

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this the ^{9th} day of ^{Sept} 2010.

CORAM:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No.1077 of 2004
(U/s 19 of the Administrative Tribunals Act 1985)

Phool Chand Yadav,
S/o Late Sri. Chauthi Ram Yadav,
Presently working as Inspector, Planning Office
of Post Master General, Allahabad,
R/o House No.102/61D/7A,
Om Gayatri Nagar, Allahabad. ... Applicant

By Adv: Shri B.N. Singh

VERSUS

1. Union of India through its Secretary,
Ministry of Communication (P&T),
Dak Bhawan, Sansad Marg, New Delhi.
2. The Post Master General, Agra Region, Agra.
3. Superintendent of Post Offices,
Etawah Division, Etawah.
4. The Director of Accounts (Postal),
U.P. Circle, Lucknow. ... Respondents


By Adv: Shri R.D. Tiwari

ORDER

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

The applicant was joined on the post of Postal Assistant on 9.8.1983 and promoted as U.D.C. on 19.4.1990. He appeared for the examination of Junior Accounts Officer in the year 1994. In the result he was placed at Sl.No.1 in the merit list. According to the O.M. dated 2.2.2001, regarding '**Special Pay**', the following provisions were made.

"Ministry of Personnel, Public Grievances and Pension has now conveyed the decision of Group of Ministers to grant Special Pay to candidates who qualify in the Departmental Examination for Promotion to the grade of Junior Accounts Officer and are



awaiting promotion and continue to be in the time scale of the existing post with rates of special pay being same as applicable to similarly placed persons in other organised Accounts Departments which is currently Rs.80/- per month for the first year of waiting and Rs.140/- per month thereafter. These orders will take effect from the date of issue of this order."

2. The applicant ~~was~~ also qualified in the selection to the post of Inspector of Post Office in August 1995 and joined as Inspector on 3.7.1997. The claim of the applicant is that, he is entitled to the Special Pay of Rs.140/- per month, until he is posted on the post of Junior Accounts Officer (JAO for short). But, without any recovery order or show cause notice or giving an opportunity of hearing, recovery has been made ~~of Rs.1100/-~~ ^{per month} from the salary of the applicant and the Special Pay of Rs. 140/- has also not been allowed. The applicant has made a representation dated 20.7.2004, but, it is yet to be disposed of. Aggrieved, the applicant has filed this O.A. seeking the following reliefs:

"1. To issue a writ, order or direction in the nature of mandamus directing the respondents not to make recovery from the applicant in future.

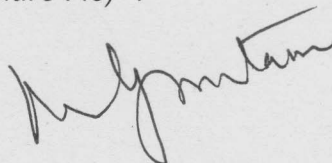
2. To issue a writ, order or direction in the nature of mandamus directing the respondents to refund the amount which has already been deducted from the salary of the applicant with compound interest.

3. To issue a writ, order or direction in the nature of mandamus directing the respondents to allow the Special Pay Rs.140/- per month till the promotion on the post of Junior Accounts Officer, on the basis of O.M. dated 2.2.2001.

4. To issue any other suitable order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

5. To award cost of the petition.

6. To issue order or direction to set aside the order dated 9.9.2004 (Annexure A8)".



3. In the counter affidavit filed by the respondents it is stated that, the applicant has passed in two examinations i.e. JAO and IPO, but he joined as Inspector of Posts cadre. During checking by Internal Checking Organisation Party, it was held that the Special Pay of Rs.140/- per month allowed to the applicant with effect from 2.2.2001, was not correct, and the audit party after raising objection ordered for recovery of irregular payment of Rs.3335/- from the pay of the applicants and to stop Special pay of Rs.140 per month in the future. In compliance of the same, recovery of Rs. 1100/- is being made from the salary of the applicant, since June 2004. The applicant made a representation dated 20.7.2004 which was examined by the Director General of Postal Accounts, U.P. Circle and it was held that, since he had opted for IPO Cadre, he cannot be considered as awaiting for a posting as JAO, and therefore, the recovery being made is justified.

4. In the O.A. the applicant has stated that, the post of Inspector of Posts was in the scale of Rs.5500-175-9000, whereas JAO's scale was revised to 6500-200-10500 w.e.f. 28.2.2003. Therefore, the claim of the applicant was that, he would join if he was posted as JAO, which is in a higher scale to that of IPOs.

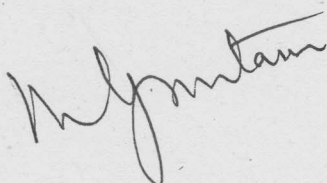
5. I have heard both parties and perused the record on file. The factual position is that, the applicant had qualified in two examinations, but he was offered appointment in the IPO's Cadre, which he accepted. It is nowhere stated that he was offered a posting in the JAO cadre and he did not join and therefore, as per statements of the applicant, he is still awaiting a posting as JAO and until then, he is entitled to Special Pay.



6. Respondents on the other hand tried to say that, the post of IPO and JAO was in the same pay scale and therefore, it cannot be said that he was waiting for posting as JAO. But in the counter affidavit the respondents have admitted that, the post of JAO was revised and upgraded to Rs.6500-200-10500. It is also evident that no notice was given to the applicant before starting of recovery and he was not given any opportunity to represent his case. The recovery was started on raising of an audit objection, whereas the recovery should have been made only after informing the applicant and giving him an opportunity to be heard. In the supplementary counter affidavit filed by the respondents, it has been clarified that a decision has been taken that, those who have joined other cadres should not be considered for posting as JAO, and that since the applicant has chosen a posting in the IPO cadre, he is no longer eligible for posting as JAO. It is also clarified that, at the time when the applicant joined the IPO cadre, the pay scale of IPO and JAO was the same i.e. 5500-9000.

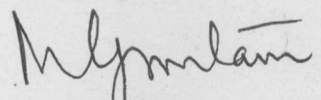
7. Counsel for the applicant placed reliance on the following orders.

- i) ***S.V.V. Satyanarayana Murthy Vs. The Director of Accounts (Postal) A.P. Circle, Hyderabad and ors(O.A.1185/2001, CAT., Hyderabad Bench)***
- ii) ***M.S. Sadanandan Vs. Executive Engineer and another (1997) 35 ATC 584 (FB); and***
- iii) ***Shyam Babu Verma and others Vs. Union of India and others (1994 SCC (L&S) 683)***



8. From the above three citations, it is clear that, ^{if} any over-payment is made to an employee which is not based on fraud or misrepresentation by him, ^{it} should not be recovered. Thus, following the judgements of the Hon'ble Supreme Court in ***Shyam Babu Verma and others Vs. Union of India and others (1994 SCC (L&S) 683***), in the present O.A also it is clear that, whatever be the facts of the case, the recovery was made on account of objection raised by the Audit party. No notice was given and no opportunity was provided to the applicant and recovery started without passing any orders, therefore, recovery of Rs.3335/- made from the applicant is unjustified and is hereby stopped. It is now for the respondents, however, to pass speaking orders regarding entitlement of the applicant to Special Pay with effect from the date of the audit objection.

9. O.A. is accordingly allowed with a direction to the respondents not to recover the amount of Rs.3335/- from the salary of the applicant and refund the same, if already recovered. Regarding entitlement of special pay, orders should be passed as per laws and rules, within a period of one month from the date of receipt of a copy of this order. No costs.


MEMBER(A)