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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

Original Application No. 307/2004

Date of Decision: 30.8.2005

CORAM:

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

Smt. Pushpa Vyas. W/o late Shri Janki Lal Vyas, 199, Kamla Nehru Nagar, HUDCO quarters, Jodhpur.

Legal Heir of Shri Janki Lal Vyas-

: Applicant.

Rep. By Mr. P. Bohra : Counsel for the applicant.

VERSUS

1. The Union of India through the Postal Secretary, Department of Posts and Communication, Shastri Bhawan, New Delhi.
2. The Post Master, Department of Post, Head Post Office, Shastri Nagar, Jodhpur.

: Respondents.

Mr. Mahendra Godara for

Mr. Vinit Mathur ;

Counsel for the respondents.

ORDER

Mr. J.K. Kaushik, Judicial Member.

This O.A was initially filed by Shri Janki Lal Vyas. Pending adjudication of this case, the said Janki Lal Vyas expired on 23.05.2005 and his legal heir Smt. Pushpa Vyas, has been substituted for him. In this case an order dated 29.05.2004 has been challenged and a prayer has been made for setting aside the same.

2. Keeping in view the short question involved in the instant case and the pleadings being complete, the case was taken up for final disposal. I have carefully heard the arguments advanced at the bar by both the learned counsel for the parties and have also perused the pleadings and records of this case.

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3. The factual background of this case falls within a narrow compass. Late Janki Lal Vyas, served the respondents department during the period from 09.05.67 to 31.10.2003 and he was allowed voluntary retirement while holding group D post w.e.f. 31.10.2003. There was neither any disciplinary/vigilance case nor any recovery pending against him. Subsequently, Annexure A/1 has been issued without giving him proper opportunity of hearing. Through the said Annexure A/1, late Shri Janki Lal Vyas was directed to deposit a sum of Rs. 20509/- on the ground that certain over payments have been made to him on account of leave sanctioned to him which was not due to him. Hence the dearness relief in respect of his pension was completely stopped from April 2004 till the order dated 28.12.2004 came to be passed by this Tribunal. The Original Application has been filed on numerous grounds and it has been specifically averred that the late Janki Lal Vyas was not given proper opportunity of hearing and the recovery has been ordered in an illegal manner.



4. The respondents have contested the case and have filed an exhaustive reply to the O.A. They have also annexed a copy of the leave account in respect of said late Shri Janki Lal Vyas for certain years. It has been averred that he had availed 44 days of half pay leave during the period from 29.06.1979 to 20.07.1979 and after deducting the said leave there should have been a balance of 196 days of half pay leave, but by mistake it was shown that 396 days as balance half pay leave and therefore a total 200 days of excess half pay leave was credited in his leave

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account. The said mistake could not be detected and rectified by the department at that the relevant time. Further details of leave account subsequent to the aforesaid mistake have been given been given. It has been averred that the deceased government servant had not disclosed the correct position regarding the leave availed by him. It has been further averred that it is the settled position of law that excess payment made to an individual due to wrong fixation by the department can be recovered and admittedly late Janki Lal Vyas had availed excess leave which was not due to him and hence he drew excess payment from the Government. The grounds mentioned in the O.A have been generally denied.



Both the learned counsel have reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has submitted that late Shri Janki Lal Vyas was not given any notice prior to the passing of the impugned order. He also submitted that there are rules that matters relating to 1979 could not have been reopened after passage of such long time. He has submitted that even late Shri Janki Lal Vyas has not been issued with any show cause notice or given any pre-decisional hearing before passing the impugned order. There has been clear breach of principles of natural justice and the impugned order cannot be sustained at all. He has in the alternative submitted that the question of recovery would not arise even in case of any excess payment made to late Shri Janki Lal Vyas since there was no mis-representation from his side. For this purpose he relied on one of the judgements of the Hon'ble High Court of Rajasthan in the case of Goverdhan Lal

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vs. State of Rajasthan and ors. [RLW 2004 (1) Raj 237].

6. On the other hand the learned counsel for the respondents has demonstrated before me that a bona fide mistake had crept in while crediting the leave in the leave account of late Shri Janki Lal Vyas. He has made me to traverse through the leave record and pointed out that there has been a clerical mistake and 200 days of excess half pay leave had been incorrectly credited to his account. When the actual position was ascertained from the learned counsel, he fairly submitted that no notice or pre decisional hearing was given in the matter.



I have considered the rival submission put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned there is hardly any dispute. It is true that before passing the impugned order late Shri Janki Lal Vyas was not given any notice or pre-decisional hearing and the order in question had definitely visited with civil consequence. The law on this point has been fairly settled by now we take judicial notice of a celebrated judgement of the apex court in case of **H. L. Trehan and others. v. Union of India and others** AIR 1989 SC 568, wherein their Lordships have elaborately dealt with the question involved here and the following para are considered relevant:

"11. xxx 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 by 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 Art. 14 of the Constitution.

12. xxx In our opinion, the post-decisional opportunity of hearing does not subserve the, rules of natural justice. The authority who embarks. upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection,

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we may refer to a recent decision of this Court in K. L. Shephard v. Union of India, JT 1987 (4) 600 : (AIR 1988 SC 686). What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial, Bank which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under S. 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the Court observed as follows :-

"We may now point out that the learned single Judge of the Kerala High Court had proposed a post amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

Keeping in view the aforesaid principle of law and applying to the same to the instant case I find that the impugned order cannot be sustained in the eye of law on this ground alone. I, therefore, do not find any necessity to examine other grounds.



8. In the premises, I find that there is ample force in this O.A and the impugned order dated 29.05.2004 (Annex. A/1) is hereby quashed. The respondents are directed to refund the amount already recovered in pursuance of Annex. A/1 from Late Shri Janki Lal Vyas, to Smt. Pushpa Vyas, legal heir of late Shri Janki Lal Vyas within a period of two months from the date of receipt of a copy of this order. No costs.


(J.K.Kaushik)

Judicial Member.

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