

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 10th day of Dec 2010

Original Application No. 1574 of 2004

Hon'ble Mr. S.N. Shukla, Member (A)

Hari Shanker Tewari, S/o Shri Ghan Shyam Tewari, R/o Village and P.O. Baripur, Sikhariganj, Dist: Gorakhpur and residing in Postal Colony, Gorakhpur employed as Staff Car Driver, O/O P.M.G. Gorakhpur in the Distt: Gorakhpur.

..... Applicant.

By Advocate: Sri J.M. Sinha and Sri A. Tripathi

V E R S U S

1. Union of India through the Secretary, Ministry of Communication and I.T. Department of Posts, Dak Bhawan, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Director Accounts (Postal), UP Circle, Sector D, Aliganj Lucknow.

..... Respondents.

By Advocate: Shri Anil Dwivedi

O R D E R

This OA is filed seeking to quash the impugned order dated 07.12.2004 passed by Senior Accounts Officer, O/o Post Master General, Gorakhpur Division, Gorakhpur(Annexure A-1) and copy of para No. 23 of IR on O/o PMG, Gorakhpur conveyed on 07.12.2004(Annexure A-2) and simultaneously upheld the decision of the authorities at Annexure A-7.

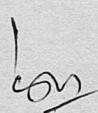
2. Very long and winding pleadings have been made by both sides which on facts of the case appear to be totally unnecessary.



3. Briefly the facts of the case are that the employment of the applicant has a checkered history in which he was engaged and removed repeatedly. But finally accommodated on a regular basis in terms of direction issued by this Tribunal in TA No. 135/87 vide order dated 24.07.1992. Thereafter, the applicant filed another OA No. 1813/99 and sought intervention of this Court for fixation of his emoluments etc. However, in the meantime vide order dated 15.02.1996 the Post Master General, Gorakhpur Region passed order dated 14.02.1995 (Annexure A-7) to the satisfaction of the applicant. Taking note of that order the OA was withdrawn and closed. Thereafter, as a result of audit objection (details as per Annexure A-2 to the OA) the Senior Accounts Officer through order dated 07.12.2004 directed deduction of total amount of ₹ 39597/- from the salary of the applicant starting from the salary in the month of December, 2004. It is not necessary to go into the details of the deductions. It will suffice to say that the objection related to some payment of salary considered is not admissible to the applicant. However, there is no dispute about the fact that the applicant neither concealed or misrepresented any facts by any time and the order dated 14.02.1995 (Annexure A-7) was passed by the competent authority on the basis of record.

4. Several decisions have been relied upon by the learned counsel for the applicant such as:-

"a. (1997) 35 ATC 584 (FB) : *M.S. Sadanandan s. Executive Engineer and another – A. Pay- Reduction in pay with retrospective effect – Applicant's pay reduced from Rs. 2900 to Rs.2825 as a result of internal audit – Held; the role of auditor is advisory in character and the decision making authority has to made his decision after following*



principles of natural justice – Administrative Law – Natural justice – Internal audit.

B. Natural Justice – Pre-decisional hearing – Dispensation of.

- b. (1997) 25 ATC 586 Ram Kripal Prasad Vs. Union of India and others – Recovery – Applicant found to be senior and pay fixed on a par with his junior – Subsequently (13 years in this case) found fixation of pay wrong and ordered for recovery without show-cause notice – Held, principle of natural justice denied and accordingly liable to be declared illegally – Administrative Law – Natural justice.*
- c. (1994) 28 ATC 747 : Sahib Ram Vs. State of Haryana and others- Pay scale – Upgraded pay scale for Librarians in colleges possessing first or second class M.A., M.Sc., M, Com. Plus first or second class degree or diploma in Library Science – Subsequent order allowing the ungraded pay scale to those appointed prior to the specified date (3-12-1972) "without insisting on a first or second class in the degree, diploma or other prescribed educational qualification" – Interpretation of – Such an order, held, had to effect of relaxing only the requirement of first or second class and not the educational qualifications itself – Hence, a librarian not possessing the requisite educational qualifications, although appointed prior to the specified date, held, not entitled to the benefit of the relaxation – Government of India proceedings dated 16-1-1987 –Universities.*
- Pay – Excess payment – Recovery – Upgraded pay scale given to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee – In such circumstances recovery of the payment already made, restrained.*
- d. 2002(1)SCC 217 : P.H. Reddy and others Vs. National Institute of Rural Development and others – Pay fixation – Fixation of pay of an employee from defence services and re-employed in a civil post – Held the case DG, ESI Corp. V. M.P. John represent the correct view that an ex-serviceman who is re-employed will get the minimum of pay scale in addition to his full pension as on ex-serviceman – No infirmity or inconsistency in the circulars dated 25-11-58 and 8-2-1983 – On facts authorities entitled to refix the pay if the same is erroneously fixed either but no recovery can be made from the employee concerned.*
- e. 2004(3) ATJ 289 : Santokh Singh and others Vs. State of Punjab and others – Arrears of Salary – Recovery – Recovery of excess pay to petitioners by way of arrears of salary – Petitioners cannot be palmed for overpayments or fraud on their part – No recovery can be made."*

4. From the respondents side records shows that there was inordinate delay in filing Counter Affidavit. Even in the delayed counter affidavit the respondents have not convincingly met the legal precedence cited by the applicant. The only reason why the audit objection was accepted and acted upon was that the Tribunal in its order in TA No. 135/87 while deciding the OA in favour of the applicant with the following observations:-

".....His services were rightly terminated as the said deponent Sri Jagannath Chowdhary is never in service nor he was terminated merely because he proceeded on leave vacancy. It could not be said that the post at any count has fallen vacant but the respondents were in need of the appointment of a driver and that is why the applicant was appointed

CSM

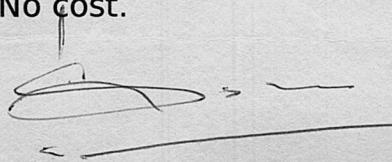
and as such the applicant cannot have a preferential claim above the said Sri Jagannath Chowhdary. However, in view of the fact that even if the applicant was favoured by some one the applicant was working in the department and will work when ever vacancies are available. The respondents will also accommodate him in the department or allow him to continue his work in the department or may be at other place. No order as to the costs."

5. The above direction did not specifically direct the department to treat duty period from 16.10.1985 to 06.03.1994 to count towards increments and pensionary benefits. This preposition at this stage cannot be upheld keeping in mind that the competent authority while passing its order dated 14.02.1995 (Annexure A-7) has all the facts and figures before him and considered it appropriate to pass order dated 15.02.1996 as it did.

6. Needs no emphasizing that the applicant get support from the catena of judgments cited above and deserves full relief in this OA.

7. In view of the above discussions the OA is allowed. The impugned order dated 07.12.2004 passed by Senior Accounts Officer, O/o Post Master General, Gorakhpur Division, Gorakhpur(Annexure A-1) and copy of para No. 23 of IR on O/o PMG, Gorakhpur conveyed on 07.12.2004(Annexure A-2) are quashed and set aside and the orders of the Post Master General, Gorakhpur Region dated 14.02.1995 (Annexure A-7) holds good and the competent authority is directed to refund the entire amount, if any deducted within a period of 08 weeks from the date of receipt of a certified copy of this order. No cost.

/pc/


Member (A)