

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.740 OF 2010

Cuttack this the 27th day of September, 2012

CORAM:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)
AND
THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL.)

...
Sri Laxmidhar Kabat, aged about 63 years, S/o. late Bansidhar Kabat,
resident of Village/Post-Jamada, Dist-Mayurbhanj.

.....Applicant

By the Advocates: M/s.P.K.Padhi, M.Rout, J.Mishra & K.Sharna

-Versus-

1. Union of India represented through it's Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110 001
2. Director of Postal Services (Hqrs.), O/o. Chief Postmaster General, Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda-751 001
3. Director of Accounts (Postal), At/PO-Mahanadi Vihar, PO-Nayabazar, Dist-Cuttack, Orissa-753 004
4. Superintendent of Post Offices, Mayurbhanj Division, At/PO/-Baripada, Dist-Mayurbhanj, PIN-757 001

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

O R D E R

(oral)

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

The Applicant, while working as HSG-II, was ordered to work as HSG-I Postmaster, Baripada HO w.e.f. 1.10.2003 on ad hoc basis. He continued as such till 24.5.2005 when he was appointed on regular basis in HSG-I cadre. While the matter stood thus, applicant retired from service on 30.11.2007. An amount of Rs.14,556/- having been recovered from his DCRG on the allegation of wrong payment he had moved this Tribunal in O.A.No.449/08 which was disposed of on 19.11.2008. Pursuant to the direction of this Tribunal, applicant preferred a representation dated 15.12.2008(Annexure-A/5) seeking refund of the recovered/withheld amount with interest. The said representation was

disposed of by the Respondent-Department vide order dated 27.9.2010 (Annexure-A/6). According to the Respondents (both in the order dated 27.9.2010 as also counter filed in this case) as per rule in vogue, the officiating promotion of the applicant ought to have been approved by the DOP&T which is the nodal Ministry for the purpose. A proposal was submitted to the DG(Posts) vide letter No.ST/26-16(2)/RMS dated 25.11.2005 in which the name of the applicant appeared at Sl. 4 of the list containing name of 23 postal officials of the Circle Directorate was reminded on 19.04.2006 to obtain approval of the nodal Ministry. But no such approval was received. In the absence of any approval from the nodal Ministry conveyed through DG(Post), New Delhi the official is not entitled to higher pay of HSG-I. Therefore, recovery of Rs.14,536/- from the DCRG of the applicant as per the Audit objection was made.

2. We have heard Shri P.K.Padhi, learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel appearing on behalf of the Respondents and perused the materials on record. Mr.Padhi, Learned Counsel for the Applicant drew our attention to the order dated 22nd August, 2008 in OA No. 74 of 2007 (Udaya Nath Mohapatra –Vrs- Union of India and others) and submitted that issues involved in the instant case were the issues in the above referred case. Hence by applying the aforesaid order of this Tribunal the applicant is entitled to the relief claimed in this OA. Mr. Mohapatra, learned SSC sought some time to go through the above said order and find out how far the said order is applicable to the present case. We have gone through the order

in OA No. 74 of 2007 vis-à-vis the present case. Relevant portion of the order dated 22nd August, 2008 in OA No. 74 of 2007 is extracted herein below:

“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/25-5/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/HSG-I (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 foremost 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

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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:

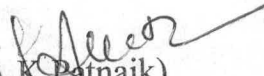
"...We, therefore, hold that if the applicant has not worked he will not be paid salary for the period for which he has not worked. It is well settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words doctrine of no work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

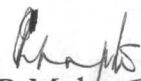
7. Viewed the matter from any angle, recovery of Rs.18,765/- from the DCRG amount of the Applicant is not at all justified. Hence the impugned order under Annexure-A/6 dated 09.01.2007 so far as it relates to ordering recovery of Rs.18,765/- towards the over payment of pay and allowances from the DCRG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

3. We have noted that the pay and allowances already received by the Applicant is because of the duties discharged by him in the higher post and that too by the order of the competent authority. It was not because of any pleading or misrepresentation by the Applicant. In view of this recovery is not found to be justified particularly in view of the order of this Tribunal in the case of

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Udayanath (surpa). Hence Respondents No.2 is directed to reconsider release of the withheld/recovered amount of the Applicant within a period of 60(sixty) days from the date of receipt of copy of this order. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K. Patnaik)
Member(Judicial)


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