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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

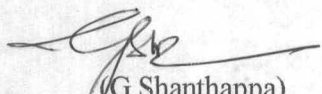
O.A.No.499 of 2007


Cuttack, this the 11th August, 2010

Omkar Singh ..... Applicant  
-Versus-  
Union of India & Others ..... Respondents  
.....

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?

  
(G. Shanthappa)  
Member (Judicial)

  
(C.R. Mohapatra)  
Member(Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No.499 of 2007  
Cuttack, this the 11<sup>th</sup> August, 2010

C O R A M  
**THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)**  
**A N D**  
**THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)**

.....  
Sri Omkar Singh, S/o.Late Mann Singh, Asst. Director, Central Poultry Development Organization (Eastern Region), At/Po-Bhubaneswar, Dist. Khurda.

.....Applicant  
Legal practitioner: M/s.Ms.C.Padhi, Ms.Monalisa Devi, Counsel  
-Versus-

1. Union of India represented through the Secretary, Government of India, Ministry of Agriculture, Department of Animal Husbandry, Diary and Fisheries, Krishi Bhawan, New Delhi-110 001.
2. Deputy Secretary, Government of India, Ministry of Agriculture, Department of Animal Husbandry, Diary and Fisheries, Krishi Bhawan, New Delhi-110 001.
3. Director, Central Poultry Development Organization (Eastern Region), At/Po-Bhubaneswar, Dist. Khurda.

.....Respondents  
By legal practitioner: Mr.U.B.Mohapatra, SSC

O R D E R  
MR. C.R.MOHAPATRA, MEMBER (A)

Applicant who is now continuing as Assistant Director, Central Poultry Development Organization (Eastern Region), Bhubaneswar by filing this Original Application U/s.19 of the .A.T.Act, 1985 seeks the following reliefs:

- “(i) Quashing para-II of OM dated 25.04.2007 (Annexure-A/12 on the grounds discussed in para 5.1 and 5.2 of this Original Application;
  - (ii) Directing restoration of the benefit which fixing the pay of the applicant in terms of order dated 2.11.1994 (Annexure-A/5) and granting all consequential benefits thereafter;
  - (iii) Directing the grant of benefit of second ACP in the scale of Rs. 10,000/- 15,000/- in terms of para 3 of order dated 25.4.2001 (Anexure-A/2);
  - (iv) Any other order(s) as this Tribunal may deem fit and proper.”
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Annexure-A/12 dated 25<sup>th</sup> April, 2007 is an Office Memorandum issued by the Deputy Secretary of the Government of India, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries, Krishi Bhawan, New Delhi. Paragraph 2 of the said Memorandum reads as under:

"2. The representation of Shri Onkar Singh was carefully considered with reference to the rules and regulations on the subject. When an official is promoted to a higher post carrying duties and responsibilities of greater importance his pay is fixed under the provisions of FR -22 (I)(a)(1). If the official had officiated in the higher post on adhoc or regular basis no a previous occasion, the benefit of past officiation is limited to counting the period during which he drew pay at the same stage in the time scale for the purpose of deciding the ate of next increment. There is no provision under the rules to grant any additional increment to an official for past officiation in the same post. The CPBF, Chandigarh had erroneously granted five additional increments to Shri Onkar Singh on his reappointment as Manager w.e.f. 23.9.1993. Based on an audit objection the additional increments granted to him were withdrawn on 30.3.1998. For the reasons stated above it is not possible to restore the additional increments to him.

2. The grounds of quashing the aforesaid order as adduced by the Applicant in this OA as also in course of submission are that the audit objection was also totally invalid because it was contrary to the provision of proviso to FR 22 (i) which provides that in the matter of fixation of pay on reappointment of an official to the same post held earlier, the pay fixed should not be less than the pay he drew on the ~~that~~<sup>last</sup> occasion and he shall count the period he drew that pay on regular basis on such last and previous occasions for increment in the stage of time scale equal to that pay and that the audit objection is advisory in nature and not statutory in character. Hence, based on such audit objection the applicant ought not to have been denied or the benefit granted would not have been withdrawn from him.

