

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1387/1998

New Delhi, this 21st day of December, 2000

Hon'ble Shri V.K. Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

R.N.Agarwal
Chargeman Gr.II(T)
Regional Training Institute
Opto-Electronics Factory, Raipur
Dehradun-248008 .. Applicant

(By Mrs.Meera Chhibber, Advocate)

versus

Union of India, through

1. General Manager
Upto-Electronics Factory
Raipur, Dehradun-248008
2. Director General
Ordnance Factory Board
10A, Auckland Road, Calcutta
3. Secretary
Ministry of Defence
South Block, New Delhi .. Respondents

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

ORDER

By Shri Shanker Raju

The only short point that needs determination in this case is whether the respondents are legally justified in effecting recovery of a sum of Rs.44,295/- as alleged excess payment drawn by the applicant without issuing any show cause notice or affording a reasonable opportunity of hearing to him, that, too, after a long lapse of nearly four years.

2. Admittedly the applicant while working as Chargeman Grade II(T) under the respondents was granted permission to pursue his higher study of Ph.D and study leave in different spells from time to time, including extensions, from 10.2.92 to 31.12.94. He was also paid pay and allowances for this period as admissible under

Rules. However, the respondents woke up in 1998 when they detected that the applicant should not have been granted study leave 10 months in excess of 24 months admissible to a government servant under Rule 51 of CCS(Leave) Rules, 1972 and they have chosen to issue the impugned order dated 2.3.98 (Annexure 1) for recovery of Rs.1.14 lakhs and with interest calculated @ Rs.800/- per month w.e.f. March, 1998. Admittedly before issuing this order, the applicant was neither issued any show cause notice nor afforded reasonable opportunity to explain the circumstances. After this, respondents on 7.8.98 issued a communication calling upon the applicant to deposit Rs.44,925/- being excess salary and bonus drawn by him which the applicant duly paid before he took up the new assignment at IIT as Project Scientist, to which post he was duly selected. Applicant further contends that the said amount has been paid to him after the grant of study leave and the recovery was sought after a long lapse of time and in these circumstances, the apex court in the case of Shyam Babu Verma Vs. UOI JT 1994(1) SC 574 has held that the order directing the applicant to refund the amount paid in excess would be unjust and harsh. The applicant has also taken the contention that once the benefit is given after due consideration, it cannot be withdrawn on the pretext of mistake as has been held in the case of Capt. S.P.Bhargava Vs., UOI 2000(3) AISLJ 197. Learned counsel for the applicant relies upon the judgement in the case of Bhagwan Shukla Vs. UOI 1994(6) SCC 154 and K.I.Shepherd Vs. UOI 1987(4) SCC 431 as also D.K.Yadav Vs. JMA Industries Ltd. 1993 SCC(L&S) 723 to contend that any administrative order which involves civil consequences must be made consistently with the rules of

(26)

natural justice and that recovery without affording opportunity would be violative of principles of natural justice.

3. Admittedly neither a show cause notice nor reasonable opportunity of hearing was afforded to the applicant before he was forced to refund the aforesaid amount.

4. In the result we are of the considered view that the action of the respondents in this direction is not justified inasmuch as that the applicant has been deprived of reasonable opportunity to show cause and not afforded opportunity to represent his case. Admittedly the applicant has suffered civil consequences and an amount of Rs.44,295 was recovered from him.

5. In the result, we allow this OA and quash and set aside the order dated 7.8.98. We direct the respondents to refund the amount to the applicant recovered from him forthwith. However, our orders shall not preclude the respondents from taking action against the applicant for recovery of excess amount in accordance with the rules and law laid down on the subject, i.e. by issuing a show cause notice to the applicant and giving him reasonable opportunity to explain his case. This shall be done within a period of three months from the date of receipt of a copy of this order. We do not order any costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

/gtv/