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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of Order 16.07.2003

O.A. No. 292/2002

G.C. Tak S/o Shri Late Shankar La, aged about 33 years,
resident of Village and Post Chadarun Tehsil Degana, Distt.
Nagaur, at present employed on the post of Accountant in the
office of Superintendent of Post Office, Nagaur.

.....Applicant.

Versus



1. Union of India through Secretary to the Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Post Master General (Western Region), Jodhpur.
3. Dy. Director Postal Accounts, Tilak Nagar, Jaipur.
4. Superintendent of Post Office, Postal Division, Nagaur.
5. Post Master, Head Post Office, Nagaur

.....Respondents.

CORAM :

Hon'ble Mr. R.K. Upadhyaya, Administrative Member

Hon'ble Mr. J.K. Kaushik, Judicial Member

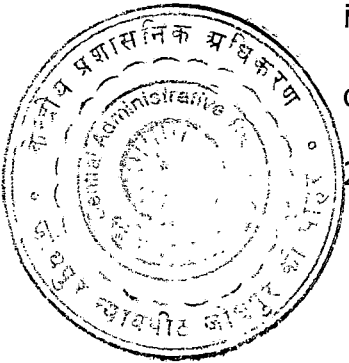
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Mr. B. Khan, counsel for the applicant.

Mr. Kuldeep Mathur, counsel for respondents.

Shri Gopi Chand Tak, has assailed the impugned order dated 24 February, 2002 (Annexure A/1) and has further prayed that the Pay of the applicant may be ordered to be fixed and regulated as per Fundamental Rules [FR] 22 (1) (a) (ii) with all consequential benefits.

2. The brief facts of the case are that the applicant was appointed as Postal Assistant on 16th April, 1969 and has been allowed further promoted to the post of Accountant in the year 1977 and thereafter, to the post of LSG under One Time Bound Promotion (OTBP) Scheme w.e.f. 1st December, 1992. He was allowed his due fixation and he retained the defunct scale up to 1st November, 1992 and was drawing Rs. 1,760/- (1660+90+10) in the scale of Rs. 1350-2200. Thereafter, he enjoyed the benefits of fixation under FR 22 (1) (a) (ii) in the pay scale of Rs. 1400-2300 and was fixed at Rs. 1,800/-.



3. The further case of the applicant is that there was an internal check vide para No. 15 Part (ii) (b)... wherein, it was pointed out that applicant's pay should have been fixed at Rs. 1,760/- instead of Rs. 1,800/- and an amount of Rs. 13,970/- was to be recovered. The applicant submitted his representation against the same and he was informed that a clarification for similar case has been sought from the Directorate and after receiving the same, his case shall be dealt with accordingly. The applicant again strived to impress upon the respondents to regulate his pay as per the FR 22 (c) (Old) and represented the matter on 30th May, 2002. But, without

paying any heed on his representation the respondent No. 3 has issued a letter dated 24th September, 2002 ordering recovery of the excess amount from the applicant. It has also been also submitted that the applicant was not given any hearing prior to passing of the order Annexure A/1 and his representation against the internal check report is still pending. The impugned order has been assailed on number of grounds viz., he was correctly given the fixation of pay on the post of LSG cadre which carries greater responsibilities and importance, no show cause notice was given before passing the impugned order and no pre-decisional hearing was given to him in the matter and in this way there has been a clear breach of principles of natural justice and lastly, no recovery can be made from the employees when the amount is paid due to the mistake of the administration and there is no misrepresentation on the part of the individual.



4. The application has been contested and a detailed reply has been filed controverting the facts and grounds and it has been submitted that the applicant was required to be fixed at Rs. 1,760/- in defunct scale but, the Post Master, Nagaur (Respondent No.4), wrongly fixed him at Rs. 1,800/-. The fixation was done in pursuance with the Superintendent of Post Office, Nagaur, letter dated 7th April, 1994. However, it has been found that no such letter has ever been issued by the said authority. The pay fixation was also pointed out in the internal inspection report of Nagaur in the year 2001 and the same is quite in order and in accordance with the rules.

5. The further case of the respondents' is that the recovery of overpayment from 1st December, 1992 till date can be made

in accordance with Rule 86 of P & T F.H.B. Vol. I (Annex. R/8).

