

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 465 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Duryodhan Mallick, aged about 47 years, S/o Late Banchanidhi Mallick, presently working as GDSMD/MC, Ikiri BO under Mandhatpur, SO Nayagarh HO, Puri Division, Puri-752079.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-Director General of Post, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110116.

2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Khurda-751001.

3. Senior Superintendent of Post Offices, Puri Division, Puri-752001.

4. The Inspector of Post, Nayagarh (East) Sub-Division Nayagarh HO, Puri Division Nayagarh-752079.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.B.R.Mohapatra, counsel

Heard & reserved on : 13.8.2020 Order on :

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed the present OAs seeking the following reliefs :

“(i) To quash the order dtd 27.06.2018 under Annexure A/5.

“(ii) To direct the Respondents to fix the salary of the applicant from Feb.2013 in the pay of Rs.4445/- with arrears.

“(iii) To direct the Respondents to refund the deducted amount recovered from the applicant.

“(iv) To pass any other order/orders as deemed fit and proper in this case.”

2. The applicant joined as Gramin Dak Sevak (in short GDS) Mail

Carrier/Mail Distributor under the respondents on 3.1.2000. His Time Related Continuity Allowance (in short known as 'TRCA'), was fixed at the rate of Rs. 4445/- per month w.e.f. 1.1.2006 and it was based on the workload of 3 hours 45 minutes as claimed by the applicant in the OA. On 9.10.2009, DG Posts issued a circular revising the TRCA of the GDSs w.e.f. 1.1.2006 based on the workload. It is averred in the OA that in February, 2013, the TRCA of the applicant was unilaterally reduced by the respondents to Rs. 4230/- per month without giving any notice to the applicant. When his representation to restore his earlier TRCA was not acted upon, he filed OA No. 242/2013 which was disposed by this Tribunal with direction to the respondents to consider and dispose of his representation.

3. Thereafter, the applicant's representation was rejected and the rejection order was challenged by the applicant in another OA No. 504/2013, which was disposed of by this Tribunal vide order dated 25.1.2018 (Annexure-A/1 of the OA), quashing the order of rejection as no show cause notice was issued to the applicant before taking the decision to reduce his TRCA and allowing liberty to the respondents to take a decision afresh after giving an opportunity of hearing the applicant. The operative part of the order dated 25.1.2018 of this Tribunal passed in OA No. 504/2013 is as under :-

"6. Since in the instant case before passing such recovery order no show cause notice was issued to the concerned employee, the recovery becomes vulnerable and hence the recovery becomes vitiated. Accordingly, the recovery order dated 29.04.2013 (Annexure-A/4) is hereby quashed. However, the respondents are at liberty to take up recovery measure only after issuing the show cause notice to the concerned employee and after hearing his side of submission so that justice not only will be done but also seems to have done."

3. As directed by this Tribunal in order dated 25.1.2018, the respondents issued the notice dated 15.5.2018 (Annexure-A/3) giving an opportunity of hearing to the applicant on the proposed recovery of excess amount paid to the applicant towards higher TRCA. In reply, the applicant represented to inform him the reasons of recovery from him. However, the respondents did not inform any reason to the applicant and passed the impugned order dated 27.6.2018 (Annexure-A/5) confirming the decision to recover the excess amount of Rs. 12116/- paid to the applicant towards higher TRCA from 1.1.2006 to 30.6.2009.

4. Following main grounds are mentioned in the order dated 27.6.2018:-

(i) The reply submitted by the applicant requesting to be informed about the reasons for recovery, was not found satisfactory **"as the reason was very much implicit in the court order itself."**

(ii) As per the circular dated 9.10.2009, the TRCA was to be revised on the basis of

work load assessment. Since assessment of work load was delayed, the applicant's TRCA was revised w.e.f. 1.1.2006 to Rs. 4445/- per month and the arrear was disbursed after taking an undertaking from him. The workload was assessed as per the letter dated 8.1.2011 which implied less TRCA of Rs. 4230/- for the applicant from 1.1.2006.

(iii) As per the judgment of Hon'ble Apex Court in the case of **High Court of Punjab & Haryana vs. Jagdev Singh reported in AIR 2016 SC 3523**, the excess amount of Rs. 12,116/- is recoverable as the applicant had furnished the undertaking for such recovery.