3. Respondents strongly refuted the contentions of the Applicant made in his OA in support of the aforesaid prayers and have prayed that this

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OA being devoid of any merit is liable to be dismissed. In support of the stand it has been contended by the Respondents that the applicant was appointed as Assistant Manager, Chandigarh Administration (Poultry Project, Chandigarh) w.e.f. 23.3.1974 which has come into control of Central Govt. Ministry of Agriculture, Department of A.H. Dairying and Fisheries, Krishi Bhavan, New Delhi w.e.f. 1.4.1978 and prior to 1.4.1978 the applicant had been given promotion on ad-hoc basis to the post of Manager w.e.f. 29.3.1978 by the Chandigarh Administration. The <sup>P</sup>USC was requested to regularize the applicant in the post of Manager but due to lack of qualification it could not be considered and the applicant had not been regularized and thereafter the said post of Manager had been filled up on regular basis by other person. Subsequently, the applicant had been reverted back to his original post of Assistant Manager w.e.f. 11.4.1983. Recruitment Rules for the post of Manager had been modified in the year 1983. Meanwhile applicant got some special training and considering such training Department promoted him to the post of Manager w.e.f. 23.9.93 which was after more than ten years from the first promotion on adhoc basis. The benefit of second financial up-gradation under ACP to the scale of pay Rs.10,000-15200/- in the cadre pay scale of Deputy Director, has already been granted to the applicant. Since on his regular promotion while fixing the pay of the applicant he was erroneously granted five additional increments taking into consideration his earlier ad hoc promotion ten years before and the same having been pointed out by the audit was rectified and the excess payment made to him due to such wrong fixation of pay was recovered from the applicant.

4. Rejoinder has been filed by the Applicant more or less reiterating the stand taken in the OA. As an additional point, in support of his stand that on the basis of the audit report the benefit granted to him should not

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have been withdrawn he has relied on the Full Bench decision of the Ernakulam Bench rendered in the case of M.S.Sadanandan v Executive Engineer, Central Division and another (OA No. 737 of 1996) and has prayed that in view of the aforesaid decision the withdrawal of the benefit being bad in law, the applicant is entitled to the reliefs claimed in this OA.

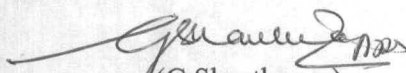
5. Learned Counsel appearing for both sides have reiterated their stand taken in their respective pleadings. We have carefully considered the rival submission of the parties and perused the materials placed on record including the relevant provision of the Rules.


6. From the above we find no clue as to how the applicant is entitled to five additional increments on his regular promotion to Manager after ten years of reversion to the original post of Assistant Manager. The adhoc period of service was not followed/continued by regular promotion. Applicant has not produced any authority (Rule/Law) specifically providing grant of five additional increments in such a situation. The decision of the Ernakulam Bench relied on by the Applicant has no relevance to the present case as in the present case, after the audit objection, the Respondents considered the matter with reference to Rules and since the grant of five additional increments was found to be erroneous the same was withdrawn from the Applicant. Rather law is well settled that to err is human; to correct an error is also human. In 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 is cast not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also part of the

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administration like the person who has committed the mistake. It is the cardinal principle supported by the decision of the Hon'ble Apex Court that no person can claim any right to retain benefits granted illegally - **M.I.Bulders Pvt. Ltd v Radhey Shyam Sahu**, AIR 1999 SC 2468 and **Delhi Development Authority v Skipper Construction Private Limited and Another**, 1995 (8) SLR 221 (SC). For the aforesaid reason, we find no reason to interfere in the order under Annexure-A/9. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

  
(G. Shanthappa)  
Member (Judl.)

  
(C.R. Mohapatra)  
Member (Admn.)