
(2025) 12 CAT CK 1689

**In the Central Administrative Tribunal, Central Administrative Tribunal
Cuttack Bench, Cuttack**

Case No : Original Application No. 260, 000501 Of 2024

Gopabandhu Khemundu

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2025) 12 CAT CK 1689

Hon'ble Judges : Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : N.R. Routray, B.N. Swain

Final Decision : Allowed

Judgement

Pramod Kumar Das, Member (A)

1. The applicant, Gopabandhu Khemundu, aged about 54 years as on the date of filing of the OA on 04.08.2024 and working as GDS ABPM, Raisingh BO in the District of Koraput, has filed this OA under Section 19 of AT Act, 1985 praying to declare the recovery from his salary based on the Audit Report, without giving any prior opportunity, as illegal and arbitrary for the same being contrary to the DGP&T OM dated 13.10.2017, law laid down in the case of State of Punjab and Ors Vs. Rafiq Masih (Whitewasher) & Ors, (2015) 4 SCC 334, and in the case of UOI Vs E.G.Nambudiri, (1991) 3 SCC 38, providing therein that where a vested right is adversely affected by an administrative order or where civil consequence ensue principle of natural justice has to be followed even if statutory provision do not provide to do so and accordingly, to direct the respondents to refund him the recovered amount.

2. Respondents filed counter in which they have denied the allegation of the applicant that the respondents have sought to recover Rs. 2,15,000/- and it is

stated that the correct amount is Rs. 1,05,301/-. It is stated that besides this amount, an amount of Rs. 16,301/- was sought to be recovered as an outcome of the disciplinary proceedings for the irregular payment made by him during financial year 2019-2020.

As regards recovery of Rs. 2,15,000/- is concerned, it is stated that the applicant while discharging combined duties remained absent by providing substitutes on different dates, who were paid allowances for the period of their work and at the same time, the applicant also drew the TRCA de hors the rules. The names/ period/amount paid to the substitutes have been provided in the counter as under:

Name of Substitute

provided by Sri

Gopabandhu Khemundu

Period

Amount Paid

In

Contravention

of Rules

Sri Subash Nayak

04.04.2020 to

30.05.2020

Rs. 16607.00

Sri Manu Nayak

08.08.2019 to

04.11.2019

Rs. 26420.00

Sri Subash Nayak

07.11.2019 to

03.01.2020

Rs. 18493.00

Sri Manu Nayak

05.01.2020 to

02.04.2020

Rs. 27174.00

Sri Subash Nayak

04.04.2020 to

30.05.2020

Rs. 16607.00

Total:

Rs. 105301.00

3. During Internal Audit, the aforesaid irregularities was detected and the audit report was communicated vide letter dated 18.06.2021 and, accordingly, in letter dated 24.03.2025, recovery to the above extent was ordered to be effected. It is stated that since the payments de hors the rules, recovery is inbuilt and hence giving opportunity prior to recovery would have been an empty formality only. Therefore, recovery without giving opportunity cannot be a ground to interfere in the matter.

4. Heard. Perused the records.

5. Since, according to the respondents, recovery of Rs. 16,301/-was by way of disciplinary proceeding which having not been challenged, we see no ground to interfere on the same. However, justifiability or otherwise of the recovery even if made illegally or irregularly is no longer res integra and suffice it to state that the Hon'ble Apex Court in the cases of Jogeswar Sahoo vs The District Judge, Cuttack in Civil Appeal No.....of 2025 (Arising out of SLP(C) No(s). 5918/2024 dated 04.04.2025, after taking into consideration the earlier decisions in the cases of State of Punjab & others Vs. Rafiq Masih (White Washer) & others, (2015) 4 SCC 334, and Thomas Daniel Vs State of Kerala & Ors in Civil Appeal No. 7115 of 2010, held as under:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for

a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by 13 this Court in the above quoted judgment, the recovery is found unsustainable."

6. We have examined the case in hand with reference to the yardstick/parameter laid down by the Hon'ble Apex Court quoted above. We find that the applicant is a GDS ABPM and gets nominal/meager Time Related Continuity Allowance for discharging his duties and, thus, recovery would certainly put him in financial hardship. Further, according to the respondents, the wrong payment was made during the periods 08.08.2019 to 04.11.2019, 07.11.2019 to 03.01.2020, 05.01.2020 to 02.04.2020, 04.04.2020 to 30.05.2020 and 04.04.2020 to 30.05.2020 and based on the Audit Report, the amount of Rs. 1,05,301/- is sought to be recovered by letter dated 24.03.2025, which is nearabout five year prior to the recovery order. Thus, we are of the considered view that the recovery is not justifiable in accordance with the decision of the Hon'ble Apex Court in the cases of Rafiq Masih (supra), Thomas Daniel (supra) and Jogeswar Sahoo (supra). Hence, the amount of Rs. 1,05,301/- sought to be recovered from the salary of the applicant is declared as bad in law and accordingly, respondents are directed to refund the applicant the recovered amount, if any, out of Rs. 1,05,301/- within a period of 60 days from the date of receipt of a copy of this order.

7. In the result, the OA stands allowed by leaving the parties to bear their own costs.