5. Now in third round litigation, the applicant has challenged the order dated 27.6.2018 (A/5) passed by the respondent no. 3 in pursuance to the order dated 25.1.2018 of this Tribunal (Annexure-A/1) in OA No. 504/2013 mainly on the following grounds:-

(i) The pay and allowances disbursed to an official erroneously cannot be recovered after a long time as per the judgment of Hon'ble Apex Court.

(ii) The order of recovery is illegal as the principles of natural justice were not adhered to. The law laid down in the case of **Canara Bank and others vs. Debasis Das and others reported in (2003) 4 SCC 557** was not followed.

(iii) The applicant avers that "if such inquiry is made regarding work load of the post, then it was held behind the back of the applicant which cannot be accepted in the judicial scrutiny." The applicant claims to be covering an area of about 32 km per day and it is not known how the workload assessment of less than 3 hours 45 minutes was assessed by respondent no. 4 .

(iv) There is no fraud or misrepresentation on the part of the applicant which resulted in the alleged excess payment.

(v) The circular dated 9.10.2009 cannot be effective retrospectively w.e.f. 1.1.2006.

6. The respondents have filed Counter. Besides reiterating the grounds in order dated 27.6.2018 (A/5) as stated in paragraph 4 of this order, it is stated in para 14 of the Counter as under:-

"14.....As per the work load collected for the purpose of fixation of TRCA reveals that the work load of MC was for 1 hr 1 minuted and work load of MD was for 1 hr 53 minutes. The average distance of 23 Km covered daily by the applicant has been taken into account..... Instead of representing through his appointing authority he had preferred to file as much as 3 OAs earlier to instant O.A before Hon'ble Tribunal merely to draw the mercy. The applicant has bypassed the appointing authority who is basically involved with his work load and preferred to approach Hon'ble Tribunal. As regards non applicability of decision of Hon'ble Apex Court it is humbly submitted that similar case has been disposed of by this Hon'ble Tribunal vide its order dated 03.04.2018 passed in OA No. 746/2015. The copy of the same order is Annexed as Annexure-R/8."

7. In reply to the contention in the OA that the applicant covers about 32 km daily, it is stated in the Counter (para 24) that the present workload was not applicable to the work load statistics taken by the respondent no. 4 prior to

1.1.2006 for the purpose of fixation of TRCA w.e.f. 1.1.2006 as per the letter dated 9.10.2009 (Annexure-R/1 of the Counter).

8. Learned counsel for the applicant and the respondents were heard and both the parties also filed their written notes of submission, broadly reiterating the grounds advanced in their respective pleadings on record. It was submitted by the applicant's counsel that the re-assessed work load of 2 hour 54 minutes by respondent no.4 was the work load for the MC or Mail Carrier and it does not include the work load for the MD or Mail Distributor which was entrusted to the applicant. It was reiterated that such assessment of work load was required to be done in presence of the applicant. The judgment of Hon'ble Apex Court in the case of Paras Nath Singh vs. State of Bihar & others (2009) 6 SCC 314 was cited by learned counsel for the applicant in support of his arguments.

9. Learned counsel for the respondents in his written noted of arguments, besides reiterating the averments in Counter, submitted that the work load of 2 hour 54 minutes was for both as GDSMC (1 hour 53 minutes) and as GDSMD (1 hour 1 minute) as explained in para 14 of the Counter. It was also referred to the judgment of Hon'ble Apex Court in the case of Jagdev Singh (supra) and the order dated 3.4.2018 of this Tribunal passed in OA No. 74/2015 (Annexure-R/8 of the Counter) in support of his arguments.

10. On perusal of the pleadings on record and the submission by both the parties, the following issues are required to be decided in this OA:-

(i) Whether the impugned order dated 27.6.2018 passed after issuing the show cause notice to the applicant as per the order dated 25.1.2018 of this Tribunal in OA No. 504/2013.

(ii) Whether the order dated 3.04.2018 (Annexure-R/8 of the Counter) of the Tribunal passed in OA No. 764/2015 is applicable to this case.

