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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOs.447 OF 2006

Cuttack this the 11th day of September, 2008

Golakh Behari Singh

...Applicant

-VERSUS-

Principal Regional College of Education and others.... Respondents

For Instructions

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Golakh Behari Singh, aged about 61 years, S/o. late Rathunath Singh, Ex-Semi Professional Asst. Plot No.91A, Kalpana Area, B.J.B.Nagar, Bhubaneswar-751014

...Applicant

By the Advocates Mr.D.K.Mohanty

-VERSUS-

1. Principal Regional College of Education, Bhubaneswar-751022
2. Director, NCERT, Sri Aurobindo Marg, ME Campus, New Delhi-110 016
3. Administrative Officer, Regional College of Education, Bhubaneswar-751022

...Respondents

By the Advocates:Mr.P.R.J.Dash

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

1. The applicant challenges the order dated 2.11.2004 by which his pay has been reduced. The applicant also has prayed that his retiral benefits including the pension shall be directed to be paid without any deduction.

2. The facts which led to filing of this O.A. are as follows:

The applicant was originally appointed as Junior Librarian in the service of the 2nd Respondent at the Regional College of Education, Bhubaneswar, in the pay scale of Rs.118-4-170-EB-5-200-EB-5-225/-.



The post of Junior Librarian was re-designated as Semi Professional Assistant in the year 1987. The above pay scale of the applicant was revised to Rs.165-10-215-15-275-EB-15-350/-. However, on the basis of the 3rd Pay Commission's recommendations, the pay scale of the applicant was further revised to Rs.330-10-350-EB-10-380-15-500-EB-15-560/-. But this scale of pay was wrongly reflected as Rs.330-10-350-EB-380-15-500-EB-560/- in the Service Book of the applicant whereas the correct scale of pay was Rs.330-10-350-EB-10-380-15-500-EB-15-560/-. The applicant was paid his annual increment @ Rs.10/- raising his pay from Rs.340/- to Rs.350/- on 31.12.1972. While granting his annual increment after EB stage, he was granted higher rate of increment @ Rs.30/- raising his pay from Rs.350/- to Rs.380/- on 31.12.1973 in accordance with the scale of pay wrongly indicated in the service book and the applicant was thereafter granted annual increment @ Rs.15/- and he continued to draw subsequent incremental pay accordingly. It is in the year 2004, in course of scrutiny, 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 pay of Rs.330-10-350-EB-10-380-15-500-EB-15-560/- and accordingly directed to re-fix the pay. This being the backdrop of the case, Annexure-A/4 came to be issued reducing the pay of the applicant from Rs.380/- to Rs.360/- which was wrongly fixed vide Annexure-A/3 dated 20.4.1983 and thereby regulating the subsequent increments from time to time and in effect the pay of the applicant was

reduced to Rs.7000/- from Rs.7250/- with effect from 1.12.2004 and accordingly, the pay of the applicant was fixed at Rs.7125/- on 1.12.2004 consequent on accrual of first stagnation increment. Against the deduction made the applicant filed an appeal dated 17.11.2004. However, the said appeal was also rejected. Further the applicant took up the matter with the Secretary, the 3rd Respondent with two representations dated 13.1.2006 and 27.2.2006 and those representations are not so far answered. Hence the applicant has filed the present application.

3. This Tribunal heard the learned counsel appearing on either side and also perused the entire records produced in this case.

4. The counsel for the applicant contended that the deduction made from the pay of the applicant and the consequential re-fixation of pay are erroneous and not in accordance with the principles laid down by the Apex Court. Further, the counsel submitted that Annexure-4 order as modified amounts to victimization to the applicant. The counsel for the applicant also relied on a Full Bench judgment of the C.A.T. Madras Bench in O.A.Nos.383 and 384 of 2006 in which the same question was considered by the Madras Bench of the Tribunal.

5. The learned counsel appearing for the Respondents, relying on the counter filed for and on behalf of the Respondents, had answered to the questions raised by the counsel for the applicant. The learned counsel for the Respondents submitted that the pay of the applicant has been re-fixed on 2.11.2004 by reducing his pay from Rs.380 to 260 in order set right



the wrong committed by the authorities as the applicant was not entitled for increments from 1973 onwards in the higher rate. However, the applicant had been given the higher rate of increments of Rs.30/- wrongly and thereby his pay was raised to Rs.380/-. Actually the applicant was entitled for increment of Rs.10/- only. In the above circumstances, according to the counsel for the Respondents, the applicant's pay has been re-fixed at Rs.7125/- from 1.12.2004 as a result of the accrual of the stagnation increment. The learned counsel for the Respondents further submitted that the 3rd Pay Commission recommended the pay scale at Rs.330-10-350-EB-10-380-15-EB-500-15-560/- as a replacement or revision of scale of Rs.165-350/-. Even according to 4th Pay Commission report also the applicant was not entitled for higher increment of Rs.30/-. Hence, according to counsel for the Respondents, the action taken by the Respondents to re-fix the pay of the pay was done only on the infirmity being detected by the audit department and hence Annexure-A/4 order is sustainable in law.

6. In view of the above contentions of the counsel on either side and on the basis of the judgment of the Apex Court relied by the counsel for the applicant, viz., in *Sahib Ram vs State of Haryana and ors.* (1995 Supp. (1) SCC 18) and the order of the Full Bench of C.A.T. Madras Bench in O.A.Nos.383 and 384 of 2006 the question to be decided is whether the applicant is entitled for the relief claimed or not.



7. Before considering the rival contentions raised by the counsel on either side, it is to be noted that the authorities are empowered to re-fix the pay or scale of an employee. If it is wrongly fixed, no recovery can be made from the employees who are not at fault for the wrong fixation of pay. The Apex Court also in a catena of judgments reported in 1995 Supp. (1) SCC 18 (Sahib Ram vs. State of Haryana), (1994 (2)) SCC 521 (Shyambabu Verma vs. Union of India), 1996 (4) SCC 416 (Union of India vs. m. Bhaskar) categorically held that "even if such payment was made by the employer by applying a wrong principle of calculating the pay and allowances or on the basis of particular interpretation of the rule or order which is subsequently found erroneous, unless and until it is proved that it is due to any misrepresentation or fraud on the part of the employee, it is not legal to order recovery of the amount back which is paid in excess".

8. With the above background, we are of the view that even if the Respondents have re-fixed the pay of the applicant to set right the wrong fixation made by it, it is not proper to order recovery of such excess payment from the applicant. Apart from the judgments of the Apex Court, the same question was considered by the Full Bench of the CAT Madras Bench in O.A.Nos.383 and 384 of 2006. Hence, we are of the view that the Respondents may be correct in re-fixing the pay scale of the applicant in order to rectify the mistake committed by them, but the recovery of the amount already drawn by the applicant is not justifiable.

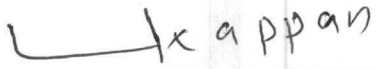


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9. Accordingly, the impugned Annexure-A/4 order is quashed to the extent of the recovery of the amount which the applicant has received on the basis of wrong fixation of pay. With regard to the prayer for the retiral benefits, it is made clear that the applicant is entitled for all his retiral benefits in the light of the view expressed in this order and the retiral benefits shall be paid to the applicant, as early as possible, at any rate, within 60 days from the date of receipt of this order. Ordered accordingly.

10. In the result, the O.A.is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER