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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 723 of 2002  
Cuttack, this the 11<sup>th</sup> day of July, 2008

Parsuram Raut ... Applicants  
Versus  
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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

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Original Application No. 723 of 2002  
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C O R A M:

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

Parsuram Raut aged about 53 years, Son of Late Udayanath Raut, At-Kosalia, Po-Haridaspur, Dist. Jaipur, presently working as Senior Clerk under the control of Deputy CE (Con.) Hq.,S.E.Railway, Chandrasekharpur, Bhubaneswar.

..... Applicant

By legal practitioner: Mr. N.R.Routray, Counsel

-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, Chandraekharpur, Bhubaneswar, Dist. Khurda.
3. Deputy Chief Personnel Officer (Con.), S.E.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

...Respondents.

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

## ORDER

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

Applicant a senior Clerk of the East Coast Railway, calls in question the order under Annexure-2 dated 24.7.2002 by which the Respondents have not only modified his order of promotion but also directed recovery of the promotional benefits already paid to the Applicant. Respondents have filed their counter objecting the stand taken by the Applicant in support of his prayer made in this OA.

2. Heard Learned Counsel for both sides and perused the materials placed on record. At the out set, Learned Counsel for the Applicant submitted that it was not necessary to go into details of the matters as the orders impugned in this Original Application has already been quashed by the Division Bench of this Tribunal in its order dated 8th February, 2008 passed in OA No. 669 of 2002 (Gangadhar Das and Others v Union of India and Others) and this Original Application can be disposed of in the light of the decision taken therein. On perusal of the aforesaid records, it is seen that similarly placed persons, having faced similar order, had approached this Tribunal in OA No. 669 of 2002; wherein the Respondents have filed their counter by taking the same stand as has been



taken in this OA. The Division Bench of this Tribunal after taking note of various submissions raised by respective parties, in its order dated 8<sup>th</sup> February, 2008 in OA No. 669 of 2002 reached the following conclusion:


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 canceling 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:*

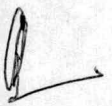
*"9. Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked after 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.***



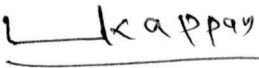


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6. In view of the above, there is no question of recovery of any amount.

7. Considering the facts and circumstances of the case, the OA succeeds. The impugned Annexure A-4 order is quashed and set aside. Respondents are directed to maintain order at Annexure A-3 in tact. No cost."

3. Learned Counsel appearing for the Respondents has not placed any further material so as to enable this Tribunal to take any other view than the view taken by the Division Bench of this Tribunal in the aforesaid OA. Hence, by following the decision of the Division Bench in the case of Gangadhar (supra), the impugned order under Annexure-2 is hereby quashed/set aside and as a consequence, CE/Con/HQ/BBS's Office Order No. CE/Con/HQ/P/PCR/Clerk/99-2000/DI496 dated 08.03.2000 (Annexure-I) is hereby maintained. There shall be no order as to costs.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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