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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 322 OF 1987
~~XXXXXX~~

DATE OF DECISION 9.6.1989

SHRI P.S. BAPAT Petitioner

PARTY-IN-PERSON ~~Advocate for the Petitioner(s)~~

Versus

UNION OF INDIA & ORS. Respondent s.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Shri P.S. Bapat,
Sr. Supdt. of Post Offices,
Vadodara West Division,
Fateganj,
Vadodara - 390 002.
(Party-in-person)

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..... Petitioner.

Versus.

1. Union of India, notice
to be served through
Secretary, Postal Board,
Dak Bhavan,
Parliament Street,
New Delhi.
2. Director General (Postal)
Department of Post
Ministry of Communication
Dak Tar Bhavan,
New Delhi.

3. Post Master General,
Ahmedabad.

4. Director of Accounts (Postal)
Nagpur.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.No. 322 OF 1987

Date: 9.6.1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri P.S. Bapat, working as Senior Superintendent of Post Offices at Baroda, has filed this application under section 19 of the Administrative Tribunals Act, 1985 on 3.7.1987. He has challenged the validity of the order dated 25.11.1985 passed by Mr. M.R.Chopde, Accounts Officer (Postal) Nagpur, directing the petitioner to credit a sum of Rs. 1374.55 to the Government account. The said order reads as under :-

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While you were working as Supdt. of Post Offices, Valsad Division, Valsad, you were authorised vide this authority No. GE/GP-56/612 dtd. 31.5.1982 to draw arrears of pay and allowances with effect from 1.9.79 owing to fixation of pay in P.S.S. Group 'B' in terms of Director General Posts and Telegraphs (PAP Section) memo No. 2-19/79/PAP dtd. 4.11.1981. Since the actual benefit on account of fixation of pay is made admissible with effect from the date of issue of orders i.e. 4.11.81, and not from 1.9.1979, the arrears authorised and drawn from 1.9.79 to 3.11.1981 have been turned to be inadmissible and ordered to be recovered vide Department of Posts Memo No. 2-19/PAP, dated 13-11-85, a copy of which is enclosed for information. The total amount of arrears authorised to you for the period from 1.9.1979 to 3.11.1981 works out to Rs. 1374.55 which may please be credited to Govt. account under intimation to this office for onward intimation to the Department of Post as instructed in para 2 of their letter dated 13-11-85 referred to above.

2. According to the petitioner, the President vide order dated 19.6.74, on the basis of the representation to D.G. P&T requesting to grant benefit of F.R.22(c) was pleased to decide that the appointment of ASP in scale of Rs. 550-900 of HSG Gr. I (PM) will involve higher duties and responsibilities and pay should be fixed under F.R.22(c). It is alleged that when the petitioner was appointed in the post of Postal Superintendent Service Grade II (now called as PSS Gr. B), DG. P&T New Delhi authorised the petitioner vide memo dated 4.11.81 for fixation of pay in PSS Gr. B from 1.9.79 there was no question of recovering the amount paid to him. The petitioner, therefore, prayed that the impugned order be quashed and set aside. He also prayed that the respondents be directed to issue orders to consider involvement of higher duties than higher responsibilities on promotion from ASP to HSG-I cadre with effect from 1.1.73 instead of from 29.8.80 as contemplated vide DG P&T letter dated

16.9.1980 (Annexure 'A').

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3. The respondents in their counter ^{have} / denied the assertions and allegations made against them. According to them, as the fixation of the pay was agreed to by the Department of Personnel and Training, in relaxation of normal rules it was pointed out by the DOP that the fixation of pay of the petitioner in PSS Group that the actual benefit should be ^{issuance} allowed with effect from the date of / of orders i.e., 4.11.81 and not from the retrospective date i.e., 1.7.79 and accordingly the directorate has issued the order for recovery of the irregularity ^{irregularly} amount paid in excess for the period between 1.9.79 to 3.11.81.

4. When the matter came up for hearing the petitioner- party-in-person and Mr. J.D. Ajmera for the respondents are heard. The documents including the rejoinder and the reply of the opponents rejoinder are perused and considered.

5. During the course of arguments, it was brought to the notice of the petitioner that the petition was suffering from plurality of relief claimed by him. The petitioner, therefore, restricted his right to claim relief in respect of the impugned order only and reserved his right to pursue his other reliefs either by making representation or by filing separate application in accordance with law.

