

Open Court

**Central Administrative Tribunal  
Allahabad Bench  
Allahabad.**

**Original Application No. 985 of 2005**

Allahabad, this the 19<sup>th</sup> day of **March**, 2010

**Hon'ble Mr. A.K. Gaur, Member (J)**

Mohd. Ashfaq, Aged about 48 years, Son of Shri Mohd. Shafi, Resident of House No. C-9/89, Habibpura, Chetganj, Varanasi, presently working as Driver (Mail Motor), Head Post Office, Varanasi.

**Applicant**

**By Advocate: Sri Rakesh Verma**

**Vs.**

1. Union of India through Secretary, Ministry of Communication (Department of Post), Dak Bhawan, New Delhi-110001.
2. The Superintendent of Post Offices, Varanasi West Division, Varanasi-221002.
3. The Senior Superintendent of Post Offices, East Division, Varanasi.

**Respondents**

**By Advocate: Sri R.D. Tiwari**

**ORDER**

Heard Sri Rakesh Verma, learned counsel for the applicant and Sri R.D. Tiwari, Senior Standing Counsel (U.O.I.) on behalf of the respondents.

2. It is seen on record that on 25.08.2005 recovery of Rs.30,413/- was stayed by this Tribunal. Accordingly, respondents were restrained from making recovery in this regard. Learned counsel for the applicant invited our attention to annexure-1 (impugned order) wherein it is observed that during the period 01.09.1992 to 30.09.1999 while the applicant was posted as

Superintendent, Post Offices, he was wrongly paid Rs.30,413/-, accordingly he was directed to deposit the same immediately. Sri Rakesh Verma would contend that a perusal of letter dated 25.06.1998 would clearly indicate that sanction of the Superintendent of Post Offices, Varanasi West Division has been accorded for including element of H.R.A. and C.C.A. at the rate of Varanasi City towards calculation of wages being paid to the applicant w.e.f. 01.09.1992 to 31.05.1998, details of which have been given below in the letter. The applicant has clearly and specifically stated in para-10 of the O.A. that as the applicant has not received the aforesaid amount <sup>by</sup> playing fraud or misrepresentation, same cannot be recovered. In para-14 of the Counter Affidavit, this crucial statement of facts has not at all been denied by the respondents, and the respondents have stated that the contents of para-4.10 need no reply. We have also perused the Rejoinder Affidavit and Supplementary Counter Affidavit wherein the earlier facts have been reiterated only. It is also brought to my notice that earlier O.A. (relates to regularization of the applicant) filed by the applicant, was dismissed by this Tribunal, and against the same order applicant approached the Hon'ble High Court through Writ Petition No. 35558 of 1998. The said Writ Petition was disposed of with the direction that there were sanctioned posts of Driver, out of which, one post is lying vacant on account of retirement of Sri Rajendra Upadhyaya after attaining the age of superannuation on 02.11.1995 and, thus, it appears that one post is vacant against which <sup>the</sup> claim of petitioner for regularization may be considered. After passing the aforesaid order of the Hon'ble High Court, services of the applicant has been regularized vide order dated 16.09.2003 (Annexure A-3). According to the applicant, as

his services have been regularized vide order dated 16.09.2003, there was hardly any justification to recover the amount of H.R.A. and C.C.A.

3. Having heard the parties counsel, I am firmly of the view that the order of recovery, which has been passed by the competent authority vide annexure A-1 dated 24.12.1999 is misconceived and is liable to be quashed and set aside. I have clearly noticed that no amount has been paid to the applicant <sup>or because</sup> ~~because~~ of his misrepresentation or on account of the fraud committed by the applicant. Accordingly I find no justification to recover the amount already paid to the applicant.

4. In view of the above facts and circumstances, O.A. is allowed, and the order dated 24.12.1999 (Annexure A-I) is hereby quashed and set aside. The amount, if any, recovered from the applicant be refunded to him within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.

*An Gaur*  
**Member-J**

/M.M/