

(Reserve)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 13 DAY OF 4, 2010)

PRESENT :

HON'BLE MR. A.K. GAUR, MEMBER-J

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 1445 OF 2004

(U/s, 19 Administrative Tribunal Act.1985)

Chatur Singh Bisht Son of Sri J.S. Bisht, serving as Upper Division Clerk, Office of the Director, S.S.B. Frontier Academy, Gwladam District Chamoli (Uttaranchal).

.....Applicant

By Advocate: Shri A. Rajendra

Versus

1. Union of India, through Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2. Director General, Seema Sashstra Bal (S.S.B.), Ministry of Home Affairs, East Block VI, R.K. Puram, New Delhi.
3. Director, S.S.B. Frontier Academy, Gwladam District Chamoli (Uttaranchal).

..... Respondents

By Advocate: Shri R. C. Shukla

O R D E R

(DELIVERED BY: A. K.GAUR- MEMBER-JUDICIAL)

By this Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing/setting aside the impugned orders dated 13.7.2004 (Annexure A-I) issued by Assistant Director (E-A-1) and 18.5.2001 (Annexure A-II) issued by Joint Director (E-A) coupled with prayed for restraining the respondents from recovering any amount in pursuance of the orders dated 13.07.2004 and 18.05.2001.

2. The facts of the case, in brief, are that the applicant was initially appointed as Lower Division Clerk on 05.10.1970 in Uttar Pradesh Division of Special Service Bureau (SSB). At that time the Secretarial Staff of SSB was not part of

combined and common Directorate General of Security Secretarial Service constituted in November 1975 for Special Service Bureau (SSB), Aviation Research Center (A.R.C), Special Frontier Force and Chief Inspector of Armaments (CIOA). There were also no centralized seniority list nor recruitment rules and the promotions of ministerial staff in SSB were made on the basis of Division-wise seniority. According to the applicant, he was promoted from L.D.C to Upper Division Clerk (UDC) w.e.f. 01.01.1976 on the recommendation of D.P.C.

3. In the meanwhile a combined ministerial cadre of four component Units i.e. S.S.B, A.R.C, S.F.F and C.I.OA was constituted and Recruitment Rules were notified on 04.11.1975. Thereafter the Combined Secretarial Service was placed under the Director (C&P), Directorate General of Security, who finalized the modalities & inter se seniority of the merged cadres and decided that all promotions made in Ministerial Cadres of the Component Units after 04.11.1975 be treated adhoc. Accordingly the applicant was reverted as Lower Division Clerk w.e.f. 01.08.1978 and his pay was fixed at Rs. 308/- in pre-revised pay scale of Rs. 330-10-380-EB-12-500-EB-15-560. He was again promoted as U.D.C w.e.f. 27.09.1984 on the basis of combined seniority list in Common D.G.S (Secretarial) Service and vide order dated 21.01.1985 (Annexure-1 of O.A), after adding the service rendered by him as U.D.C w.e.f. 01.01.1976 to 31.07.1978, his pay was fixed at Rs. 380/-. The pay of the applicant was revised w.e.f. 01.01.1986 and taking into account his pay fixation on 27.09.1984 (the date of promotion as UDC), his pay was fixed at Rs. 1320/- in pay scale Rs. 1200-2040.

4. According to the applicant, the Director of Accounts, Cabinet Secretariat in September 2000 pointed out that his pay had wrongly been fixed as on 01.01.1986 and 27.09.1984 and Rs. 46,384 has impliedly been made to the applicant from 27.09.1984 to 08.08.1999. The applicant preferred an application

dated 14.02.2002 to the Director General for not recovering the over payment made from 27.09.1984 to 08.08. The SSB Directorate informed the applicant vide memorandum No. 21/SSB/A-1/82 (32)-I dated 30.9.2002 that his case for waiving off recovery of overpayment is under process and the over-payment may not yet be deducted from his salary till further orders. But the Directorate General, SSB, vide memorandum dated 08.12.2003 (Annexure No. 4 of O.A) informed the applicant regarding deterioration of waiving the overpayment of Rs. 46,384/- Aggrieved the applicant sent a legal notice to Respondent No. 1 and 2 (Annexure No. 5 of O.A).

