

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.512 OF 1999  
CUTTACK THIS THE 25 DAY OF JUNE 2001  
May

Gobinda Chandra Behera ..... Applicant(s)  
  
- Versus -  
  
Union of India & Others ..... Respondents

For Instructions

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

*Somnath Som*  
(SOMNATH SOM)  
VICE - CHAIRMAN  
25.5.2001

*G. Narasimham*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 512 OF 1999  
CUTTACK THIS THE 25 DAY OF MAY 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,  
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN  
MEMBER (J)

1. Sri Gobinda Chandra Behera,  
aged 35 years,  
S/O: Late Bhramarbar Behera,  
Extra Departmental Messenger,  
At/P.O: Banki, Dist: Cuttack. .... Applicant

By the Advocates

Mr.P.K.Padhi

-Versus-

1. Union of India, represented by it's  
Chief Post Master General(Orissa Circle)  
At/P.O:Bhubaneswar, Dist:Khurda, 751001.
2. Sr. Superintendent of Post Offices,  
Cuttack City Division, At:P.K.Parija Marg,  
P.O: Cuttack G.P.O, Dist: Cuttack.
3. Assistant Superintendent of Post Offices  
Cuttack East Sub Division,  
P.O: Cuttack G.P.O, Dist: Cuttack, 753001.
4. Head Post Master, Chandinichowk H.O.  
At/P.O: Chandinichowk H.O,  
Dist:Cuttack, 753002.
5. Sub Post Master, Banki Sub Post Office,  
At/P.O: Banki, Dist: Cuttack.

..... Respondents

By the Advocates

Mr.J.K.Nayak  
A.S.C

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant Gobinda Chandra Behera, an ED Messenger at Banki Sub Post Office challenges the order dtd.24.6.99 of Sr.Superintendent of Post Offices, Cuttack City Division (Respondent No.2) for recovery of Rs.3860/- from the applicant on the ground that though the monthly basic allowance as per the 4th Pay Commission was refixed at Rs.330/- per month during the year 1987, but Rs.350/- per month was drawn and disbursed to him. He further prays for fixation of his allowance at Rs.420/- w.e.f 1.1.86 and in the maximum scale from 1.1.96, and further for drawal of cycle allowance w.e.f.1.1.86.

2. His case is that he was appointed as an ED Messenger at Banki Sub Post Office by an order dtd.6.4.84. His duty is to deliver the telegrams received at Banki Sub Post Office for Banki and 13 other villages, within the delivery jurisdiction of that Sub Post Office. The telegraph branch functions at Banki Sub Post Office from 10 A.M to 6 P.M and though he is required to work for five hours from 10 to 3 P.M, he is being practically engaged to work from 10 to 6 P.M. The basic allowance for ED agents on duty for 8 hours has been fixed at Rs.420/- w.e.f 1.1.86. He is also entitled to draw the cycle allowance at Rs.20/- per month and the same has been denied to him.

3. Respondents in their counter submit that working hours of ED Messengers is fixed with reference to number of telegrams

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delivered daily. The daily average delivery of telegrams at Banki Sub Office is about three. Hence to utilise his service for 3 hours, the work load as per the departmental norms, he was also being entrusted the work of clearance of letter boxes during his duty hours only. For the work load of 3 hours the basic allowance has been revised to Rs.330/- w.e.f. 1.1.86, but due to clerical mistake excess drawal of Rs.20/- per month had drawn all these years and this came to the notice only when the allowance was revised during the month of January, 1999 on the basis of Talwar Committee Report. There is no legal bar for recovery of the excess paid amount from the applicant as it is Government money. This excess paid amount was recovered by adjusting from the arrear allowance of the applicant in two instalments i.e. Rs.1794/- from the first instalment and Rs.1267/- from the second instalment. The rest amount of Rs.799/- was recovered in 3 instalments of Rs.100/- each the last instalment being Rs.99/-.

