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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.223 of 1988.

Date of decision - February 1, 1990.

1. Ashok Kumar Pradhan
2. Benudhar Sahoo
3. Sahadev Tripathy
4. Jadumani Podha,
5. Tripurari Bhoi
6. Naoin Chandra Nag
7. Gopal Chandra Vayas,
8. Baikuntha Nath Meher,
9. Ganeswar Sahoo
10. Binod Behari Thakur
11. Artatrina Behera
12. Kasta Muna
13. Jayaram Kumbhar
14. Dharmaday Nag

All are working as Mail Overseers
under the Superintendent of Post Offices,
Bolangir Division, P.O. and District-
Bolangir.

... Applicants

Versus.

1. Union of India, represented by its
Secretary in the Department of Posts,
Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, District-Puri.
3. Superintendent of Post Offices,
Bolangir Division, P.O./Dist-Bolangir.

... Respondents

For Applicants - M/s. Deepak Misra, Devananda Misra and
A. Deo

For Respondents - Mr. Aswini Kumar Misra, Senior
Standing Counsel for respondents.

C O R A M :

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDL.)

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporters or not ? No

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT.

Usha Savara, Member (Admn.) This original application has been filed by 14 applicants working as Mail Overseers under the Superintendent of Post Offices, Bolangir Division in the Town & District of Bolangir. This application is filed against the impugned order dated 20.6.1988 ordering recovery of certain amount on the ground that there has been excess payment to the applicants as the maximum amount payable to the Mail Overseers per month was Rs.240/- only.

2. The facts of the case are that the applicants are entitled to get outstation allowance/ night-halt allowance. The rate of this allowance for Class III and Class IV staff in the Post offices was fixed by the D.G., Posts & Telegraphs letter No.44-1/83-PE-II dated 29.4.1985. The Cash/ Mail Overseers, Village Postmen, were to be given as per the revised rates of Night-halt allowance as per award Rs.12/- per night subject a maximum of Rs.240/- per month. The Runners and Mail Peons were to be given Rs.6.75 per night subject to a maximum of Rs.135/- per month provided that the tour programmes were approved by the appointing authority. These orders were to take effect from the date of issue i.e. 29.4.1985.

3. These rates of Night-halt allowance were subsequently revised by the D.G., Posts, New Delhi vide his letter No.

44-1/83-PE-II dated 1.10.1986. The revised rates of N.H.A. for the first category of staff i.e. Cash and the Mail Overseers and the Village Postmen was 75% of D.A. as admissible to the official per night subject to the maximum of 20 nights per month. The Runners and Mail Peons were also to get 75% as admissible to the officials per night subject to the maximum of 20 nights per month. This Memo. also mentioned that these categories of staff would be entitled for Night-halt allowance subject to the same conditions as have been incorporated in Memo No. 44-1/83-PE-II dated 29.4.85. These orders were to take effect from 29.4.1985. It is submitted by the applicants that the respondent No.3 in the impugned order while relying on a letter dated 24.2.1988 has passed the order of recovery with effect from 1.4.1985. and this order being illegal, may be quashed.

4. Mr. Deepak Misra appearing for the applicants has submitted that the applicants are entitled to get Out-station allowance/ Night-halt allowance and the rates originally fixed by the department were revised by letter dated 1.10.86. The applicants were therefore paid night-halt allowance according to this letter and no objection was raised by the authorities concerned at any point of time. All of a sudden, respondent No.3 by his letter dated 20.6.1988 has ordered for recovery of certain amounts from the applicants on the ground that there has been excess payment to them. This order is illegal, arbitrary and contrary to the principles of natural justice and the recovery is unsustainable as there has been no excess payment to the applicants. No opportunity has been afforded to the applicants to submit their cases before the

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respondents and relying on a letter dated 24.2.1983, the order of recovery has been made with effect from 1.4.1985. Therefore, this order should be quashed.

5. Mr. A.K.Misra, appearing for the respondents, has submitted that the Night-halt allowance has been revised from time to time. Originally by D.G. P & T.'s letter dated 29.4.1985 (Annexure-R/1), the rate of Out-station allowance was fixed at Rs.12/- per night subject to a maximum of Rs.240/- per month and Group D officials were to be given Rs.6.75 per night subject to a maximum of Rs.135/- per month. Subsequently, as per the D.G., Posts, New Delhi's letter dated 1.10.1986 (Annexure- R/2). This rate was revised and fixed at 75% of the Daily Allowance as admissible to the officials per night subject to the maximum of 20 nights per month. It was mentioned in this letter specifically that these revised rates will be effective from 29.4.1985 subject to the conditions laid down in the earlier letter. He has contended that this means that the rate of Outstation allowance should be 75% of Daily allowance subject to the maximum limit of Rs.240/- per month. Through a wrong interpretation of this order, the outstation allowance to Mail Overseers was paid at the rate of 75% of the Daily allowance without limiting to them to the maximum of Rs.240/- per month. Subsequently, clarifications were received from the P.M.G. vide letters dated 6.1.88 and 24.2.88 (Annexures-R/3 and R/4) that payment of outstation allowance to Mail Overseers should be restricted to Rs.240/- per month and such payments to Group D officials should be limited to Rs.135/- per month. Following the

instructions, the over payments made to the applicants were calculated and orders were issued on 20.6.83 (Annexure-R/5) to recover the excess payment of Outstation allowance from the concerned Mail Overseers and Group D officials in easy instalments. In the aforesaid circumstances, Mr. A.K. Misra contends that the application is not maintainable and should be rejected. He has further contended that the orders passed by respondent No.3 are in accordance with the rules and instructions and as such are not illegal, arbitrary or contrary to the principles of natural justice.

6. We have heard the learned counsels for both the sides. There is no dispute as to the basic facts of the case. Having gone through the annexures carefully, we find that due to mis-interpretation of the instructions certain amount of excess payments have been made. No details have been given by either side. So it is not possible to know as to what is the excess amount paid or recoverable from the applicants. There is no doubt that if the excess payment has been made by the department, they are not bound to give an opportunity to the applicants to show reason as to why the same may not be recovered. However, there is some merit in the contentions of the applicants inasmuch as the recoveries are being made from 1.4.1985 by an order dated 1.10.1986 which had ~~the~~ revised rates of Night-halt allowance. This action of the department appears to be arbitrary and is violative of natural justice. It is submitted by Mr. A.K. Misra that there are no mala fides in the order passed by the respondent No.3 for recovery of excess payments made to the applicants as it has also been ordered that if less amount has been paid, then the department should make necessary

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arrangement for payment of the balance. The orders passed by the D.G., Posts as well as the letters issued by the P.M.G. were circulated and the applicants had specific knowledge about the contentions therein. If the respondents have made an error and paid the amount in excess of the sanctioned amount as per the instructions, the same can be recovered from the applicants and illegal act of payment made in favour of the applicants cannot give them absolute right over this amount.

7. To sum up, the respondents are within their rights in recovering the excess payments made to the applicants by them. However, the revision of rates of Night-halt allowance took place on 1.10.86 and this cannot have retrospective effect from 1.4.85. Whatever payments have been made by the respondents according to the first letter dated 29.4.1985 of the D.G., P.& T. will not be disturbed at this point of time and the revision of the rates will be enforced only from the date of the Memo. dated 1.10.1986.

8. The application is partly allowed. There is no order as to costs.

Meenakshi
Member (Judl.)

1/2/90



B. Kawar
Member (Admn.)