrongly higher pay scale was allowed to the applicants. Thereafter for eight years no action was taken to recover the amount. In a series of decisions from different Benches of the Tribunal it has been held that where the Government servant was not responsible for over-payment, no recovery could be ordered long after the payment was made. It has been so decided in the case of K.S.Sridharan and others v. Union of India and others, 1991 (2) S.L.J.(CAT) 229, Gobinda Sinha and others v. Garrison Engineer, Narangi Division, 1991(1) S.L.J.(CAT) 74, M.Moideen Keya v. Union of India and another, 1992(2)(CAT) 564. In a recent decision of 24th November, 1995 in the case of Bakhshish Singh v. Union of India and others (OA No.1018/PB/94) rendered by a Division Bench of Chandigarh Bench of Central Administrative Tribunal, the same view has been taken following

J. Ananthan
16.4.97

14 a decision of the Allahabad Bench of the Tribunal in the case of Mohd Quamar Ansari v. Union of India and others (O.A.No.971/93). in which it has been observed as follows:

"The settled position of law in this regard is that if pay has been wrongly fixed of an employee on account of administrative mistake and is in no way attributable to him, the over-payments made cannot be recovered once he has enjoyed such a pay for several years."

In this case, the applicants have now been brought to the pay scale of Rs.800-1150/- at the time of their initial appointment and presumably given the higher pay scale on completion of two years, as I have earlier mentioned. Their position would be the same on completion of three years and no over-payment would be involved, nor would the applicants suffer any loss of emoluments from the third year. The applicants are low paid employees of semi-skilled and skilled category and it will undoubtedly entail hardship on them if the amount is sought to be recovered after eight years. Considering all these factors, it is ordered that recovery of the over-payment made to the applicants after lapse of eight years is bad in law and also unreasonable as it involves hardship to the applicants, and so the departmental authorities are precluded from recovering the amount.

5. In the result, the Original Applications are, therefore, allowed in part. There shall be no order as to costs.

The stay orders granted at the time of admission of these applications stand vacated. The departmental authorities will be free to put the applicants in the scale of Rs.800-1150/- for the first two years of their appointment and thereafter take them to the scale of Rs.950-1500/-.

S. Somnath Singh
(S.SOM)
VICE-CHAIRMAN 16.4.97