

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 412 OF 1992.
TxxNo.

DATE OF DECISION 10-2-1994

Vishnuprasad D. Shukla, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Vishnuprasad D. Shukla,
Branch Postmaster,
Khamblav (Pansina) 363423.
(Advocate: Mr. K.C. Bhatt)

.... Applicant.

Versus.

1. Union of India through
The Director General
Department of Posts,
Ministry of Communication
New Delhi - 110 001.

2. The Postmaster General,
Rajkot Region,
Rajkot - 360 001.

3. The Supdt. of Post Offices,
Surendranagar Division,
Surendranagar - 363 001.

4. The Postmaster,
Surendranagar - 363 001.

.... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

C.A. No. 412 OF 1992

Date: 10-2-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant is a retired School Teacher pensioner. He was appointed as EDBPM and was working as such from 13.8.1986. He was regularly paid pay and allowances including dearness allowance as EDBPM from the date of appointment to 1.11.1991. In December 1991 his pay for November was drawn without dearness allowance without any previous intimation as to why

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it was stopped. The applicant did not accept the deduction in his emoluments and returned the pay roll to the Postmaster, Surendranagar. The latter through the letter Annexure A-1 informed the applicant that being ^a pensioner he was not entitled for dearness allowance and hence Rs.300/- per month was being recovered for over-payment paid from the date of appointment upto November 1991. The applicant represented again against the recovery to the Superintendent of Post Offices. This was rejected by Superintendent of Post Offices, Ann. A-4. He was also told that excess over-payment made to the extend of Rs.6344/- would be recovered from his pay and allowance in installments. The applicant's representation to the Postmaster General, Rajkot was also rejected by him, Annexure A-5. Hence the applicant has come to the Tribunal with the following reliefs:

"9. Relief(s) sought:

In view of the facts mentioned in para-6 above, the applicant prays for the following reliefs:-

i) The following impugned orders of the Postmaster Surendranagar be quashed and set aside.

- A) No.A3/2140 dated 3-1-92 (A-1).
- B) No.A3/220 dated 31-1-92 (A-2).
- C) No.A./AA/743 dated 22-6-92 (A-3).

ii) The order of the S.P.Surendranagar No.AN/VR/226/91 dt. 27-1-92 be quashed and set aside the recovery of Rs.6344/- (A-4).

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- iii) The order of the P.M.G.Rajkot No.A&P 1/IX/VDS/92-93 dt. 14.9.92 conveyed under S.P. Surendranagar No. B2/31/109 Dt.15-9-92 be quashed and set aside.
- iv) The respondents be directed to stop the recovery of dearness allowance paid and the recovered amount till today to be refunded with interest.
- v) The arrears of revised pay which is not paid vide Annexure A-3 to be paid immediately.
- vi) The respondents be directed to draw the dearness allowance to the applicant at the rate admissible from time to time from the date for which not paid to the applicant and continue further till the applicant in service.
- vii) Any other suitable relief may be granted."

3. The contention of the applicant which was vehemently put-forth by Mr.K.C.Bhatt, learned advocate for the applicant was that the department was aware of the fact that the applicant was a retired School Teacher receiving pension and there was nothing in the initial appointment letter denying him dearness allowance on his pay and he was regularly paid dearness allowance every month from the date of his appointment till November 1991. The applicant was not even told about any over-payment until he found Rs.300/- deducted when he was received the payment roll for November 1991 payable in December 1991. The applicant's contention is that no details or reasons were given for not

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granting the dearness allowance. No authority was shown and he was not given opportunity to be heard, hence the action of the respondents in recovering the amount received by the applicant in good faith without following the principles of natural justice, violates Articles 14, 16 and 311(2) of the Constitution of India and therefore, bad in law. The contention of the applicant is that had he been told dearness allowance would not be payable when he was appointed you would have perhaps not joined post at all, as it was not considered worthwhile by him. He has received the amount in good faith from August 1986 to November 1991 and hence he was not at fault. Any recovery of amount paid prior to November 1991 without giving him show-cause notice was an arbitrary action on part of the respondents which had put him in financial straits. Mr. Bhatt also produced extracts from judgment ATR 1988(2) CAT 510 where it was held recovery of excess payment after long lapses of time was unjustifiable, illegal and in-equitable. It was held that issue of an order resulting in serious civil consequences to an employee can not be done without issuing show-cause notice setting out all the circumstances and affording him an opportunity of hearing to his case which is the basic requirement of the principles of natural justice.