6. The main grievance of the petitioner is two fold. Firstly, that once a favourable order granting actual benefit of fixation of pay from 1st September 1979 is issued by the President, it can not

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be revoked or cancelled by any authority below the President. Secondly, that he has not been afforded any opportunity to explain his point of view before cancelling the order which was favourable to him. However, the stand of the respondents is that the Government is competent to correct its mistake and such action on its part do not attract the applicability of principles of natural justice, requiring them to issue notice, as the action is neither penal in nature nor resulting in any stigma or misconduct. According to them, earlier orders of Directorate dated 4.11.81 were issued in consultation with the Department of Personnel and Training and the subsequent order dated 13.11.85 was also issued under the instructions of the Department of Personnel and Training. The said department pointed out that since the question of fixation of pay was agreed to by them in relaxation of normal rules for fixation of pay, the actual benefit should be given from the date of issue of orders only. Therefore, the subsequent order dated 13.11.1985 had to be issued to regularise the fixation of pay in accordance with the orders issued by the Department of Personnel and Training.

7. Before adverting to the rival contentions raised by the parties it will be in the fitness to relate to the earlier favourable order passed in favour of the petitioner found at Annexure II dated 4.11.81. The said order is reproduced as under:-

Sub: Fixation of pay in the P.S.S.Group 'B'.

I am directed to say that the President is pleased to fix the pay of the following P.S.S.Group 'B' officers w.e.f. the date mentioned against their names on promotion from the Post of HSG to the post of PSS Group B with reference to their pay which he

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would have drawn on the date of their promotion in the A.S.POs post, had they not held the post of HSG I. The actual of benefit on account of the pay fixation shall however be admissible from 1st September, 79 or the date on which the pay in PSS Group (B) was fixed which ever falls later.

2. Shri P S Bapat S.P.O. Valsad 18-5-78

This issues with the concurrence of P&T Finance Advice-I vide their U.O.No.5290-EA.1/81 dated 17-10-81.

Sd/-
(P L Sarkar)
A.D.G. (PE)

Endst.No.A&R/21-168/80-81 Dt.at Ahd the 17.11.81

8. The fact that the petitioner has been paid a sum of Rs. 1374.55 being the total amount of arrears authorised for a period from 1.9.79 to 3.11.81 vide earlier favourable order dated 4.11.81 is not in dispute. The recovery sought by the impugned order nearly four years thereafter. It is borne out from the impugned order that the Accounts Officer(Postal) Nagpur issued the orders for recovery on the basis of the memo dated 13.11.85 (Annexure III) issued by the Assistant Director General (E). Now once the benefits are sanctioned by the orders of the President it can be revoked only by the order of the President. No materials are brought on record except Annexure-3 dated 13.11.1985 to show that competent authority has revoked or cancelled the order dated 4.11.81. The impugned action of the respondents therefore can not be sustained in absence of such lawful orders.

9. In P.V.Pavithran V/s. State of Andhra Pradesh (A.T.R. 1988(1) C.A.T. 26), it was held that cancelling of an earlier order favourable to Government servant without giving a show-cause notice to him, would be in violation of the principle of natural justice. In the instant case also I find

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that the impugned order even though not violative of Article 311 of the Constitution, it is certainly in violation of the principle of natural justice, inasmuch as an order recovering the emoluments once paid to an employee certainly entails civil consequences. In order to meet such a situation, an opportunity should have been afforded to the petitioner to put forth his point of view before order dated 4.11.81 was sought to be cancelled or revised to his detriment or prejudice. This position of law rests on the principles of "Audi Alteram Partem", which is a basic concept of principles of natural justice. Even administrative orders which involve civil consequences must be made consistently with the rules of natural justice and opportunity granted to the person who is going to be adversely affected by them. (see Chaden Bhan V/s. Union of India, 1987(3) A.T.C. 432).

10. In view of the foregoing discussion, the action of the respondents calling upon the petitioner to credit a sum of Rs.1374.55 to the Government account vide order dated 25.11.85 can not be sustained. The same is therefore, quashed and set aside. The action for recovery has been stayed by the interim relief granted by the Tribunal vide order dated 9.9.87. Rule made absolute.

The application is allowed and stands disposed of with the directions indicated above. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER