IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 502 of 2003
Cuttack, this the 23rd day of July, 2008

B.N.Samantray through LRSs ... Applicants
Versus
Union of India & 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 CAT or not? yes.

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CORAM:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Biranchi Narayan Samantray through LRSs. ..... Applicants
Versus
Unioni of India and others. .....Respondents

By legal practitioner: M/s. A.K.Mishra, J.Sengupta, D.K.Panda, P.R.J.Dash,G.Sinha, Counsel.
By legal practitioner : Mr. U.B.Mohapatra, SSC.

ORDER

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

Applicant Biranchinarayan Samantaray, was working as Assistant in the Office of Income Tax, Orissa. He retired from service with effect from 31.05.2001. After his retirement, vide order under Annexure-6 dated 04.09.2002, the Respondents cancelled the order granting him the benefits under ACP w.e.f. 09.08.1999 which order is under challenge in this OA. However, during the pendency of this OA as the Applicant, Biranchinarayan

Samantaray expired, his legal heirs substituted in this OA vide order dated 29.04.2008 in order to remove the injustice caused to their father. This Original Application contains the following prayer:

> "To quash the order dated 04.09.2002 passed in Annexure-6 and to allow the same."

2. Respondents have contested the matter by stating that as conferment of the benefits under ACP, was found erroneous in exercise of the powers conferred on the authorities to rectify the error/mistake occurred, at any point of time, the same was rectified vide order under Annexure-6 and, therefore, the applicant has hardly any right to resist withdrawal of any benefits conferred on him illegally/ irregularly/erroneously to which he is not entitled to. Accordingly, the Respondents have prayed for dismissal of this OA.

3. However, during the hearing learned counsel for the Applicant submitted that as the order under Annexure-6 does not contain any reason besides being against the well sounded principles of law 'Audi Alterm Partem' the impugned order is liable to be quashed. On the other hand Learned Counsel appearing for the Respondents, relying on the averments made in the counter,

submitted that ACP scheme came into force w.e.f. 09.08.1999. As per paragraph 5.1 of the scheme, two financial up-gradations shall be available only if no regular promotions during the periods of 12 & 24 years have been availed by an employee. In the instant case, the Applicant was initially appointed as LDC in the Central Family Planning Field Unit w.e.f. 14.06.1963 and was promoted to the post of UDC on 06.01.1970. Being declared surplus, he was absorbed in the Income Tax Department as LDC w.e.f. 10.04.1974. Thereafter, on the basis of judgment of this Tribunal dated 28.2.1990 in TA No. 178/1986, he was treated deemed to have been appointed as UDC w.e.f. 10.04.1974 and thereafter he was promoted to Assistant w.e.f. 01.12.1995. But while processing the case of ACP in the first lot as per DOP&T OM dated 09.08.1999, his case was erroneously given the benefits under the ACP scheme and the mistake subsequently having come to the light, the mistake was rectified vide order under Annexure-6. As such, it was argued by Learned Counsel for the Respondents that since it was only correction of the mistake committed by the Respondents, there was no necessity to put notice to the Applicant.

4. Having considered various submissions put forward by the Parties, we have gone through the materials placed on record. There is no dispute of the circumstances under which an employee is conferred with the benefits of ACP. Similarly the factual aspects mentioned in the counter with regard to the dates of initial appointment, deployment/redeployment, and promotion etc. of the Ex-employee are not in dispute. The only question that arises for consideration is whether the Respondents have any power to rectify their mistake at any point of time and as to whether on rectification of such mistake can effect recovery of excess payment, if any made, on that count. As regards the first question, we may observe that none can claim any vested rights on the benefit illegally or erroneously conferred upon him and in this connection it would suffice to quote some of the observations of Their Lordships of the Hon'ble High Court of Kerala rendered in the case of **United India Insurance Co. Ltd. v. Roy, reported in** 2005 (2) KLT 63, which runs thus:

> "To err is human; to correct an error is also human....It is a large organization where several employees are working and large volume of work is being transacted. In such a situation, human error at times cannot be avoided. Nobody could expect an ideal situation without any error or mistake in the matter of administration. Due to inadvertence or otherwise a mistake has been committed which can always be corrected. Duty to cast not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also part of the administration like the person who has committed the mistake."

5. The above view has also been reiterated by the cases of Santhakumari P.J. v. State of Kerala and others 2006 (1) ATJ 321 and Kumar Behera v Union of India and others, OA No. 662 of 2005. In this view of the matter, we find no error in the decision making process of the matter of passing the impugned order under Annexure-6 dated 4th September, 2002. At the same time, it is settled law that when the higher pay granted to an employee is not on the basis of any misstatement, no recovery could be effected. In this regard, reference is made to the decision of the Apex Court in the case of Purshottam Lal Das v. State of Bihar,(2006) 11 SCC 492 , wherein it has been held as under:-:

8. In Bihar SEB case it was held as follows:

"9 . Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees' salaries which were paid to them since the year 1979. It is on this score the High Court observed that as both the peti tioners have passed the examination though in the year 1993, their entitlement for relief cannot be doubted in any way. The High Court has also relied upon the decision of this Court in Sahib Ram v. State of Haryana 4 wherein this Court in para 5 of the Report observed:

5 . Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appel lant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.'

10 . The High Court also relied on the unreported decision of the learned Single Judge in Saheed Kumar Banerjee v. Bihar SEB . **We do record our concurrence with the observations of this Court in Sahib Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time**. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order however be restricted to the facts of the present writ petitioners. It is clarified that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except however in the case or cases which has/have attained finality."

6. Considering the facts and circumstances of the case, we are not inclined to interfere with the order under Annexure-6 dated 4th September, 2002. However, it is ordered that if any excess payment is drawn by virtue of according the benefits of ACP, the same are not recoverable from the Respondents in the light of the decision of the Hon'ble Apex Court in the case of Purshottam Lal Das (Supra).

7. With the above observations and directions this OA stands disposed of. No costs.

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.