

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 74 of 2007
Cuttack, this the ~~22nd~~ day of August, 2008

Udaya Nath Mohapatra Applicant
Versus
Union of India & Ors. 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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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)

Udaya Nath Mohapatra, aged about 62 years, S/o. Late Narayan Mohapatra, Ex-Chief Supervisor, SBCO, Kendrapara Head Post Office, Kendrapara at present residing at first Line Medical Bank Colony, At/Post. Berhampur, Dist. Ganjam.

.....Applicant.

Legal practitioner: Mr. Bhupati Bhusan Patnaik, Counsel
- Versus -

1. Union of India, represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Assistant Director (Staff) Office of the CPMG, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices Cuttack North Division, Cuttack.
4. Director of Accounts (Postal), At-Mahanadibihar, Ps. Chauliaganj, Dist. Cuttack-4.
5. Senior Accounts Officer (Pension), Office of the Director of Accounts (Postal), Mahanadi Bihar, Cuttack.

....Respondents

Legal Practitioner : Mr. G.Singh, ASC.

O R D E R

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

Applicant was an employee of the Postal Department working as Chief Supervisor, SBCO, Kendrapara Head Post Office, Kendrapara. He retired from service on reaching the age of superannuation on 30.06.2005. In

this Original Application he challenges the recovery of Rs.18, 765/- from his retirement dues of DCRG amount without following prescribed procedure/Rules or giving him notice before effecting such recovery. He has therefore, in this Original Application, prayed for the following relief:

- “(A) To direct the respondents to regularize the officiating period/ad-hoc promotion period in the cadre of HSG-I and accordingly the pay and pension of the applicant be revised;
- (B) To pass such other order/orders and direction as the Hon’ble Tribunal may deem fit and proper considering the facts and circumstances of this case for the ends of justice;
- (C) Further Hon’ble Tribunal be pleased to direct the Respondents that the amount of Rs. 18,765 so recovered from the DCRG amount be refunded and paid to the applicant as the same is deducted in a illegal manner for no fault of the applicant within a stipulated period.”

2. Stand of the Respondents in the counter is that the applicant who joined as UDC, SBCO, Phulbani HO on 27.08.1968, was promoted to LSG cadre on 26.02.1982 and got financial up gradation under BCR scheme w.e.f. 1.1.1995 in the pay scale of Rs.1600-2660/-. The date of promotion to BCR scheme was subsequently modified to 01.10.1991 at par with his juniors promoted earlier. Thereafter, he was promoted to HSG II cadre notionally with effect from 01.08.2001 vide CO Memo No. ST/25-3/HSG-II/2002-03 dated 05.06.2003 and was ordered to continue as officiating Supervisor

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(SBCO) of Kendrapara HO vide CO Memo No. ST/98-9/2003-04 dated 12.06.03. Thereafter the applicant was promoted to HSG I (SBCO) cadre on notional basis w.e.f. 01.01.2005 vide CO Memo No. ST/25-03/HSGI (SBCO)/2005 dated 26.10.2005. While continuing as Chief Supervisor, SBCO, Kendrapra HO, the applicant on attaining the age of superannuation retired from service on 30.06.2005. The case of Applicant for regularization of the ad-hoc/officiating period of promotion from 28.09.2001 to 31.12.2004 to HSG I was referred to Head Office at New Delhi. But the Director General of Posts, New Delhi refused to accord the approval on the ground that the promotion of the applicant to HSG I was irregular as by that time the applicant did not fulfill the requisite period of service of three years in HSG II. As the promotion of the applicant to HSG I was held to be irregular/ erroneous, the amount drawn by the Applicant in the promotional post of HSG I for the period from 28.09.2001 to 31.12.2004 was recovered from the DCRG amount of the Applicant. Accordingly, it has been stated by the Respondents as there has been no wrong in the decision making process of the matter, this Original Application is liable to be dismissed.

