IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 25809 of 2022

Pradipta Kumar Swain	…..	***Petitioner***
		Mr. D.P. Dhalsamanta, Advocate
	Vs.	
Union of India and others	…..	***Opposite Parties***
		Mr. P.K. Parhi, DSGI along with Mr. A. Pradhan, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER
29.09.2022

Order No. 01.

This matter is taken up through hybrid mode.

2. Heard Mr. D.P. Dhalsamanta, learned counsel appearing for the petitioner and Mr. P.K. Parhi, learned DSGI along with Mr. A. Pradhan, learned CGC appearing for the opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 16.09.2022 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00336 of 2017, by which the tribunal has dismissed the Original Application filed by the petitioner and vacated the interim order granted earlier.

4. The factual matrix of the case, in brief, is that the petitioner was provisionally appointed as EDDA at Alavar Branch Office in account with Balikuda SO in the year 1982, but after continuing for more than three years, his services were terminated on administrative ground. He challenged the said order of termination before the Central Administrative Tribunal in OA 239/1988, which was

disposed of vide order dated 16.08.1988. Pursuant to which the petitioner was again appointed in service vide order dated 03.07.1989 and joined as EDDA Srirampur B.O. under Tiran S.O. on 04.07.1989. Subsequently, the post of GDSMD, Srirampur BO was redeployed as GDS Packer, IOCL Paradeep NDT SO and the petitioner was directed to join as GSS Packer IOCL, Paradeep NDT SO. After joining at IOCL, Paradeep NDT SO, the petitioner made a representation for his transfer on redeployment to any vacant post of Titira B.O., which was nearer to his native place. Vide memo dated 23.04.2013, the petitioner was directed to join at Titira BO as GDS MD and consequentially the petitioner joined the said post on 26.04.2013. The case of the petitioner is that although he received salary at Rs.11,124/- for the month of January and February, 2017 but the same was reduced to Rs.9,879/, i.e. Rs. 1485/- lesser than the previous month, from the month of March, 2017 onwards without any notice or show cause. The petitioner submitted representation on 09.05.2017 for restoration of his salary with further prayer not to deduct any further amount. Since the petitioner did not receive any reply, he filed O.A. No. 260/00336 of 2017 before the tribunal.

5. While entertaining the Original Application, the tribunal vide order dated 24.05.2017, directed that "in the meantime, no further deduction in the allowance will he made in case of the applicant". But pursuant to notice, the opposite parties filed their counter affidavit stating that the petitioner while working as GDS Packer at IOCL Paradeep NDT SO, vide his representation dated 30.03.2012, he had applied for request transfer from IOCL Paradeep NDT SO to Sangrampur/ Titira/ Somepur Benahar/ Goda B.O. under limited transfer facility. The CPMG, Odisha Circle, Bhubaneswar approved

the petitioner's transfer to GDS MD, Titira BO on account with Borikina SO vide Circle Office Memo dated 08.04.2013 with one of the specific conditions that "TRCA of the new post to which the GDS is transferred shall be fixed as per the instruction contained in Directorate Letter No. 19-10/2004-GDS dated 17.07.2006 under Para 3(iii)". The petitioner vide his declaration dated 23.04.2013 accepted the terms and conditions for transfer as mentioned in the memo of Circle Office. As per Directorate Letter dated 17.07.2006, on request transfer to a new post, a GDS cannot have any claim for protection of his/her TRCA drawn in the old post. The petitioner was drawing TRCA @ Rs.5045/- in the old post and his TRCA should have been fixed at the minimum of the TRCA slab in the new post depending upon the workload of the said post, i.e. at Rs.4220/- but inadvertently, his TRCA was drawn as per his basic pay in the old pay for which excess amount of TRCA was paid to him from May, 2013 till March, 2017. When the said fact came to the notice of the authority, the excess amount of Rs.1485/- was deducted from his salary for the month of April, 2017 and the excess TRCA already drawn inadvertently from June, 2013 to March, 2017 was due to be recovered from the petitioner. Since the TRCA was regulated as per rules and as per the declaration of the petitioner, therefore, the action taken is well justified.

6. The sole question rests for consideration of this Court is that if the benefit extended to the person concerned is subsequently found that the same was extended by mistake, whether the authorities have got the power to rectify their mistake or not.

7. In order to find out the correctness of the statement made by learned counsel for the petitioner vis-à-vis learned counsel for the

opposite parties, this Court perused the record and it is revealed that the benefit had been extended to the petitioner by mistake, which was subsequently noticed and the same was rectified. The petitioner's TRCA was required to be revised/re-fixed as per the Directorate letter dated 17.07.2006, due to his request transfer from IOCL, Paradeep NDT SO to Titira BO as well as due to his declaration, since the TRCA drawn in the old post cannot be protected in the new post. Although due to inadvertence the same was not done at the appropriate time, as and when the said fact came to the notice of the authorities, they initiated steps for revision/re-fixation of TRCA and consequent recovery.

8. The petitioner has not disputed his request transfer or the declaration given by him. Once the petitioner has given declaration to accept the terms and conditions of his request transfer, he is to abide by the same. The action taken by the authority for recovery of the excess amount cannot be found faulted with. It is well settled in law that if a mistake is committed by the authority, the same can be corrected when it is brought to the notice.

9. **"MISTAKE"** is not mere forgetfulness; it is a slip "made, not by design but, by mischance". Otherwise also the "mistake" includes an error in conduct consisting of an unintended failure to perform correctly and effectively a task intended to be duly performed.

10. In ***West Bengal Electricity Board v. Patel Engg. Co. Ltd.*** AIR 2001 SC 682 : (2001) 2 SCC 451, the apex Court held that a mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake.

11. In ***Deva Metal Powders (P) Ltd. v. Commr. Trade Tax, U.P.,***

(2008) 2 SCC 439, the word mistake means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception.

12. Similar view has also been taken by this Court in the case of ***Smt. Kaberi Behera v. State of Orissa and others*** (W.P.(C) No. 7021 of 2011 disposed of on 09.03.2021), where one of us (Dr. Justice B.R. Sarangi) was the author.

13. Considering the facts and law, as discussed above, this Court does not find any error apparent on the face of the impugned order dated 16.09.2022 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00336 of 2017, so as to cause an interference. The writ petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun/Kishore

(G. SATAPATHY)
JUDGE