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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 261 OF 1998
Cuttack, this the 54 day of August, 2003

Sri Radhakrushna Biswal Applicant

VS.
Union of India and others Respondents

FOR INSTRUCTIONS

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

forwrd
05/08/2003
(M.R.MOHANTY)
MEMBER(JUDICIAL)

Ans
(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

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Sri Radhakrushna Biswal, aged about 63 years, son of late Bhagabat Biswal, permanent resident of village/PO Srijang, P.S. Khantapada, Via Gopalpur, District Balasore, at present residing at C/o T.K.Biswal, Defence Colony, T/14, GT.Road, Balasore 756 001

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Applicant

VS.

1. Union of India, represented by the Post Master General, Orissa Circle, Bhubnaeswar, At/PO Bhubaneswar, Dist. Khurda.
2. The Superintendent of Post Offices, Balasore Division, Balasore, At/PO/District Balasore.... Respondents

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Advocate for the applicant - Mr.T.Rath
Advocate for the Respondents - Mr.S.B.Jena
ACGSC

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O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Radhakrushna Biswal, formerly Post Master, Balasore Head Post Office (HSG-I), has filed this Original Application, being aggrieved by the action of the Respondents in curtailing his pensionary benefits and recovering an amount of Rs.16,717/- from

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his DCRG on the plea that his pay was fixed wrongly earlier. He has, therefore, approached this Tribunal to quash the order under Annexure 2 and Annexure 4 so far as recovery is concerned and to direct the Respondents to recalculate his pension as well as other retirement benefits after taking his last pay at Rs.2300/- in the pay scale of HSG-I.

2. The Respondents in their counter have admitted that an amount of Rs.16,717/- was deducted from the DCRG amount payable to the applicant on account of re-fixation of his pay at Lower Selection Grade (LSG) in the year 1980. They have stated that before retirement of the applicant, the audit group of the office of Deputy Director of Accounts (Postal), Cuttack, while reviewing his Service Book, noticed mistakes in pay fixation of the applicant. They have pointed out that whereas the date of next increment of the applicant in clerical cadre was 9.8.1973, the same was ante-dated to 20.2.1973 while fixing his pay on the basis of Third Pay Commission recommendation. This resulted in advancing his drawal of annual increment from 1st August to 1st February each year from 1973 to 1976. Thus, he was paid excess pay for these three years. Secondly, during 1976, the applicant was allowed annual increments twice, one on 1.2.1976 and another on 1.8.1976. Lastly, with effect from 1.9.1980 his basic pay was taken as Rs.480/- in the clerical scale, instead of Rs.468/-, resulting in higher fixation of pay and



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consequently, effecting excess payment to him. As a result of the above audit objections, the pay and allowances of the applicant were recalculated at each stage from 20.2.1973 to 31.10.1993 (date of retirement) and an amount of Rs.15,773/- was decided to be realized from the applicant, being paid in excess. In addition, another amount of Rs.944/- was determined as overpaid towards leave salary because of the said wrong fixation of date of increment as well as wrong fixation of pay. As the applicant had retired from service, the Respondents ordered that the excess amount recoverable from the applicant should be recovered from the DCRG payable to him, vide the order at Annexure R/1. It is further admitted by the Respondents that the applicant being aggrieved by the said order, had submitted a representation on 9.9.1994, addressed to Respondent No.1, for reconsideration of the order of recovery. Respondent No.1, after considering of the representation of the applicant, rejected the same on the ground that there was no merit in the case for refund of overpaid amount on account of wrong pay fixation (Annexure R/4).

The order was communicated to the applicant in November 1994.

3. The main thrust of the argument of the petitioner is that the Respondents had rejected his representation by issuing a "cryptic and non-speaking order". During the oral argument, the learned counsel for the applicant argued that if the applicant was paid certain amount wrongly or his pay was fixed incorrectly, the

Respondents were at liberty to correct the same by re-fixing the pay of the applicant during his service period after giving him due notice and observing the principles of natural justice and not in the manner in which they decided to rectify the mistake. He was very bitter that huge amount had been deducted from the DCRG of the applicant on the ground that certain irregularities were committed by the authorities at the time of fixation of pay during 1973 "for which the applicant has no fault and laches and the entire responsibilities lie on the Respondents". He further urged that the applicant has been penalized due to no fault on his part.

4. The learned Additional Standing Counsel for the Respondents, rebutting the allegations of the applicant, submitted that the law is well settled that employer has right to rectify mistakes and the allegation of denial of natural justice does not come into play in this case as the events like date of next increment or fixation of pay on promotion being factual matters, by issuing a notice to the applicant prior to carrying out correction in his Service Book or re-fixing his pay from 1973 to 1993, the applicant could not have provided any material which could have changed the calculation of his pay, nor has the applicant been able to bring out any error or contradiction in the audit objections which led to re-fixation of his pay. Having not been able to bring out any error in the audit objections, the applicant has miserably failed to prove any of his allegations.

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5. We have carefully examined the facts of the case and the issues raised by the applicant in this Original Applicant, as well as the submissions made by the learned counsel for both the parties.

6. Having regard to the grievances ventilated by the applicant, we see lot of merit in his submission. There is no doubt that the representation of the applicant was disposed of summarily. We also do not agree with the submission made by the learned Additional Standing Counsel that had the Respondents given a notice to the applicant before re-fixing his pay and recovering the excess amount paid from him, he could not have produced any material which could have changed the situation. We would like to emphasize here that the principles of natural justice being the corner-stone of administrative system, any denial or infringement of these principles, in any way, should be seriously viewed. In the fitness of things, we would like to quote *Halsbury's Law of England, Vol.1(i), 4th Edition*, about the significance of the principles of natural justice:

"*Prima facie*, moreover, a duty to act in accordance with natural justice will arise in the exercise of a power to deprive a person of his livelihood or his legal status where that status is not merely terminable at pleasure, or to deprive a person of liberty or property rights or another legitimate interest or expectation, or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation so to act."



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For long about 20 years, the applicant was being paid his salary on the basis of pay fixation done on 1.1.1973 and thereafter on his promotion to LSG in 1980. Thereafter without informing him, his pay was reduced and his pension was decreased and he was confronted with an order to surrender Rs.16,717/- from his hard earned gratuity money. Such an order was handed out to him when he was preparing to settle down after a long official life in peace and his peace was disturbed very rudely. Since this order of reducing his pay and pension was made in the quiet, howsoever legally correct action that was, there is no doubt that the applicant was not only shocked, but must have felt that that was an arbitrary and unkind act. On the other hand, if the Respondents had, in the first instance, confronted him with their tentative decision to correct the pay as fixed from 1.1.1973 and correct the error of granting him two increments in one year, he could not have suspected that the Respondents were biased against him and nothing would have shocked him or he would not have felt deprived. By upholding the principles of natural justice, the administrators can ensure fairness in every sphere of official life and thereby create appropriate motivation among the officials to believe in the rule of law. We would, therefore, conclude that while we agree with the learned Additional standing Counsel that employer has right to rectify mistakes, it

can only do so after giving due notice to the affected person and hearing him before giving their final decision.

7. The learned counsel for the applicant, at the end, submitted that by recovering Rs.16,717/- from DCRG amount payable to the applicant, the Respondents have transgressed the accepted law that recovery of overpayment due to wrong fixation of pay cannot be ordered after a long time. In this regard, he has drawn our notice to the case of *S.Radha v. Union of India*, O.A.No.348 of 1994, decided on 30.9.1994, wherein it was held by the Tribunal, following the ratio of the judgments in the cases of *Vital Dagdoo Marathe v. The General Manager, Central Railway*, ATR 1989(2) CAT 65 (New Bombay Bench), *K.N.Ramamoorthy v. Director General, Ministry of Defence*, 1991 (1) ATJ 459 (Madras Bench) and *Satyanand v. Union of India*, 1989(4) SJ CAT 272 (Patna Bench), that recovery of overpayment due to fixation of pay cannot be ordered after long period. Their Lordships further observed that 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. We find that the ratio of the above judgments eminently applies to the facts of the present case. On the subject we would also like to refer to a decision of the Apex Court. In the case of *Sahib Ram v. State of Haryana and others*, Civil Appeal No.6868 of 1994, decided on 19.9.1994, the Apex Court found that the appellant Sahib Ram was not entitled to



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the pay scale of Rs.225-550/- as a Librarian in Government College because he did not possess the required educational qualification and that granting him promotion to the post by relaxing rules was an error. But since the appellant had been paid his salary in higher scale not on account of any misrepresentation made by the appellant, the benefit of higher pay scale cannot be denied to him because he was not at fault in any way. Under the circumstances, Their Lordships held that the amount already paid should not be recovered from the appellant. In the present case also, as the applicant cannot be held responsible either for wrong pay fixation or for wrong calculation of date of increment, the amount already paid to him should not have been recovered and as the applicant has already retired, the amount of Rs.16,717/- recovered from his DCRG be refunded to him within a period of ninety (90) days from the date of receipt of this order.

8. Thus, the Original Application succeeds to the extent indicated above. No costs.


(M.R. MOHANTY)

MEMBER(JUDICIAL)


(B.N. SOM)

VICE-CHAIRMAN

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