

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

PRESENT:

**HON'BLE MR. A.K. GAUR, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

Allahabad this the 6 th day of 11, 2008

Original Application No. 460 of 2005

1. Mahendra Pratap Singh, S/o Pradeep Singh, R/o Village & Post- Birpur, District-Kannoj.
2. Kanhiya Bux Singh S/o----R/o Village & Post-Asaltabad, District-Kannoj.

...Applicants.

By Advocate : Sri Pankaj Srivastava.

Versus

1. Union of India through Secretary, M/o Communication, Deptt. Of Post, New Delhi.
2. Post Master General, Kanpur Region, Kanpur.
3. Superintendent of Post Offices, Fatehgarh Division, Farrukhabad.

...Respondents.

By Advocate : Sri S.C. Mishra.

O R D E R

Delivered: By Hon'ble Mr. A.K. Gaur, Member-J

By means of this OA, the applicant has prayed for followings reliefs :

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to refund the recovered amount alongwith 18% interest thereof.

(ii) Issue any suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The main case of the applicants is that both of them retired ^{as} Military Pensioner w.e.f. 11.11.1978 and 6.11.1985 respectively. After having retired from Military service both were appointed as EDBPM,

Birpur w.e.f. 5.1.1979 and 6.11.1986 respectively. In the letter of appointment, it is clearly mentioned that the services of the applicants shall be governed by ED Conduct Rules 1964. (Annexure 1 & 2). According to the applicants after the report of 4th Pay Commission w.e.f. 1.1.1986 as well as report of Talwar Committee, it was recommended that the Postal Employee will also get the Dearness Allowance equal to Central Government Employee. The respondent No.2 started recovery of D.A. from the applicants' w.e.f. February, 1999, which were paid to the applicant earlier, on the grounds that the applicants cannot get D.A. from two sources. The applicants have relied upon a decision of the Delhi High Court, wherein it was held that the payments which were recovered from the applicants may be refunded to them. In strict compliance of the said order granted by Hon'ble High Court the respondent No.3 issued a letter dated 24.6.2002 in which they also annexed the copy of circular issued to Director General Posts dated 9.12.1988. The copy of the letter dated 24.6.2002 (Annexure-5) has been filed to this Original Application. It is clear from the letter dated 9.12.1988, that option should be obtained from the applicant/pensioner while working on the post of EDBPM but no such options were obtained from the applicants nor the circular was brought to the notice of the applicants. In the letter dated 9.12.1988, there is no mention that the D.A. which is already paid to the applicant may be recovered from them. Vide representation dated 6.2.2004, the applicants requested to respondent No.3 to refund the amount already recovered from them. The Post Master General, Kanpur vide order dated 16.11.2004 rejected the claim of the applicants. The grievance of the applicants is that they never misrepresented to the respondents for payment of Dearness allowance and no opportunity of

hearing was granted to them and the recovery was initiated arbitrarily.

3. Denying the pleas taken by the applicants, the respondents filed^e their reply and submitted that both the applicants were paid D.A. from 1.7.1986 onwards in contravention of rules. As per instructions issued by DOP&T dated 2.7.1999 (Annexure-2 to the Counter Affidavit), the Dearness Allowance is admissible w.e.f. 18.7.1997 to the pensioners who are working as EDAs. Both applicants took Dearness Allowance from two sources (Pension & Salary). Hence the recovery of over payment of D.A. for the period from 1.7.1986 to 17.7.1997 was calculated by the Audit. Accordingly, recovery of Rs.50260/- was calculated in respect of applicant No.2 and the same has been ordered to be recovered from the pay of the applicants @ Rs.500/- per month. It is also submitted by the respondents that the applicants did not deduct the amount of recovery from their salary and took whole amount of salary every month by making corrections in "A Roll" unauthorisedly. The main contention of the respondents is that the applicants are not entitled to get D.A. from two sources for the period w.e.f. 1.7.1986 to 17.7.1997. It is also submitted that the applicants were given an opportunity vide letter dated 29.7.2002. Accordingly, both the applicants attended the office of respondent No.3 on 2.8.2002 and explained their cases in detail.

4. In the rejoinder filed by the applicants they denied that any such information in regard to the recovery of excess amount was given to them. The respondents never gave any information about circular issued by Director General Posts and the applicants had never given any objection against the same. The amount, in question, has been deducted ✓

arbitrarily and unauthorizedly from the applicants without giving any opportunity.

