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CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Date of order : 8.04.1997.

ORIGINAL APPLICATION NO. 414/1996



1. Naresh Kumar S/o Shri Satyanarain
2. Abhiram S/o Shri Mathura Singh
3. Ram Pratap S/o Shri Surja Ram
4. Rameshwar Lal S/o Shri Jaisukhram
5. Jaswant Ram S/o Shri Roopa Ram
6. Vijay Singh S/o Shri Suraj Singh
7. Puran Singh S/o Shri Govind Singh
8. Nishan Singh S/o Shri Bakshish Singh
9. Babu Singh S/o Shri Bhan Singh
10. Krishna Lal S/o Shri Sri Ram
11. Nagina Ram S/o Shri Sharwan
12. Lekhiram S/o Shri Garib Das
13. Khadga Ram S/o Shri Chuni Lal
14. Bhawan Singh S/o Shri Faguni Ram
15. Ram Prasad S/o Shri Shimbhu Ram
16. Gaje Singh S/o Shri Bhag Singh
17. Ram Bharose S/o Shri Mangilal
18. Inder Kumar S/o Shri Keshav Nath
19. Jetha Ram S/o Shri Nathu Ram
20. Magha Ram S/o Shri Kana Ram
21. Prakash S/o Shri Bhdha Ram
22. Rehmatullah S/o Shri Rayab Ali
23. Krishna Kumar S/o Shri Jetha Ram
24. Sudama Singh S/o Shri Hansaram
25. Mohan Lal S/o Shri Anant Ram
26. Devi Prasad S/o Shri Chandermani
27. Bhopal Raj S/o Shri Gulab Ram
28. Ghirish Chand S/o Shri Rameshwar
29. Ramji Lal S/o Shri Mohan Lal
30. Ramavtar S/o Shri Matedeen

...Applicants

Versus

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Commander Works Engineer (Project), Sri Ganganagar.
3. Garrison Engineer, Sri Ganganagar.

...Respondents

C O R A M

THE HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

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For the Applicants ... Mr. Vijay Mehta
For the Respondents ... Mr. O.P.Sahni, Brief holder
for Mr.K.S.Nahar

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BY THE COURT :

The applicants, who are working as Valvemen and DES under the Garrison Engineer, Sri Ganganagar, have filed this O.A. with the prayer that respondents be restrained from recovering from the applicants Night Duty Allowance paid to them earlier while they were working as Valvemen and Driver Engine Statics (for short 'D.E.S.').

2. The respondents have filed their reply in which they have stated that Night Duty Allowance was sanctioned by the Government in respect of different categories of employees from different dates. Night Duty Allowance was sanctioned to the Valvemen w.e.f. 15.4.1994 and to D.E.S. w.e.f. 14.7.1995 respectively. It is alleged by the respondents that the applicants were erroneously paid Night Duty Allowance w.e.f. 1.1.1986 and, therefore, the amount paid to the applicants as Night Duty Allowance, for which they were not entitled, is required to be recovered. The respondents have further stated that recovery of over payment can be made in terms of IR 179 which is contained in Chapter VIII under the heading Audit Objections and Recoveries (for short 'the Rules').

3. I have heard the learned counsel for both the parties and have gone through the record.

4. The learned counsel for the applicant has argued that the respondents can not recover the Night Duty Allowance which was paid to the applicants for their having discharged Night Duty. It is further argued by

the learned counsel for the applicants that the applicants are low paid employees and have spent their Night Duty Allowance as and when it was paid to them and recovery of such allowance now would put them to financial hardship. He has also argued that the respondents have given no notice to the applicants in respect of proposed recovery and, therefore, also, the respondent cannot recover the so called over payment of Night Duty Allowance from the applicants.

5. On the otherhand, the learned counsel for the respondents has argued that as and when mistake in respect of over payment or wrong payment was discovered, the same was ordered to be recovered from the pay of the applicants in terms of Rule 179 of the Rules. A general Notice was displayed on the Notice Board in respect of the proposed recovery. The applicants have not represented as against that recovery for which a specific procedure has been laid down in Rule 179 and an Appeal has also been provided in Rule 180.

6. I have considered the rival arguments. This is an admitted position that no individual notice was given to the applicants in respect of the proposed recovery. Displaying the order on Notice Board in respect of recovery of over payment, in my opinion is not sufficient notice to each and every individual. Recovery of any amount from the pay of the applicants without giving an opportunity to the applicants of being heard, is not in terms of natural justice. The rules cited by the learned counsel for the respondents are very clear on the point. Rule 179(a) specifically lays down that "before recovery of an over payment detected within this period is effected, the individual against whom the claim is preferred will be fully informed of its nature and of the method by which it

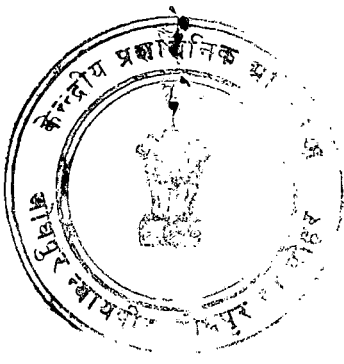


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is proposed that recovery shall be made".

Rule 179(b) says that "In the case of overpayments which have not been challenged within 12 months from the date of payment, the Controller of Defence Accounts will call upon the individual concern, through the competent financial authority to show cause why a recovery should not be enforced. On receipt of the ^{reply} individuals, the competent financial authority will decide whether the amount should be written off or whether recovery should be effected." (emphasis supplied).

In respect of both these procedures, provision for appeal has been provided. Thus, the aggrieved individual can make his submission before the Appellate Authority incase, he is dis-satisfied with the order of the competent authority.



7. In the instant case, the Department has not adopted the procedure prescribed by the Rules. Thus, the individual has been deprived of an opportunity of putting forth his submissions and claiming redressal from the competent authority and has also been deprived of the right to file an appeal. Therefore, in my opinion the recovery in terms of Annex.A-1, cannot be effected against the applicants.

8. The learned counsel for the applicants has also submitted that payment having once been made, cannot be allowed to be recovered. He has cited 1995(1)JT(SC) Page 24 in support of his argument. But I am not in agreement with this argument. The Rules cited by the learned counsel for the respondents, specifically lay down the procedure for recovery of over payment. Granting

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Night Duty Allowance under erroneous impression, is just like making some over payment. The matter of recovery or non-recovery of such Night Duty Allowance can be decided by the competent authority after hearing the applicants as per the Rules. Therefore, it would not be proper to waive the recovery of the amount as argued.



9. In view of the above discussion, the Original Application deserves to be accepted and is hereby accepted. The impugned order at Annex. A-1 dated 1st Aug., 1995, qua the applicants, is accordingly quashed. However, the respondents are free to take steps in the matter afresh by following the procedure as laid down in the Rules on the subject.

10. Parties to bear their own costs.

2/8/95
(A.K.MISRA)
Member (J)

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