

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A No. 2159/99
T.A No.

Date of Decision 9.2.2001

J.P. Singh

..Petitioner

Ms. Meenu Mainee

..Advocate for the petitioner(s)

Versus

Union of India & Ors.

..Respondent

Shri V.S.R. Krishna

..Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S. Tampi, Member(A).

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 2159/1999

New Delhi this the 9 th day of Feb, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

J.P. Singh,
S/o late Shri Rama Singh,
Assistant Engineer (Civil),
under S.E.(P)II, Dwarka,
Delhi Development Authority,
Vikas Minar,
Delhi-110 002.

... Applicant.

(By Advocate Ms. Meenu Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
(Department of Personnel & Training),
Government of India,
North Block,
New Delhi.

3. Delhi Development Authority through
its Chairman,
Vikas Sadan,
New Delhi.

... Respondents.

(By Advocate Shri V.S.R. Krishna)

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).

The applicant has impugned the order
(corrigendum) dated 23.7.1998 issued by the respondents
in which they have indicated that a sum of Rs.61,215/-
has been found to be over-paid to him which is to be
recovered in 20 monthly instalments.

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2. The applicant has submitted that the aforesaid impugned order has been passed in an arbitrary manner and is a non-speaking order. The applicant, while working as Assistant Engineer (Civil) in the Delhi Development Authority (DDA) in the pay scale of Rs.2000-3500, was sent on deputation as Additional Private Secretary to the Hon'ble Minister of Railways (Addl.P.S.to the MR) w.e.f. 3.6.1996. The period of deputation was initially for one year and was agreed to by both the respondents and the DDA. Thereafter, the respondents issued order dated 30.8.1996 conveying to the applicant sanction of the President to be appointed on deputation basis as Addl. P.S.to the MR with effect from the forenoon of 3.6.1996. In this letter, the terms and conditions of pay have been given in paragraph 2. The applicant has contended that after he was repatriated to his parent department, that is, the DDA after two years, the respondents have taken action for recovery of certain part of the pay which they had allowed him while working as Addl.P.S. to the MR. He had made a representation on 5.8.1998 against the recoveries which had been rejected by the respondents by their order/corrigendum dated 23.7.1998 which had been passed in furtherance to their earlier letter dated 24.6.1998.

3. We have heard Ms. Meenu Mainee, learned counsel who has taken a number of grounds to assail the aforesaid order. One of the grounds taken is that the impugned order has been passed in violation of the principles of natural justice as no show cause notice

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has been issued to the applicant. She relies on the judgement of the Supreme Court in *Bhagwan Shukla Vs. Union of India* (1995(2) SLJ 30). She has also submitted that the applicant had been correctly fixed in the pay scale by the respondents in accordance with the rules at Rs.3000/-, that is the minimum of the pay-scale of Rs.3000-4500 when he came on deputation as Addl. P.S. to the MR on 3.6.1996 and, therefore, no recoveries are permissible under the Rules. She has, therefore, submitted that the impugned action and the order passed by the respondents is arbitrary and mala fide and has prayed that the same may be quashed and set aside.

4. The Tribunal by interim order dated 6.10.1999 had stayed the recoveries against the applicant in pursuance of the aforesaid order dated 24.6.1998 read with order dated 23.7.1998.

5. The applicant has also filed MA 2149/99 praying for condonation of delay. Learned counsel for the applicant has submitted that the applicant had challenged the aforesaid order in the Delhi High Court which vide order dated 1.7.1999 allowed the writ petition to be withdrawn giving liberty to the petitioner to approach the Tribunal within eight weeks from that date. She states that the applicant then filed a LPA in the High Court which was withdrawn on 27.8.1999 and then this O.A. was filed.

