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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 603 of 2011

Order reserved on: **15.11.2012.**

Order pronounced on: **12.12.12.**

**CORAM
HON'BLE DR.RAMESH CHANDRA PANDA, MEMBER (A.)
HON'BLE SHRI A.K.PATNAIK, MEMBER (J)**

Shri Prafulla Kumar Acharya,
Aged about 64 years,
Son of Late B.K.Acharya,
Nuapada (Balisahi),
Madhupatna,
Cuttack.

...Applicant

By the Advocates: M/s. P.K.Mishra,S.K.Ojha

-Versus-

Union of India represented through its-

1. Director General of Posts,
Ministry of Communication,
Department of Posts,
Dak Bhawan,
New Delhi,
PIN-110 001.
2. The Chief Postmaster General,
Orissa Circle,
Bhubaneswar,
Dist.Khurda,
PIN-751 001.
3. The Director,
Postal Accounts,
Mahanadi Vihar,
Cuttack-753 004.

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4. The Senior Accounts Officer/Admn.II,
 Department of Posts, India,
 Office of the Director of Accounts (Postal),
 Mahanadi Vihar,
 Cuttack.

.... Respondents

By the Advocates: Mr.U.B.Mohapatra

ORDER

A.K.PATNAIK, MEMBER (JUDL):

The Applicant (Shri Prafulla Kumar Acharya), a retired Senior Accountant-II of the Office of the Director of Accounts (Postal), Mahanadi Vihar, Cuttack has filed this Original Application praying therein as under:

- “(i) To quash the letter under Annexure-A/1 and to direct the Respondents to restore the pay of the Applicant which was illegally reduced;
- (ii) To direct the Respondents to refix the pay and pension of the applicant and pay him the differential arrears and the recovered amount of Rs.16,647/- with 12% interest;
- (iii) To pass any other order/orders as deemed fit and proper”.

2. It is the case of the Applicant that as on 01-11-1984, his basic pay was Rs.500/- in the pay scale of Rs.330-560/-. On 01-07-1985, he was promoted to the post of Sr. Accountant in the pay scale of Rs.425-700/-. In compliance of the order dated 19.01.1995 in Civil Appeal No.1208 of 1992 of the Hon'ble Apex Court, his pay was refixed at Rs.580/- under FR (a) (ii) on 01-07-1985 and at Rs.600/- under FR 22

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(C) on 01-11-1985 as per the option exercised by him as his date of next increment in the lower scale was 01-11-1985. Accordingly his pay was rightly fixed/refixed on 01-01-1986 and 01-01-1996 under FR 22 (C) allowing him one increment and he was drawing Rs.9,300/- in the revised pay from 01-07-2006. His grievance is that just before little less than two months of reaching the age of superannuation and after many years of payment the authority should not have re-fixed the pay of the applicant thereby ordering recovery of an amount of Rs.16,647 in the garb of wrong fixation of pay. Hence this OA with the aforesaid relifs.

3. Respondents' stand in their counter is that the applicant was drawing pay of Rs.500/- as on 01-11-1984 in the grade of JA in the scale of pay of Rs.330-10-380-EB-12-500-EB-15-560/-. He was promoted to the cadre of SA w.e.f. 01-07-1985 in the pay scale of Rs.425-700/-. The pay of the applicant was fixed to Rs.580/- w..f. the date of promotion i.e. on 01.07.1985 with DNI on 01-07-1986 under FR 22 (1) (a)(1) as no option was exercised by the Applicant. Therefore, grant of increment on 01-11-1985 under FR 22 (C) and stepping up of his pay to Rs.600/- was not in accordance with Rules. When the Applicant attained superannuation his service records were reviewed for fixation of pensionary benefits and at that time only this mistake came to the notice. Accordingly, due drawn statement was prepared re-fixing his pay by reducing one increment from 01-11-1985 which worked out to over

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* payment of Rs.46,686/- and the same was intimated to the Applicant on 11.05.2007. On receipt of the letter the applicant submitted one representation dated 28.05.2007 wherein he stated to have exercised option for re-fixation of his pay w.e.f. 01-11-1985 i.e. from the date of increment in JA cadre. Though the said option is not available on official record, his representation was considered and his pay was fixed at Rs.600/- w.e.f. 01-11-1985 with DNI on 01-11-1986 and the overpayment amount was recalculated which worked out to Rs.16, 647/- which was intimated to the applicant vide letter dated 20.06.2007 and the overpayment made to the Applicant was recovered from the salary of the applicant for the months of May and June, 2007. Accordingly, Respondents contested the claim of the Applicant and prayed that no illegality having been committed this OA being devoid of any merit is liable to be dismissed. By filing rejoinder, the Applicant, more or less, reiterated the stand taken by him in the OA.

4. We have heard Mr.S.K.Ojha, Learned Counsel appearing for the Applicant and Mr. U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondent-Department and perused the materials placed on record as well as the notes of arguments.

5. It is the contention of the Learned Counsel for the Applicant Mr.S.K.Ojha that there was no wrong in the fixation/refixation of the pay of the applicant. The pay fixed at that relevant point of time was in

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accordance with rules and even if there was any mistake in the said fixation of pay the Applicant cannot be held responsible and hence the order of recovery is not sustainable in the eyes of law. This submission of the Learned Counsel for the applicant was opposed by Mr.U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondent- Department. In this regard by placing reliance on the statement filed along with the counter, it was contended by Mr.Mohapatra, Learned SSC that as per the Rules, the applicant was not entitled to the increment paid to him and since it was wrongly paid to him as per the undertaking furnished by the Applicant in Annexure-R/2, the excess payment was recovered from his pay which needs no interference. Mr.Mohapatra, Learned SSC by reiterating his stand that there was no wrong in recovering the over payment made to an employee placed reliance on the decision of the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal and others Vs State of Uttarakhand and Others**, AIR 2012 SC 2951.

6. After hearing the arguments at length, perused the decision relied on by the parties. On perusal of records vis-à-vis the Rules under which the pay of the applicant was fixed/refixed, we find no justification to nullify the action of the Respondents. The Applicant was drawing the pay of Rs.500/- as on 01-11-1984 in the grade of JA having the scale of pay of Rs.330-10-380-EB-12-500-EB-15-560/-. He was promoted to the

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cadre of SA w.e.f. 01-07-1985 in the pay scale of Rs.425-700/- . The pay of the applicant was fixed at Rs.580/- w.e.f. the date of promotion i.e. on 01.07.1985 with DNI on 01-07-1986 under FR 22 (1) (a)(1) as no option was exercised by the Applicant. Therefore, grant of increment on 01-11-1985 under FR 22 (C) and stepping up of his pay to Rs.600/- was not in accordance with Rules which was correctly rectified by the Respondents immediately after the same was detected.

7. In so far as recovery of the excess amount is concerned, we may observe that the amount drawn by the applicant was without any authority of law; especially when the Applicant had given specific undertaking at Annexure-R/2 that excess payment that may be found to have been made as a result of pay and allowances will be refunded by adjustment against future payment or otherwise. Hence the payment made without any misrepresentation or fraud by the applicant cannot be a ground to declare the recovery as illegal as held by the Hon'ble Apex Court in the case of Chandi Prasad Uniyal (supra). In view of the discussions made above, we find no merit in this OA. This OA is accordingly dismissed. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judl.)


(Dr. Ramesh Chandra Panda)
Member (Admn.)