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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

O.A.No.129/2004

December 13, 2004.

CORAM: **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

Nihal Das S/o Panjuma, aged about 43 years, R/o C/o Sawai Singh, Brahmano Ki Gali, Near Gangani Haweli, Umed Chowk, Jodhpur at present employed on the post of PA (TBOP) ICO in the office of PMG, Rajasthan Western Region, Jodhpur.

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Applicant

By : Mr. Salil Trivedi, Advocate.

Versus

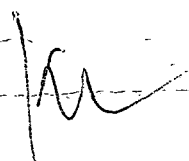
1. The Union of India through Secretary, Govt. of India, Ministry of Communication, Department of Post, Dak Bhavan, New Delhi.
2. Principal Chief Post Master General, Rajasthan, Circle, Jaipur.
3. Post Master General, Rajasthan Western Region, Near UIT Circle, Ratanada, Jodhpur.

By : Mr. Vinit Mathur, Advocate.

ORDER (oral)

KULDIP SINGH, VC

The applicant has filed this O.A. as he is aggrieved by an order-dated 26.6.2003 (Annexure A-1) whereby his representation against the illegal recovery of fixation of pay and



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change of date of next increment on promotion under TBOP Scheme, was rejected.

2. The facts as alleged by the applicant in brief are that the he was initially appointed as LDC/SBCO on 25.7.1983. He was promoted as UDC/SBCO w.e.f. 1st of March 1990, in the pay scale of Rs.1200-2040 at the minimum stage of Rs.1200/-. The applicant was then sent on deputation to Telecom Wing (MTNL, Mumbai) where he remained from 28.10.1994 to 24.6.1997. On repatriation the applicant again joined the respondent department as UDC/SBCO on 25.6.1997. In the meantime the applicant opted for PA/SBCO Cadre so that he may get the benefit of TBOP Scheme w.e.f. 1.8.1991. His option was accepted vide letter-dated 19.5.1998. The applicant was accordingly promoted vide Memo dated 20/23.9.1999 (Annexure A-2), issued by the SPO, Churu Division, Churu. The applicant thereafter, submitted his option in accordance with the terms and conditions as contained in FR 22 (1)(a)(i). According to his option, the applicant was given certain benefit and he asked for fixation of date of next increment as 1st of March 1995 instead of from the date of promotion i.e. 17.10.1994. The said option was accepted and the applicant was given the pay and allowance in accordance with the option submitted by him. However, Internal Audit Wing raised certain objection with regard to the fixation of pay of the applicant on grant of benefits under the TBOP Scheme. The audit observation was that since there was wrong

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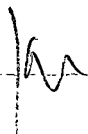
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fixation, so the applicant has been made an over payment of Rs.2, 946/- which was ordered to be recovered. The applicant filed a representation, which was rejected, and on the rejection of his representation, his pay was re-fixed and recoveries were effected. In order to challenge the same, the applicant submits that his date of next increment had earlier been properly fixed and the Audit Party has assigned no reason as to how it has been wrongly fixed. Thus, recovery of the applicant's pay and allowances at the instance of the audit party is not tenable. It is further stated that no show cause notice was issued before effecting the recovery. The applicant further submits that once a benefit available to him under the rules has been given, the same cannot be withdrawn at the instance of the audit party.

3. The respondents are contesting the Original Application. In their reply they plead that because of the Internal Audit Objection, the impugned recovery had to be effected and since the pay of the applicant had been wrongly fixed so only a rectification has been carried out and the recovery and re-fixation for pay of the applicant has been done as per the rules and law.

4. I have heard learned counsel for the parties and gone through the record of the case.

5. Admittedly, no show cause notice has been issued to the applicant before effecting the recovery of the alleged over payments having been made to the applicant. As regards the



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fixation of pay of the applicant is concerned, the audit party has raised an objection which is extracted in Annexure R-1. The same being relevant is reproduced herein below for easy reference:

"While drawing pay of Rs.1330/- with D.N.I. 01.03.95 in the P.A. scale 975-1660 Shri Nihal Das, P.A. S.B.C.O. was promoted as P.A. (T.B.O.P) in the scale 1400-2300 with effect from 17.10.94 vide S.P.O. Churu No.B 2-17 dated 20/23.09.99 on notional basis and actual monetary benefit was allowed from the date of actual assumption of charges. The official has joined this post actually on 24.09.97, the official was on deputation to Telecom Wing from 38.10.94 to 24.06.97. On promotion the official vide his option dated 27.09.99 has opted initial fixation on 17.10.94 and refixation on the date of next increment in lower scale w.e.f. 01.03.95.

Since in the both ways, the fixation came to Rs.1400/- in the scale 1400-2300 on 17.10.94 & 01.03.95, the option given by the official came inoperative. Hence his pay should have been fixed at the 1400/- with D.N.I. 01.10.95 with D.N.OI. 01.10.95 in the scale 1400-2300.

Hence overpaid amount of Rs.2946/- for the month of March to Sept., each year for the year 2000 to year 2002 upto 02/2002) may please be recovered under intimation to Postal Accounts Office, Jaipur."

A perusal of the above audit objection does not show as to what rule has been applied to show that there was a wrong fixation of pay and how the option given by the applicant became inoperative. The objection taken by the audit party does not seem to be in accordance with the rules since it has not been properly explained as to how the fixation of pay of the applicant done by the respondent department was in violation of the violation of the fundamental rules. In these circumstances, I find that the audit objection cannot be upheld and the recovery effected from the applicant is otherwise held to be illegal as having been effected without issuing any show cause notice. Therefore, in

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view of these facts, the re-fixation and recovery ordered against the applicant and impugned order, Annexure A-1 are quashed and set aside. Respondents are directed to refund the amount of recovery to the applicant within a period of 15 days from the date of receipt of copy of this order. They are, however, at liberty to issue show cause notice to the applicant giving therein the detailed reasons as to how the pay of the applicant was wrongly fixed and applicant shall be allowed time to make effective representation against the show cause notice and shall also be given a personal hearing and thereafter the matter may be decided in accordance with the rules and instructions on the subject. This should be done within a period of three months from the date of receipt of copy of this order. No costs.


(KULDIP SINGH)
Vice Chairman

December 13, 2004.

HC*

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Part II and III destroyed
in my presence on 31/10/13
under the supervision of
section officer (I) as per
order dated 18/10/2013

J.R. S
Section officer (Record) 31.10.2013