6. From a perusal of the order passed by the High Court dated 27.8.1999, it is seen that this order has been passed with respect to LPA 334/99 & CM 2205, 2206/99 by the High Court which also does not mention the name of the parties, whereas in paragraph

4.13 of the O.A. the applicant has stated that he had filed LPA No. 2408/99 which was withdrawn on 27.8.1999 to approach this Tribunal. We find from the order passed by the High Court dated 1.7.1999 that liberty had already been granted to the petitioner to approach the Tribunal within eight weeks from that date which has not been done in the present case. The relevant LPA said to have been filed by the applicant has also not been placed on record to support the averments made by him in paragraph 4.13. The O.A. has been filed on 4.10.1999, that is much beyond the period of eight weeks granted by the High Court in the order dated 1.7.1999. In the facts and circumstances of the case, the O.A. is liable to be dismissed on the ground that there is non-compliance with the High Court's order and the prayer for condonation of delay has to be accordingly rejected. Further, the document placed at page 21 of the paper book and heavily relied upon by the learned counsel for the applicant when the case was heard also appears to have been annexed to mislead the court by relying on an order which is not relevant to the facts of this case. This cannot, therefore, be over-looked. It was for this reason that another opportunity was given to the applicant to bring on record the copy of the LPA said to have been filed by the applicant in the Delhi High Court vide order dated 30.1.2001, which has also not been complied with. Therefore, the conclusion is inevitable that not only the O.A. is barred by limitation but there has also been an attempt on the part of the applicant to mislead the court and misuse the process of law.

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7. Apart from what has been stated above, we have perused the reply filed by the respondents and have heard Shri V.S.R. Krishna, learned counsel. He has submitted that the pay of the applicant can be fixed while he was on deputation as Addl. P.S. to the MR only in accordance with the Rules, that is DOP&T O.M. dated 18.12.1996. He has submitted that this had been made clear to the applicant when the offer of appointment was issued by order dated 30.8.1996. Learned counsel has submitted that the applicant's pay was fixed on provisional basis, that is at the minimum of the scale admissible to the Addl. P.S. to the MR in the pay scale of Rs.3000-4500 at Rs.3000/- per month, till his Last Pay Certificate (LPC) was received from the DDA. According to the respondents, the personal file of the applicant containing the details regarding appointment/promotion/pay, etc., in the DDA was received by them in June, 1998. Learned counsel has submitted that as the previous pay paid to the applicant was only on ^a provisional basis, after receipt of the personal file of the applicant, the matter had been examined and it was found that for the period from June, 1996 to May, 1998 there has been an over payment to him in terms of the conditions of his appointment as Addl.P.S. to the MR on deputation vide order dated 30.8.1996. He has also submitted that it is only in the rejoinder filed by the applicant on 14.9.2000 that the applicant has submitted that his LPC had been received by them on 15.7.1996. Learned counsel for the applicant has relied on Annexure R-V to the reply filed by the respondents which is a representation made by the applicant dated 30.7.1996. It is relevant to note

that the Annexures R-I to R-VIII which have been given in the index to the reply have been cancelled and none of these copies are available on record. The representation of the applicant dated 30.7.1996 (copy placed on record) and referred to by Ms. Meenu Mainee, learned counsel, refers to the request made by the applicant that his pay as Addl.P.S. to the MR may be fixed provisionally at the minimum of the scale, that is Rs.3000/- pending receipt of the LPC from the Department of the DDA which may take sometime. From this correspondence, Shri V.S.R. Krishna, learned counsel has submitted that if as contended by the applicant his LPC had been sent from the DDA to the respondents and received by them on 15.7.1996, then on 30.7.1996 there would have been no need to state that the same has yet to be received from his parent Department and that it will take sometime. We see force in this submissions made by the learned counsel for the respondents, as the applicant appears to be blowing hot and cold on the question of receipt of the LPC from his parent Department ^{of} the DDA by the respondents.

8. In the above circumstances, learned counsel for the respondents has submitted that there is nothing wrong in the respondents taking remedial action for recovery of the over-payment of Rs.61,215/- which was provisionally paid to the applicant as he is ^{entitled} ~~unable~~ to receive pay only in accordance with the rules. He has, therefore, submitted that after receipt of the personal file of the applicant in June, 1998, the necessary orders for recovery of the over-payment have

been correctly issued vide orders dated 20.6.1998 and 23.7.1998. He has also submitted that in the circumstances of the case, the principles of natural justice would not be applicable as the applicant was fully aware of the terms and conditions of his appointment before his deputation period itself. He has also submitted that the applicant had made a representation to the respondents to waive recovery of this amount which has not been agreed to. The learned counsel has, therefore, submitted that there is no merit in the O.A. and has prayed that the same may be dismissed and the interim order vacated so that the over-payments may be recovered in terms of the relevant rules and circumstances.