5. The respondents filed^e Supplementary Counter Affidavit and submitted that as per instructions contained in Director General (Post), New Delhi's letter ~~dated~~ 14-26/97-PAP dated 09.12.1988, published at page No.93 under the Heading of Calculation of Consolidated Allowance. It is further stated that the applicant No.2 - Kanhaiya Bux Singh, GDS BPM, Asaltabad was duly informed the facts vide letter dated 18.6.2002 in reply to his letter dated 6.6.2002. Further reminder was also issued vide letter dated 24.6.2002 with the request to correct the office balance of his Post Office at-once. But neither the applicant No.1 nor applicant No.2 paid any heed towards the correspondence, which was made with them in a moderate way. In such way their statement that they were not informed about the over payment is nothing but an unsuccessful attempt to escape ~~themselves~~^{from} to bear the burden of the recovery of illegally over paid amount to them.

6. I have heard Shri Pankaj Srivastava, counsel for the applicant and Shri S.C. Mishra, Senior Standing Counsel and perused the records.

7. Learned counsel for the applicants submitted that the respondents have committed serious illegality in recovering the amount of D.A. already paid to them even without any notice to them and the recovered amount may be directed to be refunded. Learned counsel for the respondents on the other hand filed written arguments and stated that the payment of relief already made on pension to the pensioners should not be made from the pensioners who are re-employed. The applicants are not entitled to get D.A. from two sources for the period, in question, the recovery is wholly just and

proper and the applicants are not entitled for the D.A. from two sources. The joint representation filed by the applicants have rightly been considered and rejected in accordance with the rules. It has also been argued on behalf of the applicants that the circular dated 9.12.1988 issued by Director General (Posts), it is nowhere mentioned that the amount of D.A. already paid to the pensioner shall be recovered. The applicants never misrepresented to the department for payment of D.A. and as such no recovery could be made from them. In support of their contention, the applicants have placed reliance on following decisions of Hon'ble Supreme Court in the case of Babulal Jain Vs. State of M.P. and ors. reported in JT 2007 (6) SC 59. The Hon'ble Supreme Court has clearly observed that "we, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. It is not a case where the applicants obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law. Moreover, such recovery has been effected without issuing any show cause notice. In the instant case, in the year 2002, certain letters were written by the respondents to the applicants asking them to explain as to why the amount received towards Dearness Allowance be not recovered from the applicants. There is no evidence on record to indicate that any show cause notice or opportunity was ever granted by the respondents to the applicants before affecting the recoveries. Learned counsel for the applicant further contended that higher pay erroneously given to the applicants by adding two DAs was not because of the applicants misrepresentation and they were paid this amount due to no fault of theirs. In these circumstances, it would be just and proper not to recover any excess amount already paid to the applicants. In support of said contention 1994 (27) ATC 121 - Shyam Babu

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Verma and ors. Vs. Union of India and Ors. has been relied upon by the applicants. Learned counsel for the applicants has also placed reliance of 1995 SCC (L&S) 248 - Sahib Ram Vs. State of Haryana and ors. This judgment has been cited by the applicants' counsel with a view to suggest that if certain amounts have been paid to the applicants by the authority concerned without any misrepresentation or fraud by the employee, in such circumstances, recovery of the payment already made must be refunded to him. In support of his contention learned counsel for the applicants has also placed reliance on decision of Madras Bench of this Tribunal in the case of V. Sundaramoorthy Vs. The Senior Superintendent of Post Offices Tambaram Division Chennai and ors.- ATJ 2005(3) 222 and Shri Madan Lal Bhasin Vs. Union of India & ors. ATJ 2006(1) 6 passed by Principal Bench. Learned counsel for the respondents has not placed reliance on any decision of this court.

8. Having heard parties counsel, we are firmly of the view that in terms of Director General (Posts) letter dated 9.12.1988, it was clear that option should be obtained from the applicants but respondents have neither taken any option from the applicant nor the circular, in question, was ever brought to the notice of the applicants. We have also carefully seen from the record that the applicants never misrepresented to the respondents for payment of D.A. and the amount of D.A. has been recovered after a long lapse of time without giving any opportunity of hearing to the applicant. It is in utter violation of Principle of natural justice and fair play. In our considered view, the respondents were not justified in recovering the amount, without any notice to the applicants. In view of number of the aforesaid decisions of Hon'ble Supreme Court as well of this Tribunal, the

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recovered amount is directed to be refunded to the applicants.

9. In the result, the OA is allowed. The respondents are directed to refund the amount already recovered from the applicants. No order as to costs.

Manjulika Gautam

(Manjulika Gautam)
Member (A)

A.K. Gaur

(A.K. Gaur)
Member (J)

RKM/