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It is wrong to contend that no suitable opportunity was given to the applicant. The applicant has submitted representations and after due examination, the fixation was not found to be in order and on receiving a clarification from the Directorate, action was taken in the matter. Hence, it is now clear that a suitable opportunity was given to the applicant and it is immaterial to contend that no show cause notice was issued, as the issue was based on rules and there would be no change in the rules even if show cause notice would have been issued allowing the applicant a chance of hearing. Under the F.R. recovery can always be made of an amount paid to an employee on account of administrative mistake. Therefore, the present O.A. deserves to be dismissed.

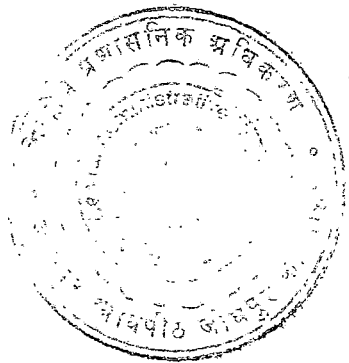
6. With the consent of both the learned counsel for the parties, the matter was heard for final disposal at the admission stage and we have carefully perused the pleadings and records of the case.

7. The material facts of this case are not in dispute. A very glaring fact has come to the light and the learned counsel for the respondents has been fair enough to apprise the Tribunal that the so called orders placed on record by the applicant are only the internal correspondence of the department and the competent authority has not issued any effective order in the matter. for the reason that an interim order has been issued by this Tribunal restraining the respondents from making any recovery on account of over payment. This very OA is premature and thus not maintainable.



8. In view of the aforesaid position, two important issues arises i.e. recovery part of the matter and the second is revision of pay fixation. As far as the recovery part is concerned, the learned counsel for the applicant has submitted that no recovery can be made from the employee on account of overpayment due to wrong fixation of pay since there was no mis-representation on the part of the applicant and the applicant cannot be made to suffer for the mistake or wrong committed by the respondents. He has submitted that this position is already settled by Hon'ble the Supreme Court in a catena of judgements, wherein, their Lordships of the Supreme Court have ruled out that no recovery is to be made on account of wrong fixation of pay in case there was no mis-representation on the part of the employee concerned. On this issue, there is no serious opposition from the side of the respondents. In our considered opinion, the contention of the learned counsel for the applicant has our concurrence since the issue has been settled by Hon'ble the Supreme Court in the case of Shyam Babu Verma and Ors. Vs. Union of India and Ors. Reported in (1994) 27 ATC 121 which has been followed by a coordinate Bench of this Tribunal in Ram Prakash Bhati Vs. Union of India and Others reported in 2002 (3) ATJ 430 (Chandigarh). Thus, in the present case, since no effective order of recovery had been passed against the applicant, the question of making any recovery does not arise and this issue is decided in favour of the applicant.

9. As regards the second issue regarding the revising of the pay fixation and for the recovery thereof for correcting the mistake, it is true that some representation had been made by



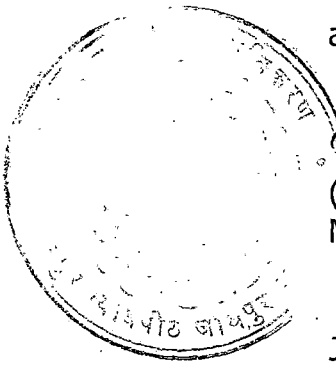
the applicant but it is also true that so far the competent authority has made up his mind to pass any effective order and if any order is required to be passed involving civil consequences and detrimental to the interest of the applicant, it would be necessary to give a predecisional hearing before passing any such order. We get support of our view from a celebrated judgement of the Supreme Court in the case of H.L. Trehan and Ors. Vs. Union of India and Ors. reported in 1989 SCC (L&S) 246, wherein their Lordships has held as under (relevant para 11) : -

" It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed but a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution."

It is expected that the competent authority ^{if it} intends to ~~pass~~ an effective order regarding revision of pay fixation of the applicant for rectifying the alleged mistake, it shall adhere to the rule of 'principles of natural justice'.

10. In the premises, the O.A. merits acceptance and the same stands allowed. The respondents are directed not to make any recovery from the applicant for any over payment on account of the alleged wrong fixation. However, it shall be scarcely necessary to mention that this order shall not preclude the

competent authority from passing any order regarding I/13
revision of pay fixation to rectify the mistake, if any, as per our
aforesaid observation but from a prospective date. No costs.



J.K. Kaushik

(J.K.Kaushik)
Member (Judicial)

JRM

R.K. Upadhyaya

(R.K.Upadhyaya)
Member (Admv)

not clear
22/7/03

RLC 084
on 22/7/03
22/7/03