

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.

ORIGINAL APPLICATION NO.454 OF 2003.

ALLAHABAD THIS THE 19th DAY OF April 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A

Baij Nath Yadava
Aged about 60 years
S/o Shri Nirmal Yadav
Resident of village Masadhi Katahera District
Allahabad.

.....Applicant.

(By Advocate: Sri S. Lal)

Versus.

1. Union of India
Through its Secretary Ministry of Defence,
New Delhi- 110011.
2. Director General
EME (EME-Civ)
Army Headquarters DHQ PO New Delhi-110011.
3. Commandant & M.D., 508 Army Base Workshop,
Allahabad Fort-211005.
4. P.C.D., Central Command, Lucknow.

.....Respondents.

(By Advocate: Sri Saumitra Singh)

O R D E R

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the order dated 26.8.2002 passed by respondent No.3 and the appellate order dated 20.03.2003 passed by respondent No.3 himself (Annexure A-1 and A-2 respectively). He has further prayed for issuance of directions to the respondents for staying the operation of impugned orders dated 26th August 2002 and the order dated 26th March 2003 coupled with the direction to the respondents restraining from recovery of balance amount from the gratuity after his superannuation.

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He has also sought issuance of direction to the respondents to refund the recovered amount along with interest @ Rs.18% per annum.

2. This is the second round of litigation between the applicant and the respondents. He filed O.A. NO.1072 of 2002 which was disposed of on 18th November 2002 with the direction to respondent No.2 to decide the pending appeal dated 09.09.2002 by a reasoned and speaking order within a period of 45 days. The appeal was decided on 20th March 2003 which has also been impugned by this O.A.

3. The relevant factual matrix leading to filing of this O.A., is that the applicant was working as Tool Maker in S.V.R.G of 508 Army Base Workshop, Chheoki, Allahabad. While going on duty on 30.12.1989, he met with an accident and sustained serious injuries. He was immediately hospitalized and after recovery he joined duty and claimed compensation under the provisions of Workmen Compensation Act, 1923. After a great deal of correspondence, the respondents paid a sum of Rs.73, 382 through Compensation Commissioner in 1996. The applicant filed an application for claiming interest and the Compensation Commissioner dismissed the application as not maintainable.

4. Respondent NO.3 vide its letter dated 07.04.1997 (Annexure A 4) informed the applicant that the amount of Compensation ^{was} wrongly calculated and paid to the applicant and he was entitled for a sum of Rs. 6604 and he was asked to deposit the over payment of Rs.66777 and failure to liquidate the over payment, action would be taken to recover the same from the emoluments of the applicant with interest. The applicant vide his letter dated 3.5.1997 (Annexure A-5) submitted that the amount

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of compensation has been rightly paid and any action to recover^{it} would be illegal and arbitrary. Again by letter dated 23.10.1998 he was informed that he was not entitled for compensation in view of the Apex Court judgment in the case of Regional Director E.S.I. Corporation Francis Vs. De Costa & Ors. Reported in A.I.R 1997 S.C 1997 wherein it has been held that employee on his way to factory meets with an accident one Km. away from the said place-injuries sustained by employee- cannot be said to be caused by accident arising out of and in the course of his employment. Accordingly he was asked to refund a sum of Rs.73,338, the Government money erroneously paid to him. The applicant resisted the demand but the respondent passed the impugned order. He preferred appeal to the Competent Authority which was also rejected by the respondent NO.3 and recovery from the employments of the applicant commenced from the month of August 2002 and continued till his superannuation and the balance of the amount was recovered from his gratuity.

5. Aggrieved by the impugned order, the applicant has filed the instant O.A., has assailed the impugned orders on various grounds mentioned in para 5 of the O.A. The main ground of challenge is that recovery without consulting the Compensation Commissioner is wholly arbitrary and illegal. Another ground taken by the applicant is that the decision of the Supreme Court cited supra is not applicable in this case as the Apex Court has given judgment regarding the provisions of E.S.I. Act and the applicant has been given compensation under the Workmen Compensation Act. It has been further pleaded that the decision of the Apex Court related to the year 1997 whereas the compensation was paid to the applicant in the year 1996 and its decision would not apply

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retrospectively. He has strongly contended that the recovery order as well as the appellate order is cryptic and does not disclose the reasons and the representation and the memo of appeal have not been considered. Hence the impugned orders deserve to be quashed.

6. The respondents, on the other hand, have resisted the O.A and filed a detailed counter affidavit. They have endeavoured hard to counter the claims of the applicant. They have submitted that the compensation was wrongly calculated and after it was duly checked by the audit authority, the Competent Authority directed to recover the over payment. It has been argued that the action of the respondents in passing the order for recovery does not suffer from any illegality. Since the amount of compensation was wrongly given to the applicant, hence according to the rules and decision of the Supreme Court, the applicant has rightly been directed to refund the entire amount paid to him. As such, O.A. lacks merit and be dismissed.

