

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No.  
~~T.A. No.~~

426 of 1992.

DATE OF DECISION 18th October, 1993.

Shri Jayandraprasad Harsukhprasad Petitioner  
Jhala.

Shri K.C.Bhatt Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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 ?

Shri Jayandraprasad Harsukhprasad Jhala,  
Supdt. of Post Offices,  
Porbandar Division,  
Porbander : 360 575.

...Applicant.

(Advocate : Mr.K.C.Bhatt)

Versus

1. Union of India, through  
The Director General,  
Department of Post,  
Ministry of Communication,  
Dak Bhavan, Sandad Marg,  
New Delhi - 110 001.
2. The Postmaster General,  
Rajkot Region,  
Rajkot - 360 001.
3. The Director of Accounts,  
(Postal) Nagpur - 440 002.

... Respondents.

(Advocate : Mr.Akil Kureshi)

ORAL JUDGMENT

O.A.NO. 426 OF 1992.

Dated : 18.10.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

This is an Original Application under Section 19 of the Administrative Tribunals Act, 1985. Very briefly the prayer is that of recovery order of the department of Posts from the salary and pensionary benefits of the applicant initially to the tune of Rs.581/- due to wrong fixation of pay which amount on representation from the applicant and on recalculation by the department was scaled down to Rs.4755/- be quashed and set aside. The applicant has already paid this amount by the time of retirement on 31.10.1992. The applicant wants further the

recover) amount to be refunded to him. The case of the applicant is that he is not responsible for the wrong fixation of pay and that the amount involved in the recovery relates to a period of about six years (1986-92), that the recovery is being effected at the time of his retirement which has caused hardship to him and that he has not been given an opportunity to show cause against the recovery which is in violation of principles of natural justice.

2. The department in its reply has stated as below :

"On 1.1.1986 the pay of the applicant was correctly fixed at the stage of Rs.2300/- in the post of ASPO. But while fixing the pay in the post of SPOs Group 'B' cadre it was fixed at the stage of Rs.2400/- instead of Rs.2375/-. I say that the pay of the applicant was correctly fixed in HSG.I Post at Rs.2450/- as on 24.2.1986 by presuming the normal rate of increment in the scale of Rs.1640-60-EB-75-2900 as Rs.75/- at Rs.2300/- in ASPOs Post instead of Rs.60/-. The pay in HSG-I as on 24.2.1986 should have been fixed at Rs.2375/- instead of Rs.2450/-. I say that aforesaid irregularities resulted in recurring overpayments with effect from 1.1.1986 onwards both in the pay and the dearness allowance totalling to Rs.4755/-."

Regarding the show cause notice, the department has stated that the officer was a Group-B officer of the department well versed with the departmental rules and could have called for the service book for reference if required. It is denied by the respondent that the applicant was not given opportunity to represent properly. In fact the

applicant represented many times to DGP for waiver of recovery which implied an admission/over payment. It is stated by the respondents that there is no punitive action in the case and the over payment on account of the wrong fixation of pay is always recoverable.

3. In his rejoinder, the applicant, apart from his earlier contention has pointed out that subsequent to the date of filing ~~of~~ the application on 15.10.1992, the Accounts Officer, Nagpur by his letter dated 27.1.1993, which was sent to the applicant by Post Master, Porbandar, on 12.2.1993, ordered further recovery of Rs.1064 without giving any show cause notice to the applicant and the applicant has already paid the amount. Applicant has contended that this action is illegal, void and bad in law and against the principles of natural justice.

4. We have heard the learned advocates for the ~~part~~ parties. The learned advocate Shri K.C.Bhatt for the applicant has relied on the judgment of Central Admn. Tribunal, Principal Bench, vide C.S.Bedi Versus Union of India and Ors., A.T.R. 1988 (2) C.A.T. 510. In this case the mistake due to wrong fixation of pay was sought to be rectified by the department after 16 years. The proposition of law laid down by the Principal Bench in this case is stated in para-13 of this judgment and is reproduced below :

"Before an authority proposes to rectify its orders which would result in serious civil consequences to the applicant, it ~~can~~ not do so without issuing him a show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case which is one of the basic requirement of the principles of natural justice is not <sup>well</sup> settled. Without any doubt that had not done by the authority, On this short point itself, the orders made against the applicant are liable to be interfered with by me."

5. The applicant has also relied on ~~Ni~~kanth Shah Versus Union of India and Ors. 1987(2) S<sup>L</sup>J (CAT) 306. The applicant has not enclosed a copy thereof. However, an extract from this judgment is reproduced in para-15 of Bedi judgment. The ratio of this judgment is that when the recovery related to a period of more than 7 years back, the Tribunal exercised its jurisdiction to waive <sup>the</sup> ~~the~~ recovery to the tune of 50 % which was outstanding. The learned advocate for applicant has also relied on the judgment of Beniprasad Versus Union of India and Others, A.I.R. 1987(2) CAT 205, which although referred to in Bedi judgment has not been extracted nor has applicant enclosed a copy thereof.

