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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 158 of 2005

Cuttack, this the 7th day of February, 2007.

Bijoy Laxmi Das

..... Applicant

Versus

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? *yes*

1. WHETHER it be circulated to all the Benches of the Tribunal or not? *yes*

[Signature]
(N.D.RAGHAVAN) 09.02.07
VICE-CHAIRMAN

[Signature]
(B.B.MISHRA)
MEMBER (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 158 of 2005

Cuttack, this the 9th day of February, 2007.

C O R A M:

THE HON'BLE MR.N.D.RAGHAVAN, VICE-CHAIRMAN

&

THE HON'BLE MR.B.B.MISHRA, MEMBER(A)

Shri Bijoy Laxmi Das, Aged about 54 years, D/o.Hrushikesh Das, at present working as Trained Graduate Teacher, D.M.School, Regional Institute of Education, NCERT, Sachivalaya Marg, Bhubaneswar.

.... APPLICANT.

By legal practitioner: M/s. N.Das & B.Mohapatra, Advocate

-VERSUS-

1. Secretary, NCERT, Sri Aurovindo Marg, New Delhi-110 016.
2. The Administrative Officer, Regional Institute of Education, Sachivalaya Marg, Bhubaneswar-751 022.
3. Principal, DM School, Regional Institute of Education, Sachivalaya Marg, Bhubaneswar-751 022.

. RESPONDENTS

By legal practitioner **Mr. P.R.J.Dash, ASC** ✓

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ORDER

MR. B.B.MISHRA, MEMBER(A):

Applicant is a Trained Graduate Teacher of DM School of Regional Institute of Education, NCERT, Bhubaneswar. Being aggrieved by the order dated 28th March, 2005 (Annexure-A/6) in which her pay has been reduced from Rs. 7600/- to Rs. 7425/-, she has filed this Original Application u/s 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

“Let the Original Application be admitted, notices may be issued to the respondents, calling upon them to show cause why direction shall not be issued to the respondents to set-aside the order dated 28th March, 2005 vide Annexure-6 and be not directed to continue with the current basic pay, at present the applicant has been received with her usual increment. In the event if the respondents fail to show cause or show insufficient cause said rules be granted to her”.

2. Respondents by filing counter have explained that the applicant was appointed Primary School Teacher in the D.M.School attached to the Regional Institute of Education, Bhubaneswar with effect from 08.10.1979 in the scale of pay of Rs.330-560/-. The said scale of pay was wrongly exhibited as Rs.330-10-350-EB-380-15-500-EB-15-560/- in the service book in place of the scale of pay of Rs.330-10-350-EB-10-380-

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15-500-EB-15-560/- as mentioned in the model II of Central Pay Commission Report. Applicant was paid her annual increment @ Rs.10/- raising her pay from Rs. 340/- to Rs. 350/- on 01-10-1981. While granting her annual increment after crossing EB, she was granted higher rate of increment @ Rs.30/- raising her pay from Rs.350/- to Rs.380/0- on 01-10-1982 in accordance with the pay scale wrongly indicated in her service book. Thereafter, she was granted annual increment @ Rs.15/- and she continued to draw subsequent incremental pay accordingly. In the years 2004, while scrutinizing the pension claim of similarly placed employees, the Accounts Officer, NCERT detected the mistake in granting higher rate of increment of Rs.30/- in place of Rs. 10/- in the scale of Rs.330-10-350-EB-380-15-500-EB-15-560/- and accordingly, directed the Respondent No.2 to re-fix the pay in similar cases. Accordingly vide order dated 28.03.2005, the pay of applicant was re-fixed as on 1.10.1982 by reducing her pay from Rs. 380/- to Rs.360/- which was wrongly allowed to her. It has been submitted that since the higher pay was allowed to the applicant due to wrong fixaton of her pay scale, this was rectified by order dated 28.3.2005 and as such, there is no illegality in the action of the respondents which needs any interference by this Tribunal. ✓

3. Applicant has filed rejoinder stating therein that NCERT is an autonomous body under the Ministry of Human Resources Development Department of the Government of India like Kendriya Vidyalaya Sangathan and in all those schools, all over India, the Primary School Teachers have been receiving salary in the same scale as that of Applicant and, therefore, it cannot be said that the applicant has been receiving salary at the present scale erroneously. She has also admitted of receiving annual increment of Rs.30/- after crossing the EB. It has been pointed out that at no point of time, none has detected this mistake though her service book has been verified every year and, therefore, after a lapse of 26 years, the Respondents are estopped to correct the mistake.

4. Heard Learned Counsel for the Applicant and Mr. P.R.J.Dash, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record. Though it has not been stated in the pleadings, but during hering, over and above the stands taken in the pleadings, the Learned Counsel for the Applicant has argued that since no opportunity was given to the Applicant before reducing the pay of the applicant, the order under Annexure-6 needs to be quashed. On the other hand, Learned Additional Standing Counsel for the Respondents has argued that since this was a genuine mistake committed while granting the annual

increment after crossing the EB, it was not necessary to allow the applicant any opportunity to have her say.

5. It is not in dispute that the applicant was in the scale of pay of Rs. Rs.330-10-350-EB-380-15-500-EB-15-560/-. Therefore, after crossing EB she was entitled to get her annual increment of Rs.15/-. But in place of Rs.15/- she was allowed Rs.30/- which was also admitted by the applicant in her rejoinder filed in this case. Since it is a correction of the mathematical wrong committed in course of official work, no opportunity was necessary to be given by the Respondents. Besides, no Government servant can claim any right on any benefit, if unduly accrued on him/her. By now it is well settled that benefits given erroneously can be withdrawn at any point of time and, therefore, the gap of 26 years is of no help to the Applicant to plead for estoppel.

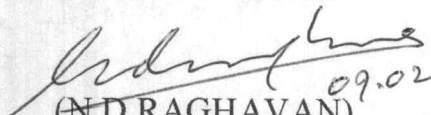
6. In view of the above, we find no discrepancies or illegality in the order under Annexure-A/6 withdrawing the benefits erroneously given to the Applicant; as the Respondents have a right to rectify this mistake at any point of time. This observation gains support from the decision of the Division Bench of the Hon'ble High Court of Kerala reported in 2005 (2)

KLT 63 – **United India Insurance Co. Ltd. v. Roy.** Relevant portion of the aforesaid decision is quoted herein below;

“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.”

7. This view has also been reiterated in the case of **Santhakumari P.J. v. State of Kerala and others** 2006 (1) ATJ 321 and by this Bench in OA No. 662 of 2005 (Kumar Behera v. Union of India & Ors).

8. In the result, this OA stands dismissed by leaving the parties to bear their own costs.


(N.D. RAGHAVAN)
Vice-Chairman
09.02.07.


(B.B. MISHRA)
Member(A)