7. During the course of the argument, Sri Swayambar Lal, appearing for the applicant, reiterated the facts and legal pleas from the pleadings of the applicant. He also submitted that reliance by the respondent on the decision of Apex Court is misplaced. He emphasized that the decision of the appellate authority is arbitrary and illegal. He relied on the following judgments in support of his contention:-

- (i) Ram Chander Vs. Union of India & Others (A.T.R. 1986 (2) S.C. 252.
- (ii) Sri Balwant Singh Kumar Singh Gohil Vs. Union of India & Ors. A.T. Full Bench judgments page 218-1991-93, others.

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The counsel for the respondents cited the decision of the Supreme Court in the case of Regional Director E.S.I. Corporation cited supra and contended that interpretation given to similar provision of E.S.I. Act would apply in this case. He also argued that the Government is entitled to recover any wrong payment and the order passed are legal and valid. Hence O.A. lacks merit and be dismissed.

8. I have heard the rival submissions of the counsel for the parties and perused the records. I have also gone through the written arguments along with supporting case laws submitted promptly by the counsel for the applicant.

9. From what has been discussed above, there issues emerge mentioned herein under requiring detailed examination and adjudication.

- (i) Validity of impugned orders in ^{view of} ~~the~~ non-disclosure of reasons and non consideration of the representation and memo of appeal of the applicant.
- (ii) Application of Supreme Court judgment in the fact situation of this case, and
- (iii) Justification for recovery and refund from the applicant.

The first question need not detained long. The settled legal position is that every order of the Administrator has to be detained, reasoned and speaking one. The counsel for the applicant has relied upon the Apex judgment in case of Ram Chandra (Supra) wherein it has been held that the duty to give reasons is an incident of judicial process. The reasoned order inspires public confidence and minimizes the arbitrariness. In the facts situation of this case, the applicant has submitted detailed representation the moment he got the recovery order. The respondent did not at take into account. His plea to refer the matter to

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the Compensation Commissioner did have no effect. The respondent went ahead with their stand. His memo of appeal equally met the same fate and the appellate order did not even allude to the points made therein, much less consider them. The respondents have not even touched those points even in their counter affidavit except the statement that the orders passed were in accordance with rule and as per the decision of the Supreme Court. They did not even case to say which rules and how the Apex Court decision would apply in this case. Such argument and assertion may be treated as naive. Hence, the respondents fail on this count and the impugned orders are bound to fail.

The second issue mentioned above is of significance. I have given careful consideration to this issue. It is common knowledge that when the Supreme Court decides any issue, it applies to the parties concerned. However, when the Court declares any law under Article 141, it applies to all from the beginning. The Apex Court in Suresh Chandra Verma Vs. Chancellor, Nagpur University- AIR 1990 SC 2023 has held as under:-

"It is unnecessary to point out that when the court decides that interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise....."

Be that as it may, in the fact situation of this case, the decision of the Apex Court relied upon by the respondent would not apply as that decision has interpreted the provisions of the E.S.I. Act, whereas the case of the applicant falls under the provisions of Workmen Compensation Act, 1923. The learned counsel for the applicant

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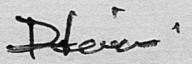
has rightly relied on the case of Balwant Singh (supra) wherein it has been held that declaration of law is effective for all such cases which are still pending or are being filed in future excluding those which have already been decided. It is undisputed that the payment has been made to the applicant in the year 1996 and to dispute the same after wards is arbitrary, illegal and improver. The applicant succeeds on this score also. The last issue relates to the vital question of recovery/ refund from the applicant. There is no doubt the recovery entails the civil consequences and has to be resorted to as per rules and after affording reasonable opportunity to the other side for defence. It is not the case of the respondents that the applicant was responsible for wrong calculation. The respondents, after paying the compensation through the Compensation Commissioner, started to scrutinize the case in consultation with Audit Authorities, P.C D.A Lucknow and ALO Allahabad and came to the conclusion that there has been wrong calculation and overpayment, this exercise should have been done earlier and they had been negligent and they are to be blamed. It is a settled legal position that overpayment made should not be recovered provided the employee is not the party to it. The Apex Court in the case of Shyam Babu Verma Vs. U.O.I was called upon to consider the question of recovery of the amount paid to the petitioner therein on account of wrong fixation of pay. While disposing of the matter, the court held that although the petitioner was entitled to lower pay scale, they have received the higher scale due to fault of theirs and that it would not be just and proper to recover, any excess amount which has already been paid to them.

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10. In view of the facts of this case and the legal position as stated herein above, the respondents cannot be allowed to take advantage of their mistakes and there is no justification of recovery from the applicant.

11. In the light of the reasons recorded above, the O.A. succeeds on merit and the impugned order dated 26.8.2002 and the appellate order dated 26.3.2003 are quashed. The respondents are directed to refund the entire amount of Rs.73,382 to applicant within a period of three months from the date of receipt of this order. The applicant will be entitled to the interest @ Rs.9% per annum in case the entire amount is not refunded within a period of three months mentioned above.

No order as to costs.


Member-A

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