5. Learned counsel for the applicant placed reliance on the decision rendered by Hon'ble Supreme Court reported in 1994 (2) SCC 621 - Shyam Babu Verma Vs. Union of India and others and submitted that since the applicant received the higher pay scale due to none of his fault, it shall not be just and proper to recover the salary already paid to him. Learned counsel for the applicant would further contend that this Tribunal vide Judgment dated 23.10.2002 (Annexure No. 6 of O.A) passed in **Original Application No. 1331 of 2000 - Hira Ballabh Joshi Vs. Union of India and others** directed that the recovery of the amount overpaid to the applicant of that O.A, who was an employee of SSB, on account of wrong fixation of pay should not be made as the applicant in that case was not responsible for fixation of his pay wrongly. Learned counsel further invited our attention to the Judgment of Hon'ble High Court of Himachal Pradesh in **Civil Writ Petition No. 335 of 1987 (Panama & others Vs. Union of India)** (Annexure No. 7 of O.A) and submitted that Hon'ble High court

had directed the respondents not to make any recovery from the petitioners because of payment of salary to them in the wrong pay scale whereas the future salary of the petitioners was payable in the lower pay scale prescribed/approved for them. Learned counsel for the applicant further argued that while passing the impugned order, no opportunity of hearing was provided to the applicant and the principle of natural justice was violated by the respondents resulting into civil consequences. Learned counsel for the applicant would further contend that vide order dated 01.12.2004, this Tribunal restrained the respondents from making recovery from the applicant, which was extended from time to time.

6. On notice respondents have filed Counter Affidavit. In para 4 of the Counter Affidavit, respondents have stated as under: -

“.....the applicant has found no fault in the re-fixation of pay and order of recovery made by the respondents meaning interalia that he is admitted that he had been excess salary due to wrong fixation earlier”.

7. Learned counsel for the respondents submitted that after the combined Ministerial cadre of 4 component units of Director General of Security (under the Cabinet Secretariat) i.e. SFF and CIOA was constituted at New Delhi and recruitment rules were issued on 4.11.1975, all promotions made in the Ministerial Cadre of the component Units after 4.11.1975 were ordered to be treated as adhoc and all the Lower Division Clerks, who had been promoted as Upper Division Clerks after 4.11.1975 were ordered to be reverted immediately. Accordingly the applicant was reverted

Lower Division Clerk w.e.f. 01.08.1978. Learned counsel for the respondents further submitted that since the pay of the applicant was wrongly fixed for the period w.e.f. 27.9.1984 to 8.8.1999 after giving the benefit for the period w.e.f. 01.01.1976 to 31.7.1978 as Upper Division Clerk. Accordingly overpayment to the tune of Rs. 46,384/- was paid to him for the said period, therefore, the order for recovery of excess amount was issued. Learned counsel would further contend that the overpayment was made due to wrong fixation of pay of the applicant after verifying his past services rendered by him as Upper Division Clerk from 1.1.1976 to 31.7.1978.

8. Applicant has filed Rejoinder Affidavit to which the respondents have filed Suppl. Counter Affidavit reiterating the pleadings already enumerated in the Original Application and Counter Affidavit respectively.

9. We have heard Sri A. Rajendra, learned counsel for the applicant and Sri R.C. Shukla, learned counsel for the respondents and perused the pleading as well.

10. In the instant case, no doubt even if the plea taken by the respondents that the applicant had wrongly been awarded the pay scale to which he was not entitled and when this mistake was detected, the orders were passed for recovery of excess amount. It is nowhere stated by the respondents that the applicant had ever misled or committed fraud to the authorities. On the other hand the record shows that the authorities concerned had fixed and paid

the salary to the applicant of their own accord. Therefore, even if, subsequently it was noticed or discovered that by mistake the applicant had been granted excess monetary benefits, a short question arises as to whether the applicant is liable to refund the excess amount already received by him bona fide?