9. We have carefully perused the pleadings and the submissions made by the learned counsel for the parties.

10. It is seen from Annexure A-III order dated 30.8.1996, copy of which has been filed by the applicant himself, that the offer of appointment on deputation basis as Addl. P.S. to the MR, was subject to the conditions regarding the pay to be fixed which had been clearly spelt out in that order. The relevant portion of this order reads as follows:

"The officer will draw pay which will be admissible to him from time to time in his parent cadre plus deputation (duty) allowance/Special Pay as admissible to him under the provisions of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Office Memorandum No. 6/30/86-ESTT. Pay-II dated 18.12.1986 as amended from time to time and the total of pay plus deputation

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(duty) allowance/Special Pay not exceeding the maximum of scale of pay of the post viz., Rs.4500".

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Admittedly, at the time when the applicant came on deputation to the respondents, he was working as Assistant Engineer in the pay-scale of Rs.2000-3500. It is also not disputed that he had requested the respondents to provisionally fix his pay at the minimum of the pay scale of Addl.P.S., that is Rs.3000/- in the scale of Rs.3000-4500. The pay so fixed by the respondents was on provisional basis, subject to the receipt of the LPC. Mrs. Meenu Mainee, learned counsel has submitted that the applicant could not have been aware as to when the LPC had been sent or received by the concerned authorities. According to her, the LPC had been received by the respondents on 15.7.1996 whereas the respondents have stated that they had received the personal file of the applicant, including the LPC only in June, 1998. It is in this connection we find that the representation of the applicant dated 30.7.1996, referred to above, is relevant wherein he himself has stated that his pay may be fixed as Addl. P.S. provisionally at the minimum of the scale, that is, Rs.3000-4500 pending receipt of the LPC from the DDA which may take sometime. After receipt of the necessary papers from the DDA, we note that the respondents have taken necessary action within about a month. No doubt, they could have asked/reminded the DDA to send them the applicant's LPA by perhaps pursuing the matter more diligently earlier. However, that cannot be held against the respondents to either

waive off the recovery of the over-payments or to fix the applicant's pay contrary to the provisions of the relevant rules and instructions:

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11. The applicant was well aware before he came on deputation to the respondents that in terms of the order dated 30.8.1996, the relevant portion of which is reproduced in paragraph 10 above, he will draw pay which will be admissible to him from time to time in his parent cadre, that is the DDA, plus deputation, (duty) allowances, subject to the maximum of the scale of pay of the post, viz., Rs.4500/-. At the time when the applicant came on deputation, he was drawing pay at Rs.2300/- in the scale of Rs.2000-3500 and, therefore, in terms of the appointment order, he could not be fixed in the pay scale applicable to the post of Addl.P.S. to the MR. In this view of the matter, we find no merit in this application as any payment in the pay scale of Rs.3000-4500 during the period of deputation of the applicant to the Railways would be contrary to the Rules, which cannot be sustained.

12. The only other point the learned counsel for the applicant urged is that the aforesaid action of the respondents has been taken in violation of the principles of natural justice as not even a show cause notice has been issued to the applicant. Taking into account the facts and circumstances of the case and the judgement of the Hon'ble Supreme Court in *Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.* (1993 SCC (L&S) 1184), we do not consider that a mechanical application of the principles of natural justice is justified in the

present case. The applicant was well aware of the terms and conditions of his deputation and at this stage we do not think that it would be proper to remit the case back to the respondents merely to issue a show cause notice to the applicant and then take a decision. We, therefore, do not find any illegal^{to} ~~infirmity~~ on this ground also. We have also considered the other submissions made by the learned counsel for the applicant but do not find any justification to interfere in the matter.

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13. In the result, for the reasons given above, the O.A. fails and is dismissed. The interim order dated 6.10.1999 stands vacated. In the circumstances noted in para 6 above, costs of Rs.10,000/- (Rupees ten thousand only) is imposed against the applicant and in favour of the respondents.

(Govindan S. Tampi)
Member(A)

'SRD'

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)