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Mr. Bhatt also supported his arguments by citing decisions in the following cases where it was held that recovery of excess payments after a long lapse of time is unjustified, illegal and inequitable.

(1) C.S.Bedi V/s. Union of India & Anrs.,
ATR 1988(2) CAT 510.

(2) Gobinda Sinha and Ors. V/s. Garrison
Engineer, 1991(1) SLJ CAT 74.

Hence Mr. Bhatt argued that the amount of over-payment recovered be refunded to him.

4. Mr. Akil Kureshi on behalf of the respondents admitted that applicant was paid dearness allowance on his appointment as EDBPM by mistake from the date of his appointment upto November 1991. According to orders issued to Director General, Department of Post, Ann. R-1 dated 14.9.1988, a re-employed extra departmental employee has the option for drawal of either dearness allowance on pension or dearness allowance on the basic allowance as E.D. employee. He argued that once the mistake was deducted by the authorities employee could not be allowed to draw both dearness allowance and dearness relief, hence action was taken to recover the over-payment made to the applicant.

5. While it is admitted that a re-employed pensioner can not draw both dearness allowance and dearness relief on pension, the applicant should have

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been given an opportunity to draw either of the two when he was appointed. This was not done; it was further compounded and he was paid dearness allowance from 13.8.1986 to 30th October, 1991 for more than five years. The applicant continued to receive the payment under the bonafide belief that he was entitled for it. The authorities stopped the payment of dearness allowance unilaterally from 1st November, 1991. No show-cause notice was given to the applicant as to why the payment of dearness allowance to him should not be stopped and why over-payment made already should not be recovered. It has been stressed a number of decisions of High Courts and Benches of the Tribunal, a person whose interest is going to be affected should adversely ~~not~~ be given an opportunity of hearing before the order adverse to him is passed and this applies effectively even to administrative decision. Before any reduction in emoluments after lapse of long period or any decision which would materially affect the interest of an employee like permanent reduction or recovery from his emoluments is made he must be heard. More over on the basis of work performed already on a certain post on the expectation of higher emoluments which was actually paid it would be unreasonable and unjust to order recovery subsequently even if it is held that the ~~excess~~ payment

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was the result of an administrative mistake. In the present case it is found that the applicant was being paid for more than five years dearness allowance on his allowance as EDBPM and the same was stopped suddenly without issue of show-cause notice and over-payment made were also recovered without any show-cause notice. The above action of the authorities was unfair and violated the principle of natural justice and created financial hardship to the applicant. Accordingly the application is allowed and the respondents are directed to refund the amount already recovered from the applicant to the extent of RS. 4321/- being dearness allowance paid to the applicant from the date of appointment from 13.8.1986 upto 31st October, 1991. Accordingly I pass the **following order:**

O R D E R

The orders issued by the Post Master, Surendranagar, Annexure A-1, A-2 & A-3 and the order of Superintendent of Post Offices, Annexure A-4, order of the Postmaster General, Rajkot, Annexure A-5 are quashed and set aside. The respondents are directed to refund Rs. 4321/- being the amount of dearness allowance recovered from the applicant within 12 weeks of the date of receipt of this order. However, the

applicant's request for drawal of dearness allowance from the date it was stopped and upto the date of his retirement is rejected. No order as to costs.



(V. Radhakrishnan)
Member (A)

vtc.