

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 119 of 2010
Cuttack, this the 5th day of September, 2011

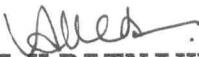
Purnendu Kumar Dash Applicant

-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(Judl)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 119 of 2010

Cuttack, this the 5th day of September, 2011

CORAM:

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

A N D

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

Sri Purnendu Kumar Dash, aged about 59 years, Son of Late Gobardhan Dash at present working as Public Relation Inspector, Bhubaneswar GPO -751 001.

.....Applicant

By legal practitioner: M/s.A.K.Mohanty,S.Rath, Counsel.

-Versus-

1. Union of India represented by Secretary Department of Posts, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Orissa Postal Circle, Bhubaneswar-751 001.
3. The Sr. Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar-751 009.
4. The Senior Post Master, Bhubaneswar, GPO, Bhubaneswar-751 001.

....Respondents

By legal practitioner: Mr.B.K.Mohapatra, ASC

ORDER

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

The prayer of the Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 is as under:

"[i] to quash the orders of the Respondent No.2 dated 9-2-2010 (Annexure-A/14) for being illegal, irregular and contrary to the provision of the Proviso (1) (iii) of Fundamental Rules 22(b);

[ii] to order that the pay fixation of the applicant made w.e.f. 1-5-1989/4-6-1991 onwards was as per Rules on the subject and no recovery should be made from the pay of the applicant



towards excess payment of pay and allowances even if made to the applicant during the period from 4-6-1991 onwards till date."

2. Applicant's contention is that he joined the Department of Posts as a Postal Assistant in Bhubaneswar Postal Division on 1-5-1973. After passing departmental examination, he was appointed as Development Officer (PLI) in the office of the Chief Postmaster General Orissa Circle, Bhubaneswar against 1/3rd quota in the pay scale of Rs.425-15-560-EB-20-640/- for a period of five years w.e.f. 03-09-1985. This scale was revised to Rs.1400-2300/- w.e.f. 01-01-1986. The period of five years was subsequently extended and the applicant continued in that post upto 30-04-1991. The Applicant repatriated to his parent Division w.e.f. 01-05-1991 and joined in his parent unit on 04-06-1991. While he was continuing as DO (PLI) in the Office of the Respondent No.2, he was granted Time Bound Promotion under TBOP scheme to the LSG Scale of pay of Rs.425-15-560-EB-20-640/- (Revised to Rs.1400-2300/-) w.e.f. 01-05-1989 vide Annexure-A/2 with condition that such Time Bound Promotion would not affect the posting of the Applicant as DO (PLI).

As the Applicant was drawing his pay in the scale of pay of Rs. 425-640/- (Revised to Rs.1400-2300/-) as DO (PLI) and while continuing in the above grade under TBOP scheme he was granted the pay scale of Rs. 425-640/- (Revised to Rs.1400-



2300/-) w.e.f. 1.5.1989 vide order dated 10.11.1989, his pay drawn in the post of DO (PLI) was protected w.e.f. 04-06-1991 under proviso 1 (iii) of FR 22.1(b) and after his repatriation to his parent unit his pay was also protected w.e.f. 1.5.1991 under proviso 1 (iii) under FR 22 (B). The fixation of pay was examined by the Respondent Nos.2&3 and vide orders under Annexure-A/7, A/9 & A/10 it was decided that the pay of the applicant has properly been fixed which needs no revision after long lapse of time.

3. The contention of the Respondents, in their counter, is that the applicant joined in the Department of Posts as Time Scale PA on 01-05-1973. Thereafter, he was appointed as DO (PLI) Circle Office Bhubaneswar against 1/3rd quota in the scale of pay of Rs. 425-640/- for a period of five years from 03.09.1985 FN vide CO Memo dated 02-09-1985. While working as DO (PLI) in Circle Office, Bhubaneswar he was given financial up gradation under TBOP scheme w.e.f. 1.5.1989 vide Memo dated 10.11.1989. On completion of his tenure in DO PLI he was repatriated to his parent post w.e.f 1.5.1991. After his reversion while fixing his pay in the PA cadre, by misinterpretation of the provision of 1(iii) of FR 22 (B) his pay was fixed at a higher stage taking into consideration of his pay which he was drawing as DO (PLI). The inadvertent mistake having been noticed steps