10. Regarding the issue no. (i), it is noticed that in order dated 25.1.2018 (A/1), this Tribunal found that the recovery of the amount in question has been ordered without giving any opportunity of hearing to the applicant. While quashing the order of recovery, liberty was given to the respondents after issuing show cause notice to the applicant. Thereafter, the respondents have issued a notice dated 15.5.2018 (A/3) stating that the excess payment of Rs. 12,116/- to the applicant was noticed by Director Accounts (Postal), Cuttack while carrying out cent percent verification of fixation of TRCA and vide letter dated 8.11.2011 (Annexure-R/3 of the Counter), he instructed to recover the excess payment in question from the applicant for the period from 1.1.2006 to 30.09.2009. It is stated that the TRCA of the applicant is to be regulated as per the above instructions of Director Accounts (Postal). Reference to the letter

dated 9.10.2009 (Annexure-R/1 of the Counter) of the respondent no.1 was given in the notice dated 15.5.2018 (A/3). It is seen that neither a copy of the letter dated 8.11.2011, nor the copy of any other document to show how the excess amount of Rs. 12,116/- was assessed by the authorities to be recoverable from the applicant, was informed to the applicant alongwith the said notice. In reply to the said notice, the applicant submitted a letter dated 21.5.2018 (Annexure-A/4 of the OA) stating *inter alia* as under:-

“In absence of the reasons behind the proposal for recovery I am unable to reply the show cause.”

No action was taken by the respondents to inform the reason as requested by the applicant and the impugned order of recovery was passed.

11. It is stated in para 4 of the Counter as under:-

“4..... After receipt of the representation dated 21.5.2018 from the applicant, the case of the applicant was considered on the basis of facts and figures and giving due opportunities and it was found that the fixation of TRCA has been done as per Extant Rules and as per the latest order of this Hon’ble Tribunal passed in OA No. 764/2015 vide order dated 03.04.2018. The copy of said order is annexed herewith as Annexure-R/8. Accordingly the decision of the Respondent was communicated to the applicant vide Memo No.LC-10-OA-504/2013 dated 27.6.2018 (Annexure-A/5) of the OA..”

There is no pleading on record to show if any reason was informed to the applicant for alleged excess payment in reply to the letter dated 21.5.2018 (A/4) of the applicant, before passing the impugned order dated 27.6.2018 (A/5). The observation in the notice dated 15.5.2018 that the reason was implicit in the court order is not sufficient as the specific court order that was stated to contain the reason was not mentioned in the said notice. Without informing the reasons for reduction of the TRCA retrospectively from 1.1.2006 on the basis of the reduced work load as on 1.1.2006, it cannot be said that the applicant was allowed a reasonable opportunity to furnish his submissions before the competent authority regarding his reduced work load and/or on reduction of his TRCA retrospectively from 1.1.2006 as directed by the Tribunal in order dated 25.1.2018 (A/1).

12. Regarding the question of compliance of the principles of natural justice, the principles laid down by Hon’ble Apex Court in the case of **Canara Bank and others vs. Debasis Das and others reported in (2003) 4 SCC 557**, which is cited by the applicant in the OA, are as under:-

“The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action

involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice.”

It was, therefore, necessary that the notice issued to the applicant to show cause should have unambiguously stated the reason for which the proposed action is warranted and allow a reasonable time to enable him to furnish his stand in the matter. Without the details based on which the action is proposed to be taken, the notice to show cause will be an empty formality.

13. In this case, the applicant on receipt of the show cause notice dated 15.5.2018, requested to be informed about the reasons for holding that the TRCA paid to him from 1.1.2006 till 30.9.2009 was in excess, which is to be recovered from him. The notice dated 15.5.2018 did not mention anything about the assessment of his work load as on 1.1.2006 by the respondent no.4 and about the reason for recovery of Rs. 12,116/-, except stating about the letter dated 8.11.2011 of the Director Accounts (Postal), instructing for such recovery. A copy of the said letter was also not sent to the applicant alongwith the said notice. The order dated 25.1.2018 (A/1) of the Tribunal did not discuss the reasons for the recovery in question. It is clear that the notice dated 15.5.2018 did not disclose sufficient details and the said details were not informed to the applicant even after he submitted a request to that effect after receiving the notice dated 15.5.2018 to enable him to submit his representation opposing the said recovery for consideration of the competent authority before taking a decision in the matter. No reason was communicated to the applicant in spite of his request for the same vide his letter dated 21.5.2018 (A/4). In the impugned order dated 27.6.2018 (A/5), the basis on which the work load of the applicant was assessed to be 2 hr. 54 minutes, justifying the TRCA at the reduced rate w.e.f. 1.1.2006, has not been disclosed and it was mentioned that the reasons for such decision was implicit in the Court order. The order in which the reasons for reduced work load and TRCA were mentioned, has not been specified in the impugned order dated 27.6.2018 (A/5). There is nothing on record to show that such details were communicated to the applicant. In the Counter, the above details have also not been disclosed, except stating that the applicant has not approached the respondent no. 4, who had assessed the reduction in workload to 2 hr. 54 minutes. The averment in para 5.8 of the OA that the assessment of reduced work load was done

