

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 669 of 2002
Cuttack, this the 08th day of February, 2008

C O R A M:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

1. Gangadhar Das, aged about 47 years, SON OF Shri B.N.Das, Office of DEN (Con.)T&A, S.E.Railway, Quarter No. 67/F, Chandrasekharpur, Bhubaneswar, Dist. Khurda.(OA 669/2002)
2. B.Linga Raju, aged about 50 years, Son of B.Jangam, Office of Senior Section Engineer (Works) (Con.), S.E.Railway, Cutack. (OA696/2002)
3. Kailash Chandra Barik aged about 52 years, Son of late Binod Barik, Office of the Deputy CE (HQ) (Con.), S.E.Railway, Chadrasekharpur, Bhubaneswar. (OA 697/2002)
4. S.K.Mohanty, aged about 51 years, S/O.P.Mohanty, O/O. the Deputy CE (Con.) S.E.Railway, Cuttack.(OA 698/2002)
5. C.Rama Murty aged about 45 years, S/o. C.C.K.raAO, Office of the Dy. CE (Con.), D-IV, S.E.Railway, Chandrasekharpur, Bhubaneswar. (OA 699/2002)
6. Maheswar Moharana aged about 49 years, Son of Kalpataru Moharana, Office of JE Gr. I (P.Way) S.E.Railway Gorakhnath, Dist. Jagatsinghpur. (OA700/02)
7. K.C.Mallick aged about 50 , S/o.Muralidhar Mallick, O/O.CRD Section of CAO (Con), S.E.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda. (OA 701/02)
8. Manikram Munda, Aged about 44 years, Son of Sabaran, Office of Dy. C.E.(Con.) D-IV, S.E.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda. (OA702/2002).

All are presently working as Senior Clerk under the control of Dy. CPO (Con.) HQ, S.E.Railway, Chandraekharapur, Bhubaneswar.

..... Applicants,

By legal practitioner: M/s. A.Das, D.K.Mohanty, Advocates

-Versus-

1. Union of India represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Chief Administrative Officer (Con.) S.E.Railway, Chandraekharapur, Bhubaneswar, Dist. Khurda.
3. Deputy Chief Personnel Officer (Con.), S.E.Railway, Chandrasekharapur, Bhubaneswar, Dist. Khurda.

... Respondents,

By legal practitioner: Mr.Ashok Mohanty, Senior Counsel & Mr. D.N.Mishra, Counsel.

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ORDER

DR.K.B.S.RAJAN, MEMBER(J):

Applicants in this OA were selected and empanelled for promotion/regularization of services as junior clerk under 60% PCR posts vide Orders at Annexure 1 and 2. Accordingly they were also regularized w.e.f. 01-02-1992 and promoted to the post of senior clerk from various dates as contained in Annexure 3. In respect of Vizag Division, and other Divisions, regularization as such took place from the dates vacancies were available unlike here, where the

regularization has been from a date much after the arising of vacancies.

To make matters worse, respondents have modified the date of promotion and decided to recover the promotional benefits already paid to the applicants, vide letter dated 24-07-2002 which is under challenge herein, vide Annexure A-4. Such recovery is without any due show cause. According to the applicants, Annexure A-3 and A-5 support the case of the applicants.

2. Respondent contest the OA. According to them, the applicants have never held any clerical posts even on ad hoc measure till office orders were issued in June, 1998 and they were working as skilled artisans. According to them some of the applicants are holding in the same pay scale as of Junior Clerk, while some others in higher pay scales of Rs 4000 - 6000 and even Rs 4,500 - 7000/- and as such, allowing them in the selection for the post of Junior Clerk was done against the extant procedure. Hence, grant of ad hoc promotion as senior clerk since 01-02-1994 is highly irregular and illegal. This has led to representation from the affected group who are seniors to the applicants. As such, on location of mistake, the applicants have been granted promotion from the date of Panel, i.e. 23-01-1998.

3. Counsel for the applicants argued that the applicants have all been working as senior clerk on ad hoc basis and all of a sudden,

without any show cause they have not only been reverted but also, recoveries were decided to be effected for the extra amount paid to them from 01-02-92 to 10-06-98. This is illegal and violative of principles of natural justice. Further, since the reversion leads to civil consequence, the same too should have been with due notice. In any event, recovery cannot be made in view of the settled position of law.

Counsel for the respondents reiterated the contents of the counter.

4. Arguments were heard and documents perused. By Annexure 1 order, the individuals who were called for sitting in the written examination for the post of junior clerk (PCR) comprised of various cadres SKIII, SKII, R/sorter, Storeman, Painter, Offg. Clerk, Duftory, HSM 1 etc., Annexure 2 clearly states that the names of the selected candidates are placed as per the integrated seniority order/merit. Obviously, this means these were the eligible group. By Annexure A-3, the promotion as Junior Clerks was advanced to w.e.f. 01-02-1992 and promotion as ad hoc Sr. Clerk was made in respect of various persons vide Annexure 3. This order had been passed after ascertaining the availability of vacancies.

5. The impugned order dated 24-07-2002, issued after four years of the earlier orders of promotion as Junior Clerk/Senior Clerk gives out the reason for modification of the date of selection as Jr. Clerk and senior Clerk as some juniors have superceded in promotion unduly and after review by the competent authority to give the promotional benefits from the date of empanelment as Jr. Clerk and as Sr. Clerk on ad hoc basis from the date of completion of two years as Jr. Clerk following the extant instructions on the subject, thereby cancelling the retrospective promotional benefit which had been granted irregularly. Even in the counter there has been no reflection as to who had made complaint and at which level the matter had been investigated. Further, the reason given in the counter, vide para 7 that the applicants were drawing equal or higher pay scale and as such allowing them in the selection was done against the extant procedure, seems to us as after thought. If the applicants are drawing more pay or are in higher pay scale, then they themselves would not have participated in the selection. As such, none of the grounds on which the respondents had proceeded to modify the date of promotion of the applicant holds good. The allegation against the respondents that the reason for such harassment that the applicants started claiming date of selection from the date of availability of vacancy as in the case of

Vishakhapatnam or other division cannot be ruled out. Above all there has been no pre notice to the applicant before making any modification in the date of promotion. It is settled law that no action entailing civil consequence can be taken without following the principles of natural justice. In any event, it is settled law that when the higher pay granted to the applicants 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 petitioners 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 appellant 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 4* 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. In view of the above, there is no question of recovery of any amount.

7. Considering the facts and circumstances of the case, the OA succeeds. The impugned Annexure A-4 order is

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quashed and set aside. Respondents are directed to maintain
order at Annexure A-3 in tact. No cost.

Sd/-

MEMBER (A)

Sd/-

MEMBER (J)