It is the further case of the Respondent, that as per the Talwar Committee Report an ED Messenger whose duty hours is less than 3 hours 45 minutes will get allowance at the rate of Rs.1220-1600/- and ED Messenger whose duty hours is more than 3 hours 45 minutes will get Rs.1545-200/- per month. The work load of the applicant being less than 3 hours 45 minutes, his allowance has been fixed at Rs.1220-1600/- w.e.f 1.3.98.

As to the cycle allowance an ED Messenger can get

cycle allowance when the number of messages delivered by him is 8 or more as provided under Annexure R/4 which is not the case with the applicant.

4. No rejoinder has been filed.

5. We have heard Shri P.K.Padhi, learned counsel for the applicant and J.K.Nayak, learned Additional Standing Counsel for the Respondents.

6. <sup>Gavine</sup>~~Being~~ averment that he was being engaged for about 8 hours a day, the applicant had not filed any document indicating his duty hours. On the other hand, it is the specific case of the <sup>department</sup>~~applicant~~, applicant's duty hour is 3 hours vide Annexure R/3. Order of the Sr.Superintendent Post Offices, Cuttack, City Division fixing the basic allowance w.e.f. 1.186 in support of 90 ED Agents working under his jurisdiction. Under serial No.2 coming under Chandini Chowaki Head Office, the basic allowance of ED Messenger,Banki Sub-Post Office (Applicant) was fixed at Rs.330/-. It is not the case of the applicant that this amount is wrongly fixed. Even if, it was wrongly fixed in 1986, the applicant could not have legally agitated it in this application filed in 1999. The fact remains though the basic allowance was fixed Rs.330/- <sup>not</sup> an amount of Rs.350/- was being drawn till the year 1999. The contention of the applicant is even if excess amount was drawn and disbursed to him, the same could not have been recovered without

giving him notice. He places reliance in O.A.2478/98 of Principal Bench New Delhi, Narendra Marwah Vrs. Union of India, disposed of on 16.7.93 and which finds mention in 1994(1), Swamy's Case Law Digest under serial 235 at page 387. We have carefully gone through this case as reported in this digest. The facts are clearly distinguishable in this reported case. The recovery of over payment was ordered, long after the applicant had taken voluntary retirement. The Tribunal held that such recovery could not have been ordered without issuing notice to the applicant, because the applicant on the basis of last pay drawn had sought for voluntary retirement and had there been previous notice <sup>of</sup> such recovery ~~he~~ could have changed his idea of taking voluntary retirement. Hence this case will not be any help to the applicant before us who knew that excess payment was being made to him all these years. We therefore do not see any infirmity in the order under Annexure-A as to the recovery of the excess amount paid.

7. Under Annexure R/4, D.G. Circular dtd.1.5.82,15.7.87 and 21.3.96, cycle maintenance allowance is granted to ED Messengers when they cover a distance of 10 kilometers or more per day and deliver 8 messages or more in a day. This cycle allowance which was initially paid at the rate of Rs.8/- per month was enhanced to Rs.30/- per month w.e.f 26.9.93. Further the allowance should be granted for 2 years at a time and its continuance has to be reviewed in advance by sanctioning

authority before the expiry of the previous sanction.

The applicant has not pleaded that he is or was covering distance of 10 kilometers more a day and delivering 8 or more messages in a day. Even otherwise the claim for cycle allowance w.e.f 1.1.86 is barred by limitation till 3 years preceeding the date of filing. On this application on 22.9.99 and in absence of any application for condonation of delay the same cannot be considered. Even for the period of 3 years preceeding the date of application as earlier stated, the prayer cannot be allowed because of absence of specific averment in the pleading that he is covering more than 10 kilometers per day and delivering 8 or more messages in a day.

8. For the reasons discussed above, we are not inclined to accept the case of the applicant. Accordingly we do not find any merit in this Original Application which is dismissed but without costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*25.5.2001*

*25.5.2001*  
(G. NARSIMHAM)  
MEMBER (J)