behind the back of the applicant has not been specifically contradicted in the Counter. The Counter also does not disclose the justifications for assessing the applicant's work load to be 2 hr. 54 minutes.

14. From above discussions and applying the law decided by Hon'ble Apex Court in the case of Debasis Das (supra), it is concluded that the respondents have failed to extend a reasonable opportunity to the applicant to place his point of view on reduced workload and TRCA, before taking the decision regarding recovery of the amount in question and thereby, the respondents have failed to adhere to the order dated 25.1.2018 (Annexure-A/1) passed in OA No. 504/2013. **The issue no. (i) of paragraph 8 of this order is, therefore, answered in negative and against the respondents.**

15. Regarding the issue no. (ii) of paragraph 8, it is seen from order dated 3.04.2018 of this Tribunal (Annexure-R/8) passed in OA No. 764/2015 (Pradip Kumar Mohapatra vs. Union of India and others) that there was no direction of this Tribunal to the respondents in the said OA to issue the show cause notice to the applicant before taking a decision regarding recovery in question and the said issue was not raised or considered in the cited order dated 3.04.2018 in the OA No. 764/2015. In present OA (No. 465/2018), there was a specific direction of this Tribunal in order dated 25.1.2018 (Annexure-A/1 of the OA) passed in OA No. 504/2013 filed by the applicant in second round litigation, to quash the recovery order as no show cause notice was issued to the applicant and liberty was given to the respondents to take such recovery measure after issuing the show cause notice to the applicant and hearing his submissions before taking any decision about the recovery in question. There is nothing on record to show that the said order dated 25.1.2018 was challenged by the respondents in higher forum. Hence, the facts and circumstances of the present OA No. 764/2015 are different from the facts and circumstances of the present OA, for which the judgment cited at Annexure-R/8 of the Counter will not be applicable to the present OA. **The issue no. (ii) of paragraph 8 of this order is accordingly answered in negative and against the respondents.**

16. The averments of the respondents in the Counter that since the applicant has furnished the undertaking in the format at Annexure-R/2 of the Counter, the respondents can recover the excess amount of TRCA paid to him. But the respondents are required to adhere to the directions of the Tribunal in order dated 25.1.2018 (A/1). Instead of mechanically issuing the show cause notice, it was necessary on their part to inform the applicant the details based on which his workload was assessed by the respondent No.4 to be less so as to allow a reasonable opportunity of hearing to him before taking any decision in

the matter. The judgment in the case of Jagdev Singh (supra) cited by the respondents will not be helpful since in that case, the recovery was due to excess payment made as per the earlier revised pay scale which was covered by an undertaking and it was not the case of the affected employee in the said case that he was not informed about the reason for the recovery and the issue of principles of natural justice was neither raised nor considered in the cited case. Hence, the case of Jagdev Singh (supra) is distinguishable from the present OA, for which the judgment in the said case will not be helpful for the respondents.

17. In view of the reasons as discussed above, I am of the considered view that the impugned order dated 27.6.2018 (A/5) has been passed without allowing a reasonable opportunity of hearing to the applicant in accordance with the order dated 25.1.2018 (Annexure-A/1) of this Tribunal passed in OA No. 540/2013 and hence, the said impugned order is not sustainable under law and is liable to be quashed. It is accordingly quashed and the respondents are directed to refund to the applicant if any amount has been recovered from the applicant towards the recovery in question.

18. The OA is allowed as above. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)