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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.403 of 2009
Cuttack, this the 7th day of July, 2010

Madhukar Tajan 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?


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.403 of 2009

Cuttack, this the 7th day of July, 2010

C O R A M:

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

Shri Madhukar Tajan, aged about 57 years, Son of Late Krushna Tajan, permanent resident of Village Raidihi, Via-Sargipali, Dist. Sundargarh at present working as Planning Inspector, Office of Postmaster General, Sambalpur Region, Sambalpur, At/Po./Dist.Sambalpur.

.....Applicant

By Legal Practitioner: M/s.B.S.Tripathy, M.K.Rath, J.Pati, Mrs.M.Bhagat, Counsel

- Versus -

1. Union of India represented through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, At/Po.Bhubaneswar, Dist. Khurda.
3. The Director, Postal Services (Head Quarters and Marketing) Office of the Chief Postmaster General, Orissa Circle, At/Po.Bhubaneswar, Dist. Khurda-751 001.
4. The Postmaster General, Sambalpur Region, At/Po/Dist. Sambalpur-768 001.
5. The Director, Postal Services, Sambalpur Region, At/Po/Dist. Sambalpur.
6. The Director of Accounts (Postal), Cuttack, At/Po/Dist. Cuttack-4.

....Respondents

By Legal Practitioner: Mr.B.K.Mohapatra, ASC.

O R D E R

MR.C.R.MOHAPATRA, MEMBER (A):

It is seen from the record that on 01.03.1974 applicant was posted as Postal Assistant in Sundargarh Postal Division. Thereafter, being successful in the competitive examination he was promoted to the post of UDC and consequently posted as UDC, SBCO, Rourkela HO on 02.07.1980. Meanwhile the scheme of

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TBOP/BCR came into effect and extended to SBCO staff w.e.f. 01.08.1991. The post of LDC and UDC SBCO were amalgamated as Postal Assistant (SBCO). Taking into consideration the criteria for up-gradation to the next higher scale (i.e. 16/26 years of service in the exiting grade), as the applicant had completed 16 years of service, he was granted the benefit of TBOP w.e.f. 01.08.1991 placing him in the time scale of pay of Rs.1400-2300/-. Thereafter, Applicant having come out successful in the Limited Departmental Examination, was promoted to the IPOs cadre and consequently posted to the office of the PMG, Sambalpur w.e.f. 25.01.1994. Applicant was extended the second financial up-gradation under ACP and accordingly his pay was fixed in the pay scale of Rs.6500-10500/- w.e.f. 09.08.1999. The grant of second financial up gradation was found to be irregular by the Internal Audit Party. Thereafter, the matter was examined and after granting due opportunity to the applicant on the basis of the recommendation of the review DPC the second financial up-gradation granted to the applicant was withdrawn. As a consequence of the withdrawal of the second financial up-gradation, recovery of the differential amount from the applicant having been directed under Annexure-A/4, the Applicant has approached this Tribunal in this Original Application filed u/s.19 of the A.T.Act, 1985 seeking to quash the order under Annexure-A/4 dated 21.4.2009 on the ground that he

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being a sincere, honest and efficient Government servant having served the Department for about 34 years without any blemish the withdrawal of the benefits which was granted since long on the recommendation of the duly constituted DPC that too at the fag end of his service career is not justified.

2. Factual aspects recorded above are not in dispute in the counter filed by the Respondents. However, it has been stated by the Respondents that since the applicant was granted the benefit erroneously, to which he was not entitled to under the Rules and the authority has every right to rectify the error or withdraw the benefit erroneously given to an employee at any time, there is no wrong in the order under Annexure-A/4 and accordingly, the Respondents has prayed for dismissal of this OA.

3. I have given my thoughtful consideration to various submissions made, with reference to the pleadings, by Learned Counsel for both sides and perused the materials placed on record.

4. The consistent view of different courts including the Tribunal is that benefit granted erroneously to an employee can be withdrawn at any point of time. The grounds taken by the applicant in support of the relief are no ground to challenge the withdrawal of the second financial up-gradation erroneously granted to the Applicant. It is also seen that such withdrawal of the benefit was with due notice and consideration of the reply submitted by the

applicant. Hence the withdrawal of the second financial up-gradation granted to the applicant erroneously is hereby upheld. However, I find no justification for the recovery of the amount drawn in view of the grant of the second financial up-gradation under ACP and already utilized by the applicant at this belated stage in view of the settled law that when the higher pay granted to the applicant is not on the basis of any misstatement, no recovery could be effected. In this regard, reference is made to the decision of the Apex Court in the case of **Purshottam Lal Das v. State of Bihar**, (2006) 11 SCC 492, wherein it has been held as under:-:

8. In Bihar SEB case it was held as follows:


"9 . Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees' salaries which were paid to them since the year 1979. It is on this score the High Court observed that as both the petitioners have passed the examination though in the year 1993, their entitlement for relief cannot be doubted in any way. The High Court has also relied upon the decision of this Court in *Sahib Ram v. State of Haryana* 4 wherein this Court in para 5 of the Report observed:

5 . Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher

pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.'

10. The High Court also relied on the unreported decision of the learned Single Judge in Saheed Kumar Banerjee v. Bihar SEB. We do record our concurrence with the observations of this Court in Sahib Ram case 4 and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order however be restricted to the facts of the present writ petitioners. It is clarified that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except however in the case or cases which has/have attained finality."

5. For the discussions made above, the order under Annexure-A/4 so far as recovery of the amount is concerned is hereby quashed and the OA stands allowed to the extent stated above. There shall be no order as to costs.


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