were taken to rectify the mistake by refixing the pay of the applicant appropriately. However, he submitted representation requesting protection of his pay. The matter was referred to the Postal Directorate who after consultation with the DOP&T intimated vide letter under Annexure-R./1 dated 14.10.2009 that the applicant was working in the post of DO PLI on tenure basis and on completion of his tenure he was reverted to his parent cadre, therefore, in terms of proviso to FR 22 (1) (b) pay drawn in an ex-cadre/tenure post cannot be protected in case of reversion to substantive post. Accordingly, it has been stated by the Respondents that there having no miscarriage of justice caused to the applicant in the decision making process the applicant is not entitled to the relief claimed in this OA. Hence they have prayed for dismissal of this OA.

4. Applicant has filed his rejoinder more or less reiterating the stand taken in his Original Application and we have also gone through the same.

5. Learned Counsel for the Applicant submitted that re-fixation of pay of the applicant consequent to the orders under Annexures-A/7, A/9 & A/10 after such a long lapse of time is against the principle of promissory estoppel. There was no reversion of the applicant as claimed by the Respondents. The applicant was repatriated back to his parent Unit and was

placed in the upgraded scale under TBOP Scheme at Rs. 425-640/- w.e.f. 1.5.1989. The plea of the Respondents that the post of DO (PLI) was a tenure post and as such pay protection could not have been made while fixing the pay of the applicant is false. Learned Counsel for the Applicant also relied on the decision of the Hon'ble Apex Court in the case of **B.J.Akkara v Government of India** (2007) 1 SCC (L&S) 529 (para 27), **Sahib Ram v State of Haryana**, 1995 SCC (L&S) 248, **Shyam Babu Verma v Union of India**, (1994) 2 SCC 521, **Union of India V M.Bhaskar** (1996) 4 SCC 416 and **V.Gangaram V Regional Joint Director**, (1987) 6 SCC 139 to state that the amount paid due to such wrong fixation cannot be recovered from the applicant.

On the other hand it was contended by the Respondents' Counsel that the Government has every right to rectify its mistake at any point of time and delay cannot be a ground to allow the mistake to perpetuate. In the instant case the mistake having come to the notice the Respondents was rectified by way of refixing the pay of the applicant. Similarly it was contended by the Respondents' Counsel that when the applicant was not entitled to the amount but it was paid to him there is no wrong in recovering the same from the applicant.

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6. We have considered the rival submissions made by the parties with reference to their respective pleadings and perused the materials placed on record. We have also perused the provisions of the Rule relied on by the respective parties. After going through provisions and the manner of fixation of pay of the applicant there is no iota of doubt in our mind that after repatriation of the applicant from the tenure post, his pay should not have been fixed by misinterpreting the provisions of the FR as has been done in the present case. Admittedly, the continuance of the Applicant as DO (PLI) was on tenure basis as the post was an ex-cadre post and after the said tenure he was repatriated to his substantive post. No document was produced before us to show that DO (PLI) is part of the cadre of Postal Assistant. Hence we hold that re-fixation of the pay of the Applicant was in accordance with the Rules. But after going through the decisions relied on by the Applicant's Counsel, we find force in the stand of the applicant that even if the amount was wrongly paid to an employee the same is irrecoverable especially when the amount has not been taken by the applicant by way of fraud or any misrepresentation. Hence while ~~we~~ dismissing this Original Application in so far as the prayer of the applicant for annulling the re-fixation of his pay, we direct that

there shall be no recovery from the applicant consequent upon
re-fixation of pay.

7. With the aforesaid observation and direction this OA
stands dismissed. No cots.


(A.K.PATNAIK)

Member (Judicial)


(C.R.MOHAPATRA)

Member (Admn.)