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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,
J O D H P U R

Date of Order : 15.03.2002.

1. O.A.NO. 212 of 2001
2. O.A.NO. 213 of 2001

R.L.Kansara S/o Shri Babu Lalji, aged about 48 years, Resident of Dev Nagari Colony, Sirohi (Rajasthan), presently working on the post of Accountant, H.P.O., Sirohi (Rajasthan).

Applicant in OA 212/2001

Indar Singh Deora S/o Shri Umed Singhji, aged about 51 years, Resident of Village and Post Balda (Barighata) Distt. Sirohi, presently working on the post of Accountant, Divisional Post Office, Sirohi, under S..P.O. Office, Sirohi.

Applicant in OA 213/2001

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Deputy Director of Acconts (Postal), Postal Department, Tilak Nagar, Jaipur (Rajasthan).
3. Post Master, H.P.O., Sirohi (Rajasthan)

Respondents in both OAs.

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CORAM :

Hon'ble Mr. Gopal Singh, Administrative Member
Hon'ble Mr. J.K.Kaushik, Judicial Member

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ADVOCATES :
Mr. S.K.Malik and Mr. Daya Ram, present for the applicants.
Mr. Vinit Mathur, present for the respondents.

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PER HON'BLE MR.GOPAL SINGH :

The controversy involved in both these applications is the same and the relief sought is also the same. Hence, both these applications are being disposed of by this common order.

2. In these applications under Section 19 of the Administrative Tribunals Act, 1985, applicants', R.L. Kansara and Indar Singh, have prayed for quashing the impugned order dated 16.4.2001 (Annex.A/1 in OA No.212/2001) and 12.7.2001 (Annex.A/1 in OA NO. 213/2001) and further the letter dated 12.2.1980 mentioned in para (a) of the impugned orders Annex.A/1, be declared illegal to the extent it has retrospective effect. Applicants have also prayed for a direction to the respondents to continue the Pay of the applicants as it was before passing the impugned orders at Annex. A/1 and refund the amount which has already been recovered from them along with interest at the rate of 12% per annum.

3. The respondent-department has revised the pay fixation of both the applicants right from the date they were appointed as Accountant vide impugned letter dated 16.4.2001/12.7.2001, placed at Annex. A/1 in the respective O.As. The contention of the applicants is that their pay fixation was done correctly and there was no reason for revising their pay fixation. Moreover, the revised pay fixation has resulted-in recovery from the applicants. It is contended by the applicants that this recovery has been ordered without any notice to them. Thus, there is a violation of principles of natural justice, hence, this application.

4. In the counter, the respondents have denied the case

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of the applicants. It is pointed-out that while the applicants were utilised as Accountant for brief periods their pay was wrongly fixed in the higher pay scale of the Accountant instead of grant of special pay to them as per the then existing rules. It has further been submitted that the wrong fixation on the post of Accountant has continued till it was detected in internal audit. The wrong fixation is being sought to be corrected through the impugned orders. It is the contention of the respondents that no notice is necessary in the instant case. It has, therefore, been prayed by the respondents that both the applications are devoid of any merit and are liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record of the case carefully.

6. By way of our interim order dated 8.8.2001, the operation of the impugned orders, so far as they relate to recovery of over-drawn pay by applicants, was stayed. However, it was made clear that fixation of applicants pay w.e.f. 1.9.2000 shall remain undisturbed and the applicants would draw pay at the reduced rate as per the fixation statement attached with Annex. A/1.

7. It is a fact that recovery of over payment has been ordered without giving an opportunity to the applicants to show cause. The orders at Annex. A/1 involve civil consequences to the applicants and, therefore, in our considered view, applicants should have been given a show cause notice before ordering recovery. Thus, without going into the merits of the case, we consider it appropriate to remit the cases back to the respondents for giving show

cause notice to the applicants before issuing recovery orders. In this view of the matter, the orders dated 16.4.2001&12.7.2001 placed at Annex. A/1 of the respective case file, are liable to be quashed. Accordingly, we pass the order as under :-

"Both the applications are allowed. The orders dated 16.4.2001&12.7.2001 placed at Annex. A/1 of the respective O.As, are quashed and set aside. The respondents are directed to give a show cause notice to the applicants and after considering the same, pass appropriate reasoned orders, within a period of four months from the date of receipt of a certified copy of this order. No costs."

(J.K.Kaushik)
Member (J)

(Gopal Singh)
Member (A)

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Part II and III destroyed
In my presence on 21.7.03
under the supervision of
Section Officer as per
order dated 14/7/03

Section officer (Record)

Received CPO
on 19/3/2002

19/3/2002