

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 2 of November 2011)

Hon'ble Mr. Justice B.N Shukla, Member (J)

Original Application No. 859 of 2007

(U/S 19, Administrative Tribunal Act, 1985)

Jwala Prasad Verma S/o Sri Ram Saware Choudhary, presently posted as Assistant Post Master (Accounts) at H.P.O. Basti.

..... *Applicant*

Versus

1. Union of India through the Secretary, Ministry of Communication & Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Basti Division, District Basti.
3. Director of Accounts (Postal) U.P. Circle Lucknow.

..... *Respondents*

Present for Applicant : ***Shri Pankaj Srivastava***

Present for Respondents : ***Shri N.P. Shukla***

O R D E R

Present Original Application has been filed by the applicant for quashing the impugned order dated 07.08.2007 (Annexure A-1) through which the order has been passed for recovery of over-payment from the applicant, which has already been deposited by the concerned officials before the

(Signature)

department concerned and no pecuniary loss accrued to the Department.

2. It is the case of the applicant that he is working in the capacity of Assistant Post Master (Accounts) at Head Post Office Basti Division, Basti whereas the Drawing and Disbursing Officer of the Department is Post Master, Basti Division, Basti. A Notification was issued by respondent No. 1 vide Memo No. Estt/X-1579/96-97/1 dated 10.10.1997 wherein the tables of revised scales for posts were given as per recommendation of 5th Pay Commission (Annexure A-2), that the applicant fixed the salary of Mail Guards with two advance increments at each level and the same has been continued for three years, it was never objected by respondent No. 3 and it was approved by the respondent No. 3, that respondent No.1 has issued letter dated 14.3.2007 wherein the Department was intimated regarding the recovery from the officials, if they had submitted their undertaking and no undertaking were obtained then the direction was issued for fixing the responsibility from the officials at fault as was directed by the Central Administrative Tribunal Principal Bench New Delhi in Original Application No. 238 of 2003 – All India Postal Employees Union Post Man & Group 'D' Vs. Director General of Posts & Others. It was found that no undertaking was available in the service book and in other records and then the respondent No.2 issued an order dated 07.08.2007 for recovery of Rs. 2,71,341/- only from the applicant and Sri Sada Shiv Gupta the then Accountant, who

has already retired on 31.07.2003. The plea has been taken that no loss has been caused to the Department concerned and amount has already been recovered and before passing the impugned order, no opportunity was given to the applicant and applicant was never at fault.

3. Counter affidavit has been filed and supplementary counter affidavit has been filed after the rejoinder affidavit of the applicant. The respondents refuted the claim of the applicant and plea has been taken that due to fault of the applicant, over-payment was made and the recovery order was passed in compliance to the order of Central Administrative Tribunal, Principal Bench, New Delhi and it was the duty of the Accountant and Assistant Post Master to obtain undertaking on behalf of D.D.O. but it was not done

4. I have heard Shri Pankaj Srivastava, counsel for the applicant and Shri N.P. Shukla, counsel for the respondents and gone through the record.

5. It is contended on behalf of applicant that no opportunity was given to the applicant before passing the impugned order and all recovery have been made and no loss caused to the Department and applicant is never at fault.

6. Learned counsel for the applicant has contended that several employees were involved in the over-payment but no particulars have been given and even no undertaking was

taken by D.D.O. and it was the view of C.A.T., Principal Bench, New Delhi that there should be recovery from the official concerned. Letter of respondent No.1 issued on 14.3.2007 was based on judgment and order given by C.A.T. Principal Bench New Delhi in O.A. No. 238/03 All India Postal Employees Union Post Man & Group 'D' Vs. Director General of Posts & Others and there was direction of the Tribunal to recover the excess payment from the official at fault. Since over-payment was being made all over country and thereafter order was passed by respondent No. 2 on 07.08.2007 for recovery of amount of Rs. 2,71,341/- from the applicant and Sri Sada Shiv Gupta the then Accountant, who has already retired on 31.07.2003. It is relevant to mention that in the judgment of Central Administrative Tribunal Principal Bench New Delhi and also in the Circular issued by respondent No.1 there is nothing for taking option from the concerned Postman/Mail Guard regarding payment of salary as per revised recommendation of 5th Pay Commission. Even before passing the impugned order, no opportunity was given to the applicant to defend his case before the Authority concerned. Annexure A-6 has been filed in order to show the amount of Rs. 2,71,341/- has already been recovered and no particulars of employees have been given, even learned counsel for the respondents could not give the particulars. If the disputed amount has already been recovered by the Department then no loss caused to the Department and applicant could not be made liable for recovery of this amount. Hence, impugned order 07.08.2007 (Annexure A-1) is liable to be quashed.

B2

7. O.A. is allowed with cost. Impugned order dated 07.08.2007 (Annexure A-1) is quashed and respondents are directed not to recover any amount from the applicant.

Manish
Member (J)

Manish/-