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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 487 of 2008
Cuttack, this the ~~19th~~ day of January, 2011

Iswar Chandra Dalai(SC) Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(J)


(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 487 of 2008

Cuttack, this the 19th day of January, 2011

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....
Iswar Chandra Dalai (SC), aged about 61 years, on of Late
Pahali Dalai, At/Po.Makhanpur, Via-Turigadia, Dist.
Balasore, retired Postman, Motiganj Sub Post Office in the
Accounts of Balasore Head Post Office.

.....Applicant

By legal practitioner: M/s.Sameer Kumar Das, S.K.Mishra, Counsel.

-Versus-

1. Union of India represented through Secretary, Ministry of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Balasore Division, At/Po/Dist. Balasore.

....Respondents

By legal practitioner: Mr. Subasis Mishra, ASC

O R D E R

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

Being aggrieved by the order under Annexur-A/1
dated 26-02-2007 [ordering reduction of the pay of the applicant
from Rs.5300/- to Rs.5200/- from December, 2006 onwards on
the allegation of wrong fixation of pay on 17.12.1984 fixing the
pay of the applicant as 278/- instead of Rs.272/-] and
consequential order of recovery amounting to Rs.24,367/- from



the DCRG of the Applicant in Annexure-A/3 dated 21-03-2007 as also the order rejecting the appeal of the applicant under Annexure-A/4 date 30.4.2007, this Original Application has been filed by the Applicant under section 19 of the Administrative Tribunals Act, 1985 praying to quash the aforementioned orders under Annexures-A/1, A/3 & A/4 thereby directing the Respondents to restore the pay of the applicant to Rs.5300/- as on December, 2006 as well as to refix the pension of the applicant and to direct the Respondents to refund the recovered amount of Rs.24,367/- with interest @ 12% pr annum to the Applicant forthwith. Applicant retired from service w.e.f. 31.3.2007.

2. In the counter it has been stated by the Respondents that the applicant joined in the cadre of Postman on 05-10-1966. TBOP scheme was introduced with effect from 30.11.1983 and after completion of 16 years of regular service, the applicant was granted the benefit of TBOP w.e.f. 30.11.1983. Accordingly after completion of 26 years of service, he was granted the benefit of BCR w.e.f. 01.10.1991. Taking into consideration the scale of pay which the applicant was receiving as on the date he was granted the benefit of TBOP i.e. w.e.f. 30.11.1983 his pay



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should have been fixed at Rs.266/- in the time scale of pay of Rs.260-6-326-8-350 with DNI on 01.11.1984. But suddenly without any justification his pay was raised from Rs.266/- to Rs.278/- on 17.12.1984 without corresponding entries in the Service Book justifying the excess drawal of increment on 17.12.1984. Accordingly pre-revised pay on 31.12.1985 was taken as Rs.284/- instead of Rs.278/- at the time of revision of scale of pay due to implementation of IVth CPC and revised pay w.e.f. 1.1.1986 was fixed at Rs.1050/- instead of Rs.1030/-. Due to such wrong fixation of pay he was in receipt of the pay at Rs.5300/- as on 1.11.2006. While settling the pension paper of the applicant, this discrepancy was noticed and thus rectified by recovering the excess payment from his DCRG.

3. No rejoinder has been filed. However, in course of hearing it was argued by Learned Counsel for the Applicant that fixation/re-fixation of the pay of the applicant at the fag end of service has adversely affected his pension and by such action he has to suffer throughout his life which is not sustainable especially because the entire action was undertaken by the Respondents without giving him any show cause notice in compliance with the principles of natural justice. Further it was

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argued on behalf of the applicant that conceding for a moment that his pay was wrongly fixed but he being not responsible for such re-fixation recovery from the DCRG amount is bad in law. Hence he prayed for grant of the relief claimed in this OA. On the other hand it was submitted by the Respondents' Counsel that the Government has every right to rectify the mistakes, if any, caused in the matter of fixation of pay at any point of time and consequently the Government has every right to recover the said excess amount paid to an employee to which he/she is not entitled to and no employee can claim any equity only because he has no contribution in the fixation of pay or payment made to him/her. As such, the Respondents' Counsel sincerely prayed for dismissal of this OA.


4. Neither in the pleading nor in course of oral submission Learned Counsel for the Applicant has placed any material or substantiated in any manner that the fixation of his pay was in accordance with Rules. We may profitably note that to err is human; to correct an error is also human....Postal Department is a huge organization where several thousand employees are working and large volume of work is being transacted. In such a situation, human error at times cannot be

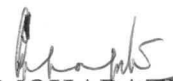
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avoided. Nobody could expect an ideal situation without any error or mistake in the matter of administration. Due to inadvertence or otherwise a mistake has been committed which can always be corrected. Duty too is cast not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also a part of the administration like the person who has committed the mistake. Similarly, the principles of natural justice were also not required to be complied with as the same would have been an empty formality. Their application would be 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, the Tribunal/court will not insist on compliance with the principles of natural justice and a writ would not issue only because there was a violation of the principles of natural justice as held by the Hon'ble Apex Court in the case of **Punjab National Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16. In view of the above we find no injustice in re-fixing the pay by way of correcting the wrong fixation made while fixing his pay and, therefore, we uphold the re-fixation of the pay of the applicant. At the same time, we do not find any

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justification for recovering an amount of Rs.24,367/- towards the excess payment made due to such wrong fixation from the DCRG amount of the applicant as admittedly the applicant had no contribution on such wrong fixation of his pay and it was due to the fault of the authority who fixed the pay of the applicant. Hence by applying the law laid down by the Hon'ble Apex Court in the cases of **Shyam Babu Verma and others v Union of India and others** reported in (1994) 27 ATC 121 & **State of Punjab and Anr v Ashwani Kumar and Others**, (2009) 1 AISLJ 482 (SC) recovery of an amount of Rs.24,367/- from the DCRG of the applicant is held to be bad in law and as such the Respondents are hereby directed to refund the same to the Applicant within a period of thirty days from the date of receipt of this order failing which the applicant shall be entitled to interest at the rate of 8% per annum till the date of actual payment.

5. In the result, with the observation and direction this OA is allowed in part by leaving the parties to bear their own costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


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