

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No. 299 of 2000.

Allahabad this the 29th day of April 2004.

Hon'ble Mrs. Meera Chhibber, Member-J.
Hon'ble Mr. S.C. Choube, Member-A.

Lallu Lal Gupta,
son of late Purshottem Das,
Resident of 209/112 Balua Ghat,
Allahabad presently posted as Post Master
Varanasi Cantt, District Varanasi.

.....Applicant.

(By Advocate : Sri N.L. Srivastava)

Versus.

1. Union of India
through Chief Post-Master
General U.P. Circle, Lucknow.
2. Post Master General, Allahabad.
3. Director,
Post Service, Allahabad.
4. Superintendent of Posts (West)
Varanasi.

.....Respondents.

(By Advocate : Sri Manoj Kumar)

O_R_D_E_R

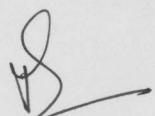
(By Hon'ble Mrs. Meera Chhibber, J.M.)

By this O.A., applicant has sought the following
relief (s):-

"i) To quash the impugned order dated 10.02.2000
passed by the respondent No.2 with all consequential
benefit.

ii) To issue an order directing the respondents to
refund the money if he has recovered from the applicant
in pursuance of the impugned order dated 10.2.2000".

2. Brief facts as alleged by applicant are that his
pay was stepped up by respondents vide order dated 18.05.90
(pg. 25) at par with Shiv Mangal Nath pursuant to the



passed by this Tribunal on 18.08.89 in O.A. No.1072/87. Not only his pay was fixed at par with Sheo Mangal Nath but was paid arrears also. He was getting salary as per his pay fixed but without giving him any show cause notice suddenly another order was issued on 10.02.2000 whereby stepping up of pay was cancelled and it was ordered to make recovery and to refix his salary.

3. It is this order which has been challenged by the applicant in this O.A. on the ground, that once his pay was fixed, the same could not have been reduced, that too without putting him on notice. Applicant was given stay against recovery vide order dated 23.03.2000 but it is submitted by applicant that in the meantime respondents had recovered an amount of Rs.5000/- from him and after filing of the O.A. he retired on 31.07.2002 and respondents have withheld the amount from his gratuity.

4. Respondents on the other hand have submitted that applicant was wrongly given the stepping up, therefore there was no need to issue any show cause notice. They have further stated that Shri Shiv Mangal Ram was appointed as P.A. on 21.09.1957 and Shri Lallu Ram Gupta was appointed on 02.05.1963. Hence Sri Gupta was Junior in P.A. cadre. On promotion in Lower Selection Grade Cadre, pay of Shiv Mangal Ram was fixed higher than Sri Gupta due to his more services in Lower Cadre. Hence stepping up is not admissible in this case according to F.R. 22(2) (c) as he does not fulfil the condition for stepping up.

5. We have heard both the counsel and perused the pleadings.

6. Perusal of judgment given by the Tribunal dated 26.07.1989 shows that this Tribunal had quashed the



orders by which applicant's claim for stepping up was rejected on the ground that the orders passed were non-speaking orders. The O.A. was disposed off by directing the respondents to re-consider the claim of the applicant in accordance with law and instruction on the subject and to communicate it to the applicant.

7. Pursuant to these directions, respondents themselves issued an orders on 18.5.90 for stepping up the pay of Shri Laloo Lal Gupta to the stage of Rs.500/- w.e.f. 24.05.1983 with D.N.I. on 01.04.1984 and it was further ordered that arrears be drawn and paid to him. As a result of this order, applicant was given the arrears and salary also regularly as per his pay fixed. However, by the impugned order they once again took a somersault and cancelled the order whereby stepping up was allowed. His pay was ordered to be refixed and recovery also made from him.

8. Admittedly no show cause notice was given to applicant before issuing this order. The law is well settled that any order which has civil consequences cannot be issued without putting the person concerned on notice, therefore, this order is liable to be quashed on this ground alone. Counsel for the respondents submitted that they have a right to correct the mistake. It is true that they can correct the mistake but by following due course of law and not in an arbitrary manner. Moreover in a case like this where stepping up was allowed as back as in 1990 w.e.f. 1983, the question is whether respondents were justified in ordering the recovery of amount. We are of the opinion "No". After all stepping up was done by respondents themselves after seeing all the rules and instructions and the amount paid to him ^{would be} ~~might~~ have been spent by him, therefore, to

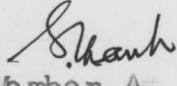


order recovery of ~~to~~ from him, after 10 years is not at all justifiable. Our view is fully supported by the judgments of Hon'ble ~~High~~ ^{Supreme} Court reported in 1994 (2) S.C.C. 521 Shyam Babu Verma Vs. U.O.I. and others, 1995 (1) Supple. S.C.C. 18 Sahvile Ram Vs. State of Haryana and 1997 (10) S.C.C. 419 State of Rajasthan Vs. R. Dyal. In all these cases Hon'ble Supreme Court took the view that even if pay scale was wrongly given to the petitioner due to no fault of petitioner. It shall not be just and proper to recover the excess amount already paid to them.

7. In normal course we would have quashed the order and remitted it back to the authorities to pass order in accordance with law but in the present case, applicant has already retired in 2000, therefore, we do not want him to have another round of litigation, therefore, in the interest of justice and fair play and after balancing the equities on both sides though we uphold the order as far as refixing his pay is concerned but that would only be given prospective effect i.e. from the date of issuance of the order. We, however, quash the order as far as it relates to recovery to be made from applicant for the arrears of earlier part.

8. We accordingly direct the respondents to release the amount which has been withheld from applicant's gratuity or recovered from his salary pursuant to the impugned order alongwith details. This shall be done within 2 months from the date of receipt of a copy of this order.

9. The O.A. is accordingly allowed partly with no order as to costs.


Member-A.


Member-J.

Manish/-