CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. No. 260/00326 OF 2013
Cuttack, this the 25th day of January,2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

.....

Prafulla Kumar Nayak, aged about 50 years, S/O-Arjuna Charan Nayak. Presently working as GDSMD, Semiliguda S.O, Dist- Koraput.

...Applicant

(By the Advocate-M/s. D. P. Dhalsamant, N. M. Rout)

-VERSUS-

Union of India Represented through

1. Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
1. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda.
2. Post Master General, Berhampur Region, At/PO-Berhampur, Dist-Ganjam.
3. Senior Superintendent of Post Offices, Koraput Division, At/PO/Dist-Koraput.
4. Post Master, Koraput H.O, At/PO/Dist-Koraput.

...Respondents

By the Advocate- (Mr. D. K. Mallick)

ORDER

Mr. S. K. Pattnaik, MEMBER (J):

The applicant has filed this O.A challenging the recovery order dated 29.04.2013(Annexure-A/4).

2. The main grievance of the applicant is that before passing such recovery order the competent authority has not given any opportunity to the affected employee to show cause against such abrupt recovery and such recovery order is violative of fundamental right and causes prejudice and amounts to infringement of right of the applicant to know before an adverse order is passed.

3. Ld. Counsel for the Official Respondents drew our attention to the undertaking (Annexure R/1) and submitted that since the applicant himself has given undertaking that in the event of incorrect fixation of TRCA or any excess payment detected, subsequently, the same shall be refunded by him, the alleged recovery even without giving any prior notice is not violative of natural justice.

4. It may be clarified, at the outset, that wrong fixation of pay or wrong drawl of entitlement including allowance can be corrected by the competent authority and no employee should be allowed to draw mileage from a wrong fixation but the question is whether such recovery can be made without issue of any notice or any show cause asking the employee to explain why the amount shall not be recovered, and if such action amounts to infringement of his fundamental right.

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5. In view of plethora of decisions rendered by the Hon'ble Apex Court, the latest being ***State of Maharashtra Vs Public Concern for Governance, Appeal (civil)14 of 2007 dated 4th January, 2017*** the matter has been set at rest. In the aforesaid decision Their Lordship's relying on the cardinal theory of *audi alterm partem*, have categorically observed that recovery without show cause notice amounts to violation of natural justice. In the case of ***A. K. Kraipak and Ors. V. Union of India and Ors. (1969) 2 SCC 262*** Their Lordships have observed that no decision shall be given against a party without affording him a reasonable hearing/opportunities.

6. Since in the instant case before passing such recovery order no show cause notice was issued to the concerned employee, the recovery becomes vulnerable and hence the recovery order becomes vitiated. Accordingly, the recovery order dated 29.04.2013(Annexure-A/4) is hereby quashed. However, the respondents are at liberty to take up recovery measure only after issuing the show cause notice to the concerned employee and after hearing his side of the submission so that justice not only will be done but also seems to have done.

7. The O.A. is allowed. No Costs.

(Dr. M. Sarangi)
Member(Admn.)

(S. K. Pattnaik)
Member (Judl.)