

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.Nos.383&384 of 2007
Cuttack, this the 27th day of April, 2009

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)

OA No.383 of 2007

Narendra Nath Sarangi, aged about 58 years, at present working as UDC, Eastern Regional Language Centre, Laxmisagar, Bhubaneswar-6.

.....Applicant

Advocate for Applicant: Ms.Chitra Padhi, Mr.Monalisa Devi.

-Vs-

1. Union of India represented through Secretary of Government of India, Ministry of Human Resource Development Department of Higher Education, Shastri Bhawan, New Delhi-110 001.
2. Director, Central Institute of Indian Languages, Ministry of Human Resources Development, Department of Higher Education, Government of India, Manasagangotri, Mysore-570 006.
3. Assistant Director (Admn.), Central Institute of Indian Languages, Ministry of Human Resources Development Department of Higher Education, Government of India, Manasagangotri, Mysore-570 006.
4. Principal, Eastern Regional Language Centre, Laxmisagar, Bhubaneswar-751 006.

....Respondents

Advocate for Respondents: Mr.P.R.J.Dash.

OA No.384 of 2007

Manjushree Roy, aged about 55 years, at present working as UDC, Eastern Regional Language Centre, Laxmisagar, Bhubaneswar-6.

.....Applicant

Advocate for Applicant: Ms.Chitra Padhi, Mr.Monalisa Devi.

-Vs-

1. Union of India represented through Secretary of Government of India, Ministry of Human Resource Development Department of Higher Education, Shastri Bhawan, New Delhi-110 001.
2. Director, Central Institute of Indian Languages, Ministry of Human Resources Development, Department of Higher Education, Government of India, Manasagangotri, Mysore-570 006.

1

3. Assistant Director (Admn.), Central Institute of Indian Languages, Ministry of Human Resources Development Department of Higher Education, Government of India, Manasagangotri, Mysore-570 006.
4. Principal, Eastern Regional Language Centre, Laxmisagar, Bhubaneswar-751 006.

....Respondents

Advocate for Respondents: Mr.P.R.J.Dash.

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Narendra Nath Sarangi is the **Applicant** in OA No. 383 of 2007 and **Manjushree Roy** is the **Applicant** in OA No. 384 of 2007. Both ~~of~~ the Applicants are working as Upper Division Clerk in the Office of the Eastern Regional Language Centre, Laxmisagar, Bhubaneswar. In both the Original Applications they have prayed as under:

- (i) Quash the notice dated 28.3.2007 vide Annexure-A/1 for forfeiture of the benefit of the second financial up-gradation granted to the applicant with effect from 09.08.1999;
- (ii) Quash the order for recovery of the amounts stated to have been paid in excess from 09.08.1999 to 25.06.2006 (Annexure-A/6);
- (iii) That the sanction of the second financial up-gradation as continuous till date without any break; and
- (iv) Pass any other order as deemed fit in the circumstances of the case for the ends of justice."

2. Applicants' stand is that since the impugned orders under Annexures-A/1 & A/6 are in gross violation of the basic principles of natural justice the same are liable to be quashed.

3. The reasons attributed in support of the order impugned in this Original Application by the Respondents are that both the applicants were continuing in the post of Language Typist since 1973. Admittedly as on 1999 they were entitled two financial up-gradations

1

under ACP scheme to the next higher grade in accordance with the existing hierarchy in the cadre. As against the above while conferring the benefits vide order dated 22.02.2000 instead of placing the applicant in the scale meant for Junior Accountant i.e. Rs.5000-150-8000/- inadvertently, the applicant was given the scale of pay meant for Office Superintendent i.e. Rs.5500-175-9000/- which was the next promotional channel above the cadre of Junior Accountant. The Audit Party in their report dated 16.7.2001 pointed out that Applicants along with many other similarly placed employees were granted the pay scale of Rs.5500-175-9000/- straightaway by way of second financial up-gradation although there was a lower post of Junior Accountant carrying the pay scale of Rs.5000-150-8000/- above the cadre of Upper Division Clerks and below the cadre of Office Superintendent filled by way of promotion from the cadre of UDC as per the Notified Recruitment Rules in force in the department and accordingly suggested for review and recovery of the excess amount wrongly paid to all such employees. By relying the decisions of the Hon'ble Apex Court in the case of **Punjab National Bank v Manjeet Singh**, [2007] 1 SCC (L&S) 16 and in the case of **Ashok Kumar Sonkar v Union of India and others**, [2007] 2 SCC (L&S) 19 it has been contended that *principles of natural justice are limited to a situation where the factual position or legal implication arising there under is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, action taken cannot be annulled only because there was a violation of the principles of natural justice and that court of law does not insist on such useless formality*

where the result would remain the same. Further in relying on the decision of the Hon'ble Apex Court in the case of **V.Gangaram v Regional Joint Director and Others** [1997] 6 SCC 139 it has been averred by the Respondents that *there is no wrong in ordering recovery of the excess payment on installments from the pension of a retired employee* and that by relying on the decision of the Bombay Bench of the Tribunal in the case of **Santhakumari P.J. v State of Kerala and others**, 2006 (I) ATJ 321 it has been stated that *whenever an employee received any amount contrary to rules the mistake is mutual* the order under Annexures-A/1 & A/6 need to be maintained and this Original Application is liable to be dismissed.

4. However, by filing Miscellaneous Application No.69 of 2009, the Respondents have drawn the attention of this Tribunal that on similar issues OA No. 324/2007 was filed by another employee working under Respondents before the Bangalore Bench of the Tribunal. Meanwhile, on 20.2.2008, the Bangalore Bench of the Tribunal disposed of the matter directing the Respondents to dispose of the representation of the applicant in OA No. 324/2007. In compliance of the order of the Bangalore Bench, the Respondents considered and disposed of the matter vide letter under Annexure-R/2 dated 24.07.2008 granting the relief to the Applicant in OA No.324/2007. It has further been stated that as the issues raised before the Bangalore Bench as also in these OAs are similar in nature, these OAs may be disposed of accordingly.

5. Heard Learned Counsel for both sides and perused the materials placed on record.

6. In view of the contentions raised by the Respondents in the aforesaid MA, the orders under Annexures-A/1 & A/6 are hereby quashed. The Respondents are directed to extend the benefits what has been extended to the Applicant in OA No. 324 of 2007 in Annexure-R/2 within a period of thirty days from the date of receipt of copy of this order.

7. In the result, these OAs stand disposed of by leaving the parties to bear their own costs.

This common order will govern both the cases.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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