

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.309 OF 2010

Cuttack the 8th day of March, 2012

Sri Pravakar Parida 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 Tribunal or not?


(A.K.PATNAIK)
Member (Judl.)

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CORAM:

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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Sri Pravakar Parida, aged about 66 years, Son of late Dinakar Parida, resident of Village-Kajala, PO/PS/Dist-Kendrapara, Ex-Head Sorting Assistant (HAS) (HSG-I) RMS N Divn., Bhubaneswar

...Applicant

By the Advocates:Mr.D.K.Mohanty

-VERSUS-

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communications, Department of Posts, Sansad Marg, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda
3. Senior Superintendent of R.M.S.N Division, Cuttack, At/PO/District-Cuttack-753 001
4. Director of Accounts (Postal), At-Mahanadi Vihar, PO-Chauliaganj, District-Cuttack
5. Senior Accounts Officer (Pension), Office of the Director of Accounts (Postal) Mahanadi Vihar, Cuttack

...Respondents

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

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O R D E R

A.K.PATNAIK, MEMBER(J):

Applicant, a retired Postal Employee,

aggrieved with the order dated 24.11.2005 (Annexure-A/6)

by virtue of which provisional pension was granted to him

to the tune of Rs.5835 + D.A. per month with effect from

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1.6.2005 has been reduced to Rs.5617 + D.A. from 1.6.2005 to 31.10.2005, with further direction to effect recovery of the excess amount @ Rs.218 + D.A.. In the circumstances, by filing the present Original Application, he has sought for the following relief.

- “i) To quash the order dated 24.11.2005 under Annexure-A/6.
- ii) To direct the respondents that the amount of Rs.1090 so recovered from provisional pension be refunded to the applicant;
- iii) To direct the respondents that to give the provisional pension, i.e., Rs.5835/- under Annexure-A/5 regularly to the applicant; and
- iv) To pass any other order/orders as deemed fit and proper.”

2. Respondents-Department, by filing a detailed counter, has resisted the claim of the Applicant stating therein that the Applicant was allowed financial benefit in HSG-I cadre beyond one year which was not admissible as per Memo under Annexure-R/3 dated 27.7.2003 and as such, while verifying the service book/particulars for finalization of the pension, the mistake having come to the

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notice this was objected to by the Respondent No.4 leading to reduction of pension and recovery of the amount paid to him beyond one year of his ad-hoc appointment. Hence it has been stated that as the mistake was mutual the applicant cannot claim any equity for his continuance in HSG-I grade beyond one year which was in violation of the DOP&T OM No. 28036/3/97-Estt. (d)

Dated 17. 2.1998. Hence they have prayed for dismissal of this OA.

3. Applicant filed rejoinder more or less reiterating the stand taken in the OA.

4. The contention of Mr. D.K.Mohanty learned counsel for the Applicant is that vide order under Annexure-A/3 dated 12th August, 2003, the Applicant was promoted from the grade SA (HSG-II) to HSG I cadre on ad-hoc and temporary basis for a period of one year or till a regular official is posted whichever is earlier and, thereafter, vide order No.ST/8-14/02 dated 17.08.2003, the

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Postmaster General, Berhampur Region, Berhampur posted the applicant as SRO RMS 'BG' Division, Jeypore and accordingly the applicant assumed the charge of the post in the grade of HSG I. While the applicant was continuing in HSG I on adhoc basis as per the order dated 12-08-2003, vide order under Annexure-A/4 dated 06.05.2005 he was appointed in the grade of HSG I on regular basis. It has been contended by the Learned Counsel for the Applicant that the adhoc appointment was followed by regularization. The Applicant was never reverted from the post nor was anybody posted in his post till he was regularly appointed. His contention is that if there was any embargo on his continuance on adhoc basis beyond one year he could have been reverted by the competent authority on completion of one year service. When he was allowed to continue beyond one year his continuance was deemed to have been approved by the competent authority and taking prior approval was the

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duty of the administrative authority. Therefore, if no such approval was taken it is the department to be blamed and as such for that reason the applicant should not be made to suffer by way of reducing the pension of the applicant and ordering recovery of the amount in the guise of excess payment. Secondly it was contended by the Learned Counsel for the Applicant that the impugned order having been issued by the Respondents without complying with the principle of natural justice, the impugned order is liable to be quashed and set aside. Third submission of Mr. Mohanty, Learned Counsel for the Applicant is that it was incumbent upon the part of the Respondent Department to communicate the reasons while ordering reduction in provisional pension and consequential recovery of excess amount and, therefore, the Respondents having not done so, the action initiated on that score is in violation of principles of natural justice and as such the impugned

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order is not sustainable in the touch stone of judicial scrutiny and is liable to be set aside.