3. In the rejoinder filed by the Applicant, it has been stated that the Applicant was in no way responsible for the promotion to HSG I and fact

remains that he had shouldered the higher responsibility of the post and in lieu thereof, he has been paid the salary of the post. Therefore, for the fault of the Respondents, he should not be made to suffer that too after his retirement by way of recovering the amount from DCRG which is a means of his livelihood during the last days of his life. Further contention of the Applicant is that he was the senior most HSG II in the circle. But during selection by the DPC his name was omitted in the panel list and that Shri B.B.Patel and A.K.Samal were promoted to HSG I during the year 2001 even though both of them did not complete the qualifying service in HSG II cadre whereas the applicant who was immediate junior to Shri Patel and Shri Samal was posted in HSG I on officiating/adhoc basis. As such, according to the Applicant, at one hand denial him the promotion to HSG I on regular basis and on the other hand recovering the amount drawn by him in the promotional post, that too without putting him on any notice was highly illegal and arbitrary.

4. In support of their stand, parties have placed reliance on their pleadings. Having heard them, we have also perused the materials placed on record.

5. Learned Counsel for the Applicant has placed no materials showing any provision contrary to the provision that the residency period of three years in HSG II is the essential requirement for being promoted to the post of HSG I. No material has also been placed showing that the Applicant had completed three years residency period in HSG II before he was promoted to the post of HSG I. In fact applicant was promoted to HSG II vide order No. ST/25-3/HSG-II/2002-03 dated 05.06.2003 w.e.f. 01.08.2001 and, therefore, his promotion to HSG I on ad-hoc/officiating basis from 28.09.2001 is certainly beyond the rules. However, the Applicant was promoted to the post of HSG (SBCO) cadre on notional basis w.e.f. 01.01.2005 vide CO Memo No. ST/25-03/HSGI (SBCO)/2005 dated 26.10.2005 and while working as such, he superannuated w.e.f. 30.06.2005. In view of the above, non-regularization of the adhoc/officiating period of the applicant cannot be faulted with. Accordingly, the first prayer of the Applicant is rejected.

6. So far as the second and third prayer of the applicant are concerned, it may be recorded that admittedly, the applicant was promoted to HSG I by the order of the higher authority and he had shouldered the higher responsibility in the higher post and got the scale meant for the post from 28.09.2001 to 31.12.2004. It is an admitted case of the parties that before

effecting recovery no notice was put to the Applicant. It is settled law that no action entailing civil consequence can be taken without following the principles of natural justice. In the case of **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557=2003(3) SLR 64 (SC) in paragraph 13 at page 570 the Hon'ble Apex Court observed as under:

"The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and for most principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. Thus is one of the most important principles of natural justice.

6. Also it is not the case of the Respondents that the Applicant had any contribution for his promotion or drawing the scale meant for the post. A three judges Bench of the Hon'ble Apex Court in the case of **Shyam Babu Verma v Union of India** (1994) 2 SCC 521 held that where benefit of higher pay scale had been given for no fault of the employee the excess amount so

paid cannot be recovered. Following the law on the subject, this Bench of the Tribunal in the case of **Radhakrushna Biswal v Union of India and another**, 2/2004 SwamysnewS 68 (OA No. 261/98 dated 05.08.2003) have held that "when salary was paid in higher scale not on account of any misrepresentation made by the employee the benefit of higher pay cannot be denied to him and the amount already paid should not be recovered. In the case of **Sukhdeo Pandey v Union of India and others**, 2008(1) SLR 72, it was held by the Hon'ble Apex Court as under:

...We therefore hold that if the applicant has not worked he will not be paid salary for the period for which he has not worked. It is well settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words doctrine of no work no pay is based on justice, equity and good conscience and in absence of valid reason to the contrary it should be applied..."

7. Viewed the matter from any angle, recovery of Rs. 18,765/- from the DCRG amount of the Applicant is not at all justified. Hence the impugned order under Annexure-A/6 dated 09.01.2007 so far as it relates to ordering recovery of Rs.18,765 towards the over payment of pay and allowances from the DCRG amount of Applicant is hereby quashed. Respondents are directed to release the aforesaid amount of DCRG to the Applicant along with interest

as per Rules within a period of 30 (thirty) days from the date of receipt of a copy of this order.

8. In the result, this OA is partly allowed. There shall be no order as to costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

KNM/PS.