

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260001562015
Cuttack, this the 12th day of March, 2018

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

.....

Sri Udayanath Panda,
Retired Sub-Post Master,
Sriram Nagar SO, Berhampur,
aged about 63 years,
S/o-Late Simanchal Panda,
Village/PO-Sidheswar, Via-Balipada,
Dist-Ganjam.

...Applicant

(By the Advocate-M/s. G.K. Behera, D. R. Mishra)

-VERSUS-

Union of India Represented through

1. Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist: Khurda.
3. The Sr. Superintendent of Post Offices, Berhampur Division, Berhampur(Gm.)-760001.
4. The Director of Accounts, (Postal), Dak Lekha Bhawan, Mahanadi Vihar, Cuttack-753004.

...Respondents

(By the Advocate- Mr. A. Pradhan)

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O R D E R

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

The applicant has filed this O.A. praying for the following relief:

“i. Hold/declare impugned Office Letter No. ST/46-ROBF (MACP/2013 dtd. 22.08.2014 (Annexure-A/9) confirming the Office Letter No. Pen-V/PC-42/12-13/R.3977 dtd. 28.12.2013 (Annexure-A/7), Office Letter No. Pen-V/PC-42/12-13/R.2576

dtd. 23.09.2013 (Annexure-A/5) & Accounts enforcement Remarks (Annexure-A/4) is bad & illegal;

ii. Direct the respondents to refund the amount recovered

from the gratuity of the applicant and to revise the pension of

the applicant and pay him accordingly;

iii. And pass any such other order.....”

2. Respondents have filed counter and the applicant has filed rejoinder,

which will be discussed infra.

3. In order to appreciate why the respondents are not willing to extend the benefit of MACP, one has to travel through the counter, which may be summarized as follows:-

Initial appointment: The applicant had entered into Govt. service as a direct recruit in Postman cadre on 21.03.1980 in the scale of pay Rs. 210-04-250-5-270/-.

1st Promotion: Promoted to Overseer Mails (OS Mails) and on completion of the prescribed training, appointed as such on 16.11.1983 in the scale of pay Rs. 260-06-362-08-350/- (Revised to pay scale of Rs. 950-20-1150-25-1400/- in the 4th Central Pay Commission).

2nd Promotion: Promoted to Postal Assistant (PA) and appointed on 19.09.1988 in the pay scale of Rs.975-25-1150-30-1660/- (Revised to pay scale of Rs. 4000-100-6000/- in the 5th Central Pay Commission). On this promotion, his pay was fixed under pay fixation rules with reference to the pay he was drawing as O/S Mails.

3rd Promotion: Allowed financial up-gradation under Time Bound One Promotion (TBOP) Scheme with effect from 08.10.2004 in the Pay Scale of Rs.

4500-125-7000/- and his pay was upgraded and fixed under pay fixation rules with reference to the pay he was drawing in the pay scale of Rs. 4000-100-6000/-.

4. Besides the above, while working as such, the applicant was allowed another pay up-gradation (3rd MACP) with effect from 09.10.2008 to the Grade Pay of Rs. 4200/- in the pay scale of Rs. 9,300-34,800/- under the Modified Assured Career Progression (MACP) Scheme introduced with effect from 1st September, 2008 vide Dept. of Personnel and Training OM. No. 35034/3/2008-Estt(D) dated 19.05.2009.

5. The Pension Papers, along with the Service Book, of the applicant were forwarded to the office of the Director of Accounts (Postal) Cuttack for fixation of his pension, Gratuity and other pensionary benefits. All these papers and records were scrutinized by the Postal Accounts Office, who could notice the irregular grant of further promotion to the applicant with effect from 09.10.2008 to the grade pay of Rs.4200/- under 3rd MACP in contravention of the order contained in the MACP Scheme (Annexure-R/1), since the applicant has already availed three promotions/up-gradations during his service career. Hence, further promotion of the applicant to the Grade Pay of Rs.4200/- with effect from 09.10.2008 was objected by the Director of Accounts (Postal), Cuttack while processing his pension case. Accordingly, the Director of Accounts (Postal), Cuttack fixed the admissible retirement pensionary benefits duly issuing the Accounts Enforcement (A.E) dated 20.06.2012 with direction to recover the excess paid amount of pay & allowance with effect from 09.10.2008 till retirement. Therefore, the excess paid

amount was calculated which came to Rs. 1,22,340/- and the same was recovered from the retirement gratuity of the applicant.

6. Having heard Ld. Counsel for both the parties and going through the impugned order dated 22.08.2014 (Annexure-A/9), we have every reason to conclude that the claim of the applicant is totally misconceived and there is nothing wrong in the impugned orders calling for our interference. Burden is heavy on the applicant to demonstrate that during his 30 years of service he was not granted three promotion or financial escalation making him eligible for MACP. The service record of applicant clearly demonstrates that he has already availed three promotions in his service career and as such he is not entitled to MACP. Hence ordered.

7. So far as recovery is concerned, we find that the recovery is well justified in view of the decision of the Hon'ble Apex Court in the case of ***Chandi Prasad Uniyal and Ors. Vs State of Uttarakhand and Ors. reported in AIR 2012 SC 2951*** wherein Their Lordships have emphatically observed that when the money does not belong to payer or payee, it becomes taxpayer's money. Relevant portion of Their Lordships given in para 16 is quoted below:

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme

hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

7. In view of the discussion made above, the O.A. being devoid of merit is dismissed. No costs.

(M. Sarangi)
Member(Admn.)

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

PMS

