

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.528/1996

New Delhi, this 20th day of January, 1997

Hon'ble Shri S.P. Biswas, Member(A)

Shri A.N. Rai
s/o late Shri Surajbali Rai
615, Lodi Road Complex, New Delhi .. Applicant
(By Advocate Shri L.B. Rai)

versus

1. Chief Secretary
Govt. of NCT of Delhi, Delhi
2. Director of Education
Delhi Administration
Old Secretariat, Delhi
3. Dy. Director of Education
Delhi Administration
South Zone, Defence Colony
New Delhi
4. Shri Daya Ram
Principal, Govt. Boys Sr. Sec. School II
Lajpat Nagar, New Delhi
5. Smt. Seema Bawa
D&DO, GBSSS No.II, Lajpat Nagar, N.Delhi
6. Shri R.K. Batra, UDC
GBSSS No.II, Lajpat Nagar, New Delhi .. Respondents

(By Advocate Shri Jog Singh)

ORDER (oral)

The applicant herein is a Lab. Assistant in Govt. Boys Senior Secondary School No.2, Lajpat Nagar under the Directorate of Education, Govt. of NCT of Delhi. He is working with the respondents since 1967. In this application filed under Section 19 of the AT Act, 1985, the applicant has challenged, inter alia, (i) illegal action on the part of respondents in not paying the stagnation increment to him and (ii) the order dated 29.2.96 (Annexure A) by which the Principal of the above school has communicated the following order:

"Shri A.N. Rai, Lab. Asstt, has exercised no option for pay fixation in terms of order dated 12.5.92. As such the official is not entitled for revision of the pay on the basis of the orders dated 12.5.92 issued by the G.O.I. The over payment made, may be recovered".

2. It is the case of the applicant that his claim for stagnation pay is covered under the instructions issued by the Govt. of India vide two OMs dated 3.8.90 and 20.5.92, respectively. It is on account of his eligibility to stagnation pay that his salary was refixed and he continued to get the salary on the revised rate with effect from August, 1993 onwards. It is his further claim that since he has exercised his option for pay fixation, as evident from Annexure A-2 dated 26.10.91, it was the responsibility of the respondents to pay him arrears of stagnation increment from 2.3.86 to 30.7.93. The applicant would further contend that it is only because of inaction on the part of respondents, particularly Respondents No.5 and 6, that neither his pay was refixed in time nor the arrears of stagnation increment, from 2.3.86 to July, 1993 was paid to him.

3. The respondents, on the contrary, have submitted that the applicant did not exercise option in respect of order dated 12.5.92. However, his pay was refixed due to inadvertence on the part of officials dealing with the case. Since the mistake was detected, it was necessary to correct the position by resorting to original fixation made with effect from 1.1.86 and the order to recover overpayment was issued accordingly. Since the applicant did not exercise any option, there was no question of preparation of due and drawn statement as well as refixation of pay. Respondents

have also denied that there was any malice on their part because of the aforesaid bonafide mistake or the actions are motivated while dealing with the case of applicant.

4. The limited issue for determination is whether Annexure-A order dated 29.2.96 directing recovery of overpayment made is legally valid in the eyes of law. It is not in dispute that the alleged overpayment from August, 1993 is on account of administrative mistake on the part of respondents. It is not also in dispute that the aforesaid recovery order was not preceded with any show cause notice or warning to the applicant to represent his side of the case in so far as the recovery is concerned.

5. A system governed by rule of law reckons no decision without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves ordinances. This is a basic requirement of natural justice, which has always been part of adjudicatory process. The Hon'ble Supreme Court has highlighted this requirement in a long line of decisions i.e. State of Orissa Vs. Dr. (Miss) A. Binapani Dei, AIR 1967(SC) 1269. In this case, the apex court held that "if there is a power to decide and determine to the prejudice of a person, the duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. This is the basic concept of the rule of law and the importance thereof trascends the significance of a decision in any particular case".

6. In the circumstances, the application is allowed and the impugned order dated 29.2.96 to effect recovery of overpayment is quashed and set aside. If the respondents are still legally entitled to recover the aforesaid overpayment; they would issue a show cause to the applicant, hear him, consider his defence and arrive at a conclusion based on law.

7. The application is disposed of as above. There shall be no order as to costs.



(S.P. Biswas)
Member(A)

/gtv/