

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.418 OF 2003

ALLAHABAD THIS THE 11<sup>th</sup> DAY OF May, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

Ijad Hussain,  
son of Late Imad Hussain,  
resident of 100/96,  
Colonelganj, Kanpur. ....Applicant

( By Advocate Sri Pankaj Srivastava & Shri L.M. Singh)

Versus

1. Union of India,  
through Secretary Ministry of Communication,  
Dak Bhawan, New Delhi.
2. Director General Post,  
Dak Bhawan, New Delhi.
3. Chief Post Master General, U.P. Circle,  
Lucknow.
4. Post Master General Kanpur Region,  
Kanpur.
5. Chief Post Master, Head Post Office,  
Kanpur.
6. The Director of Accounts (Postal),  
U.P. Circle, Lucknow.

.....Respondents

( By Advocate Shri V.K. Pandey )

ORDER

In this O.A. filed under section 19 of  
Administrative Tribunals Act 1985, the applicant has  
prayed for direction to the respondents to refund the  
amount which has been recovered from pay of the applicant  
and further direction to the respondents not to take  
any action like recovery of over payment from the pay  
of the applicant.

2. The facts, in short, are that the applicant was appointed as Postal Assistant w.e.f. 24.7.1963 in the respondents establishment. The applicant passed the examination of P.O. and R.M.S. Accountant in June 1974. The applicant was promoted to LSG cadre w.e.f. 30.11.1983 vide order dated 9.12.1983 and accordingly the pay of the applicant was fixed alongwith special pay at the uniform rate of Rs.45/-. As per applicant union made a complaint against the applicant for wrong fixation of pay. The applicant made several representations in this connection that the complaint made by the union is incorrect and fake but the respondents did not take any action and without issuing any show cause notice the recovery has been made from the applicant. Hence this O.A. which has been contested by the respondents by filing CA.

3. I have heard Shri P. Srivastava, learned counsel for the applicant and Shri V.K. Pandey counsel for the respondents at length, perused records as well as the pleadings.

4. The controversy in this O.A. is whether recovery ordered by the respondents is correct or not. The applicant was posted as Assistant Accountant with special pay of Rs.35/-, though as per the applicant the special pay for Accountant was Rs.45/-. The posts of Assistant Accountants and Accountants were merged and designated as Accountants w.e.f. 24.02.1981 and the unified rate of special pay was prescribed as Rs.45/- vide D.G.P&T letter No.31-56/79-PE-I dated 24.2.1981 (Annexure A-2) and, therefore, as brought out by the applicant while working as Accountant at Kanpur Head Post Office w.e.f. 01.03.1981 he was getting special pay of Rs.45/-.

It has also been stated by the applicant in para 4.9 that after pay fixation on 30.11.1983 the applicant as well as other persons were getting special pay of Rs.45/- without any objection by the department. Since the case of the applicant is covered under the DGP&T letter dated 24.2.1981 (Annexure A-2) the action of the respondents in ordering for the recovery, holding that the over payment had been made, is incorrect. The respondents on the other hand have relied upon the instructions contained in Ministry of Finance O.M. No.6 (1)-E-III(B)65 dated 25.2.1965, O.M. No.F-6(1)-E-III(B)/68 dated 08.01.1968 and O.M. No.F-6(1)-E-III(B)/68 dated 27.02.1971 and have held that the pay of the applicant on promotion to the Lower Selection Grade (in short LSG) was incorrectly fixed resulting into over payment.

5. On one hand the applicant maintains that his pay fixation has to be done under the provisions in note 4 below FR22C whereas <sup>on the other hand</sup> the respondents maintained that the pay fixation of the applicant was required to be done under Rule 27(A) of Appendix 8 of the Ministry of Finance O.M.s referred to above. The respondents have not filed the copies of various O.Ms on which they have placed reliance.

6. I have carefully perused the circular of DGP&T dated 24.02.1981 (Annexure A-2). The circular provides that a uniform rate of special pay of Rs.45/- will be given to the Accountants and the pay of the P.O. and R.M.S./DTO/CTO Accountants on promotion to LSG is to be fixed under FR22C. Obviously the circular of the DGP&T dated 24.2.1981 should be applicable in case of the applicant as he was promoted to LSG cadre in the year 1983. In absence of the Ministry of Finance O.M.s referred to by the respondents in the letter

dated 29.01.2003 filed alongwith the CA it cannot be examined whether the action of the respondents is correct or not.

7. In view of the aforesaid discussions, the O.A. is disposed of finally by remitting the matter back to respondent no.4 i.e. Post Master General, Kanpur to re-examine the case of the applicant in view of the circular of DGP&T dated 24.02.1981 with reference to relevant instructions of the Ministry of Finance in this regard. In case the respondent no.4 finds that the claim of the applicant raised in this O.A. is justified respondent no.4 shall take appropriate action for refund of the amount recovered from the applicant with interest of 8% per annum from the date of recovery to the date of payment. However, if it is found that the action of the respondents is covered under rules and the over payment has been made to the applicant, respondent no.4 shall pass a reasoned and speaking order within a period of three months from the date the copy of this order is filed before respondent no.4. The applicant shall be informed about the outcome of the controversy raised by him accordingly. No costs.



Member-A

/Neelam/