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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**O.A.No.755 of 2011
Cuttack, this the 27th day of June, 2013**

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)**

Sri Golak Bihari Samal,
Aged about 63 years,
Son of Late Nanda Kishore Samal,
Village-Narasinghpur,
Po.N.Dihara,
Via-Pattamundai,
Dist.Kendrapara,
Orissa -754 215.

....Applicant

(Advocate(s):-M/s.P.K.Padhi,J.Mishra)

-Versus-

Union of India represented through –

1. Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001.
2. Chief Postmaster General,
Orissa Circle,
At/Po.Bhubaneswar,
Dist. Khurda-751 001.

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3. Director of Accounts (Postal),
At-Mahanadi Vihar,
Po.Naya Bazar,
Dist.Cuttack-753 004.

4. Superintendent of Post Offices,
Cuttack North Divison,
P.K.Parija Marg,
Cuttack-753 001.

.....Respondents

(Advocate(s)-Mr.S.Barik)

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(oral)

A.K. PATNAIK, MEMBER (J):

Deduction of an amount of Rs.39, 195/- from the final settlement dues of the Applicant after his retirement and rejection of his representation vide letter dated 19.4.2011 under Annexure-A/4 has been challenged by the Applicant in this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 on the grounds that no notice was put to him prior to such deduction, representation was rejected without any reason and executive instruction having no retrospective application *regarding the* re fixation of pay thereby deduction is not sustainable.

Hence his prayer is to quash the letter of rejection under Annexure-A/4 dated 19.4.2011 and to direct the Respondents to restore the earlier pay, refund the deducted amount of Rs.39,195/- with 18% interest and direct to pay all the retiral benefits to him in the earlier pay of Rs.17740/- with 18% interest. *Ales*

2. Respondents, by filing counter, have contested the case of the Applicant. According to them, there is no wrong in the deduction from the final settlement dues of the applicant as the said deduction was made after arriving at a decision that there was excess payment due to wrong fixation of the pay of the applicant.

In the above context, it has been submitted by them that the applicant entered to the Department in Postman cadre on 7.1.1975. Thereafter, he was promoted to the post of Postal Assistant on 30.10.1979. He was granted financial up gradation after 16 years in PA cadre on 30.10.1995. He was allowed stepping up of pay on 4.2.1998 and granted BCR on 1.6.2006 after 26 years. He retired on attaining the age of superannuation from service on 31.10.2009. The basic pay of the applicant at the time of retirement was Rs.17, 740/-. While preparing his papers for payment of retirement dues it was noticed that the benefit of stepping up of his pay at par with his junior, due to TBOP/BCR promotion granted to the applicant was not in accordance with the DGP&T letter No.1-3/2007-PAP dated 06.10.2009. Accordingly, the pay of the applicant was refixed and the differential amount paid to him due to wrong fixation of pay was deducted from his dues payable to him after his retirement. Hence, it has been averred by the Respondents that this OA being devoid of any merit is liable to be dismissed.

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3. Mr.P.K.Padhi, Learned Counsel for the Applicant and Mr.S.Barik, Learned Additional CGSC appearing for the Respondents have reiterated the stand taken in their respective pleadings and having heard them at length we have perused the records.

4. Adherence to principles of natural justice ^{is} ~~are~~ recognized by all civilized states ^{as} ~~is~~ of supreme importance when an authority embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. 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. In 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. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. But it is the specific case of the ^{at} ~~at~~ Applicant that before arriving such a deduction no notice was put to him. The Respondents have also not placed before us any evidence contrary to the above stand. Hence, we have no hesitation to hold that the action taken by the Respondents is contrary to the well settled principle of natural justice.

5. Similarly we find that the Respondents rejected the representation of the Applicant without assigning any reason although time and again it has been held by various courts that giving reason in the order



especially where the decision is against the interest is essential requirement.

In this context, it would suffice to quote the relevant portion of the observation of the Hon'ble Apex Court in the case of Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & another , AIR 1991 SC 537 which reads as under:

“Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that “be you ever so high, the laws are above you.” This is what a man in power must remember always.”

6. In Krishna Swami v. Union of India & another, AIR 1993 SC 1407, the Hon'ble Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. It has been observed as under:

Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.”

7. Giving reason is mandatory as it is settled principle of law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be

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supplemented by a fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds (Ref: Mohinder Singh Gill Chief Election Commissioner, AIR 1078 SC 851=(1978) 1 SCC 405)

8. In view of the discussions made above, we quash the order of rejection under Annexure-A/4 dated 19th April, 2011 and remit the matter *to L* Respondent No.2 to consider/re-consideration *of* the representation of the *R P* Applicant under Annexure-A/3 dated 21.12.2010 and communicated *the* decision in a well-reasoned order to the Applicant within a period of sixty days from the date of receipt of this order.

9. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(R.C.MISRA)

Member (Admn.)


(A.K.PATNAIK)

Member (Judl.)