On the other hand, Mr. U.B.Mohapatra, learned Senior Standing Counsel appearing for the Respondents submitted that the applicant having not put on **regular service** for a period of 10 months in the grade of HSG-I, there was no other option left for the Respondents except to reduce the provisional pension granted and recover the excess amount paid to the applicant. Mr. Mohapatra, Learned Senior Standing Counsel appearing for the Respondents submitted that the applicant was approved for appointment/promotion in HSG-I cadre on ad-hoc and temporary basis with specific stipulation that he would continue for a period of one year or till a regular official is posted whichever is earlier. The applicant was posted on 17.08.2003 and retired from service on superannuation with effect from 31.5.2005. According to Mr. Mohapatra, Learned SSC, since the adhoc promotion

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cannot be allowed to continue beyond one year, it stood automatically ceased to operate on completion of one year. The provisional pension granted to the applicant was subject to revision on the basis of completion of detailed scrutiny of service records. As per provisions of Rule-64(6) of CCS (Pension) Rules, Respondents reserve the right to adjust the excess amount, if found to have been paid illegally/irregularly. According to Mr. Mohapatra, Learned SSC the mistake being mutual applicant should not have raised any objection and since opportunity would not have changed the result, non-compliance of natural justice cannot be a ground to interfere in the impugned order. Accordingly, Mr. Mohapatra, Learned SSC requested for dismissal of this OA.

5. Considered the rival submissions of the parties and perused the materials placed on record.
6. Admittedly, the applicant was promoted on regular basis vide order dated 6th. May, 2005 to the grade

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of HSG-I and retired on superannuation on 31.5.2005. It is also not in dispute that the adhoc appointment of the applicant was followed by regularization. It is the case of the Respondents that as the continuance of the applicant in H.S.G -I grade beyond ONE year was without the approval of the DOP&T, the promotion stands automatically ceased on or before completion of ONE year from the date of assumption of charge and taking into consideration 10 months average pay of regular service final pension was worked out to Res.5617 + D.A. which is right and justified and therefore the reduction as well as recovery cannot be faulted.

7. Law is well settled in the case of **Shyam Babu Verma v Union of India**, (1994) 2 SCC 521 that where benefit of higher pay scale had been given for no fault of the employee the excess amount so paid cannot be recovered.

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8. In the case of **Rattan Lal Sharma V Managing Committee etc.**-1993 SCC (L&S) 1106 [paras 9 & 12] the Hon'ble Apex Court held as under:

“In administrative law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures and are also applicable to the administrative bodies, in its decision making process having civil consequences”

9. In the case of **Col. J. N.Sinha v Union of India and others**, (1970) 2 SCC 458, the Hon'ble Apex Court held as under:

“The principal question is whether the impugned action is violative of Principles of natural justice. In **A.K.Kraipak v Union of India**, (1969) 2 SCC 262 a Constitution Bench of the Apex Court held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded.”

10. In view of the law laid down by the Hon'ble Apex Court in the case of **Shyam Babu Verma (surpa)**, the recovery made/ordered to be made from the Applicant, in the instant case, is not sustainable in the eyes of law.

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11. Admittedly, no notice was put to the applicant prior to reducing the pension of the applicant and it is well settled law not able to answer no answer to comply with the principles of natural justice. Hence by applying the law laid down by Their Lordships of the Hon'ble Apex Court in the cases cited above, the impugned order is not sustainable in the litmus test of judicial scrutiny.

12. Besides all theses above, it is to be noted that in so far as automatic cessation of adhoc service of the applicant as HSG-I with effect from on or before one year of his ad hoc promotion is concerned, the proposition so advanced does not hold any water inasmuch as the Applicant was in receipt of pay, DA, increments etc. attached to that post till 7.5.2005 when he was regularized as HSG-I. I have not come across any piece of document filed by either side indicating reversion of the applicant from his adhoc promotion & posting as H.S.G-I to H.S.G-II till his regular appointment/promotion as HSG-I or

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even till his superannuation. In the circumstances, there is hardly any scope for the Respondents to take into account the average 10 months' pay in the feeder grade as well as in the promoted grade for the purpose of calculating emoluments for pension. In course of hearing, Mr. D.K. Mohanty, learned counsel for the applicant submitted Swamy's Pension Compilation. In Paragraph-5 Emoluments for pension include only 'basic pay' (substantive or officiating) on the date of retirement will also be taken as emoluments (Rule-33). On a reference being made to Annexure-R/3 dated 28.7.2003, it reveals that applicant has been promoted to officiate in HSG-I cadre purely on ad hoc and temporary basis. As such, there was nothing wrong in taking into account the basic pay drawn by the applicant who had been promoted to officiate in HSG-I cadre and in this respect, it is to be held that the connotation used by the Respondents that the applicant was promoted on adhoc or temporary basis, as

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the case may be, is misnomer. Since by taking into account 10 months average pay of officiating promotion and regular promotion to HSG-I as on the date of retirement emoluments pension had been calculated provisionally vide Annexure-A/5, it is to be held that the same was in accordance with Rule-33 as referred to above and can by no stretch of imagination be called in question.

13. Having regard to what has been discussed above, the impugned order under Annexure-A/6, dated 24.11.2005 is hereby quashed and set aside and in effect, Annexure-A/5 dated 29.6.2005 holds well. It is directed that whatever amount has been recovered from the applicant be refunded to him within a period of sixty days from the date of receipt of this order. In the result, O.A stands allowed to the extent indicated above. There shall be no order as to costs.

A. K. Patnaik
(A. K. PATNAIK)
JUDICIAL MEMBER