11. Learned counsel for the applicant argued that while passing the impugned order, no opportunity of hearing was provided to the applicant and the principle of natural justice was violated by the respondents resulting into civil consequences.

12. On the other hand learned counsel for the respondents submitted that in such cases where the fixation of pay was done inadvertently and excess salary was drawn, no opportunity is required to be given.

13. We are not convinced with this argument of learned counsel for the respondents in view of the decision rendered by Hon'ble Supreme Court reported in **1986 SCC (L&S) 745 - Smt. Rajinder Kaur Vs. State of Punjab and another.** Hon'ble Supreme Court in the case of Smt. Rajinder Kaur (Supra) has held as under: -

"13. On a conspectus of all these decision mentioned hereinafter, the irresistible conclusion follows that the impugned order of discharge though couched in innocuous terms, is merely a camouflage for an order of dismissal from service on the ground of misconduct. This order has been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause the purported order of dismissal from service and without giving any opportunity to cross-examine the

witness examined, that is, in other words the order has been made in total contravention of the provision of Article 311(2) of the constitution. The Impugned order is, therefore, liable to be quashed and set aside. A writ of certiorari be issued on the respondent to quash and set-aside the impugned order dated September 9, 1980 of her dismissal from service. A writ in the nature of mandamus and appropriate direction be issued to allow the appellant to be reinstated in the post from which she has been discharged. The appeal is thus allowed with cost....."

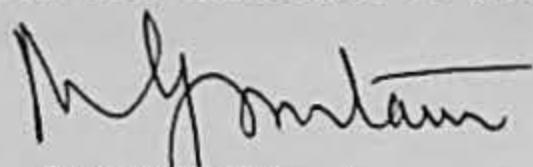
14. In the instant case admittedly the applicant has not been afforded any opportunity of hearing before passing the impugned orders, which is totally in violation of principles of natural justice and in any view of the matter can not be sustained in the eyes of law. The rule of principle of natural justice mandates that the decision makers should afford to the person concerned a reasonable opportunity of being heard. This view finds support from the decision rendered by the Hon'ble Supreme Court reported in **AIR 1990 SC 1402 (Km. Neelima Misra Vs. Dr. Harinder Kaur and others)**. Besides this, in the decision rendered in **Shyam Babu Verma and others Vs. U.O.I & Ors reported in 1994 (2) SCC 621**, Hon'ble Supreme court has held that since the petitioner received the higher pay scale due to none of his fault, it shall not be just and proper to recover the salary already paid to him.

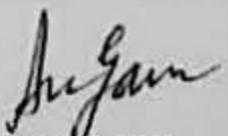
15. In view of the observations made above, the orders impugned in the present O.A are liable to be quashed and set aside not only for want of providing reasonable opportunity of hearing to the applicant but also on the ground that the applicant cannot be held responsible for securing higher scale of pay , therefore, payment of

salary already paid to the applicant cannot be recovered , as held in the case of Shyam Babu Verma's case (Supra).

16. Accordingly the Original Application is allowed. The impugned orders dated 13.07.2004 (Annexure-1 of O.A) and 18.05.2001 (Annexure 2 and 3 of O.A) are hereby quashed and set aside. The respondents are directed not to deduct any amount from the salary of the applicant. Any amount already recovered from his salary in pursuance of the impugned orders, shall be refunded to the applicant within a period of three months from the date of receipt of certified copy of the order. However, if any action is required to be taken in pursuance of the impugned orders; the respondents are directed to give reasonable opportunity of being heard to the applicant in accordance with rules and the decisions (referred to above) and then pass appropriate orders in this regard.

17. Parties are directed to bear their own costs.


MEMBER- A.


MEMBER- J.

/Anand/