6. We have considered the pleadings and documents on record and the arguments. <sup>We consider</sup> ~~we consider~~ that the recovery is naturally ~~not~~ divisible in two parts, the first part of Rs.4755/-, which is the amount referred to in DG's reply as well as in the reply of the respondents and the second part of Rs.1064/- which is <sup>broadly</sup> ~~the~~ difference between the original amount of Rs.5817/- and the scaled down amount of Rs.4755/-, and which is sought to be recovered by the Accounts Officer, by his letter dated 27.1.1993, circulated under the Postmaster, Porbandar's letter dated 12.2.1993,

*WZ* We do not accept the contention of the applicant that for the recovery effected from the applicant on account of wrong fixation of pay, all the previous pay slips are required to be cancelled and fresh pay slips ought to have been issued. This is a matter of procedure. The principle of law involved is whether the applicant had an opportunity of knowing the reasons for recovery and whether he had an opportunity of showing cause against the same. According to us on the facts of the case, the principles of natural justice have been substantially complied with so far <sup>as</sup> ~~the first part~~ of the recovery of Rs.4755/- is concerned. The pay fixation statement furnished by the Directorate of Postal Accounts at Nagpur was issued on 23.4.1991, which is cross referenced in Annexure-A/1, and which is also reproduced at Annexure-A/2. The

applicant had represented against this pay fixation on 29.10.1991, vide Annexure-A/6, and on 05.12.1991, vide Annexure-A/7. In fact he appears to have sent the first representation on 30.08.1991, which is referred in Annexure-A/6, though he has not enclosed a copy thereof. We have no doubt therefore, that the applicant knew the reasons for recovery and the applicant had an opportunity of making a representation against that recovery, in particular against the mode of pay fixation. After the Directorate turned down his representation by their letter dated 06.04.1992, which is at Annexure-A/1, the applicant represented to the administrative authority vide his representation dated 30.04.1992, at Annexure-A/9, and sent a reminder dated 22.06.1992, vide Annexure-A/4. The Administrative authority namely, the Director General Posts gave his reply vide letter dated 03.07.1992, at Annexure-A/3. The representation was essentially ~~to~~ to have the recovery waived or to postpone the recovery. The Director General did not accede to these requests but fixed monthly instalments of Rs.300/- p.m. for re-payment. Accordingly, the recovery appears to have been made from the monthly pay bill of the applicant but as he retired shortly thereafter the balance amount appears to have been recovered in lumpsum at the time of retirement. We therefore, hold that in the matter of recovery from the <sup>of Rs 4755/-</sup>

applicant, the principles of natural justice have been followed and the recovery was made only after considering the representations made by the applicant both to technical (accounting) and administrative authorities.

7. This however, cannot be said of the subsequent recovery of Rs.1064/- which has been ordered by the Director of the Accounts under its letter dated 27.01.1993, circulated under Post Master, Porbandar's letter dated 10.02.1993. Obviously, the recalculation made by the Postmaster, Porbandar, in the light of earlier instructions of the Director of Accounts, Nagpur, is sought to be reopened and the applicant has been asked to make the payment of the amount over and above the amount already recovered. According to us, when the recovery of Rs.5817/- was scaled down to Rs.4855/- not on compassionate grounds but on technical considerations, then it is not open to the department to re-open that particular issue without giving a reasonable opportunity to the applicant, of showing cause against the mode of calculation and against the recovery as such. If the department has not done this, the least relief to which applicant is entitled is to have an opportunity to show cause. However, we also note that the amount of Rs.4755/- which has been sought to be revised by the Director of Accounts ~~which~~ has already reached certain

finality in as much as this was the amount which the Head of Department, viz., the Director General Posts who is also ex-officio, Secretary, Department of Post, has accepted finally. The respondents in the written statement have also referred to this particular amount as being recoverable. We are therefore, of the view that the principle of ~~promissory~~ estoppel applies and we hold that the department is estopped from making recovery of this amount of Rs.1064/-. Now it is not open to the department to go back to the original figure of recovery of Rs.5817/-. We therefore, hold that the department is precluded from

the recovery <sup>uq</sup> ~~of~~ the additional amount of Rs.1064/- .

In the circumstances of this case we dispose of the case by passing the following order :

ORDER

"The application is partly allowed.

It is held that the full and final recovery from the applicant on account of wrong fixation of pay was made by recovery of Rs.4755/-, from applicant at the time of retirement. The additional recovery of Rs.1064/- is illegal ~~and~~ not only because the department has not followed the principles of natural justice while ordering recovery, but also because it is hit by

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the principle of ~~promissory~~ estoppel

which precludes the department from recovering the same. Since the department has already effected recovery of this amount from the applicant. Respondent No.1, through respondent no.2, is directed to refund the amount of Rs.1064/- recovered from the applicant within one month of the receipt of this order. Failure to refund the amount within this specified period would make the respondents liable to pay interest at the rate of 12%.

The application is disposed of accordingly. No order as to costs.

*R.C.Bhatt*  
( R.C.Bhatt )  
Member (J)  
18.10.1993.

*M.R.Kolhatkar*  
( M.R.Kolhatkar )  
Member (A)  
18.10.1993.

AIT.