

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 266/2009

Date of Order **24.05.2012**

(Reserved on 15.02.2012)

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. V. AJAY KUMAR, MEMBER (J)

Shri Birbal Solanki,
S/o Shri Pat Ram b/c Meghwal,
Aged about 60 years,
R/o Ward No.25,
Near Daruram Dharamshala,
Soni Market, Suratgarh,
District-Sri Ganganagar.

Retired from the post of Head Post Master,
H.S.G. Grade-I, Hanumangarh,
District-Hanumangarh.

.. Applicant

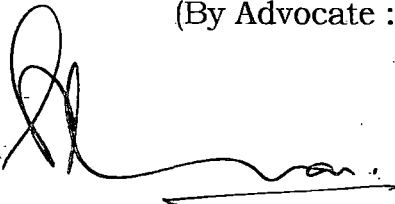
(By Advocate : Shri H.S. Sidhu)

Versus

1. Union of India,
Through Secretary,
Ministry of Communication &
Information Technology,
Dak Bhawan,
New Delhi.
2. Superintendent of Post Office,
Sri Ganganagar,
Division - Sri Ganganagar.
3. Senior Accounts Officer (Pension),
Accounts (Postal),
Jaipur.
4. Post Master General,
Rajasthan, West Region,
Jodhpur.

Respondents

(By Advocate : Shri Ankur Mathur for Shri Vinit Mathur)



ORDER**Per Mr. Sudhir Kumar, Member (A)**

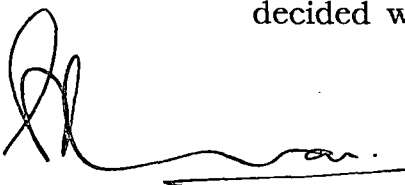
The applicant of this case had filed this OA on 08.12.2009, and after hearing his case, a Single Bench of this Tribunal had disposed of his OA through order dated 01.10.2010. However, the respondent department approached the Hon'ble High Court of Rajasthan in D.B. Civil W.P. No.876/2011, in which orders came to be passed by the Hon'ble High Court on 06.05.2011 in the case Union of India & Ors. V. Birbal Solanki, which stated as follows:-

"Though, learned counsel for the respondent tried to support the order saying that the issue involved in the writ petition so also in the Original Application is a short one and, therefore, the matter should not be remanded, we are inclined to accept the argument raised by the learned counsel for petitioner.

We have perused the Original Application filed by the respondent before the Tribunal so also the relief claimed therein and the stand of the respondent before the Tribunal. Having taken note of these facts in the context of the impugned order, we are not inclined to accept the argument of the learned counsel appearing for the respondent.

In our view, the Tribunal should have decided the matter keeping in view the pleadings of the parties, stand taken by them, submissions urged and then a finding should have been recorded as to how and on what basis and by which judgment of the Supreme Court, because no details are mentioned about the case, the issue raised by the parties is covered. Since this exercise does not appear to have been done and, therefore, we are inclined to remand the case to the Tribunal for their fresh decision on the issue.

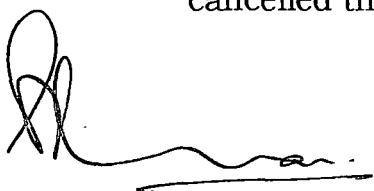
Accordingly and in the light of the aforesaid discussion, the writ petition succeeds and is hereby allowed. The impugned order is set aside. As a consequence, the Original Application No.266/2009 is restored to file of the Tribunal. Let the matter be decided within three months by the Tribunal from the



date of parties' appearance before the Tribunal. Parties to appear before the Tribunal on 04.07.2011".

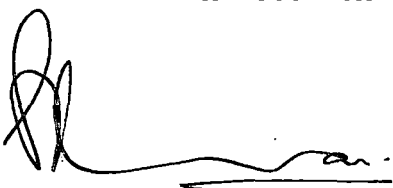
2. Thereafter, the parties put in their appearance and the case was heard on merit and reserved for orders once again.

3. The applicant is before us aggrieved by the order at Annexure A-1 dated 24.03.2009, through which, while sanctioning the pension and DCRG as admissible to the applicant on his superannuation, the respondents had ordered the recovery from DCRG of an overpayment of Travelling Allowance of Rs.3400/- and pay & Allowances of Rs.14,409/-, which amount was recovered through the consequential order dated 28.3.2009 issued by the Superintendent of Post Office Sri Ganga Nagar, Respondent No.2. The applicant has submitted that this amount relates to the pay and allowances, which were paid to him while he was working as Head Post Master HSG Grade-I on a temporary basis from 29.1.2004 to 03.02.2006. His contention is that payment of his salary ~~in~~ that higher grade was a necessary concomitant of the order dated 29.1.2004 (Annexure A-3), which had ordered for his transfer and posting as Postmaster Sri Ganga Nagar, H.O., since the incumbent there was about to retire on 31.1.2004. The officiation of the applicant against that post was further continued for another 120 days w.e.f. 7.10.2005 through order dated 3.10.2005, and, when the extended period was also getting over, the temporary officiating arrangement of the applicant was cancelled through order dated 2.2.2006 (Annexure A-4).



4. Subsequent to the Annexure A-4, terminating his temporary officiation, the applicant had been substantively promoted on a permanent basis vide an order dated 23.3.2006, and posted as Postmaster HSG-I Hanuman Garh, from which post he retired on 31.8.2008, after attaining his age of superannuation. However, when his retirement benefits were settled, aggrieved by the order of recovery at the time of his retirement of the higher emoluments paid to him during the concerned period, the applicant had served a legal notice dated 29.4.2009, (Annexure A-5), upon the respondents, which was replied to by the respondent department through their letter dated 27.5.2009 (Annexure A-6).

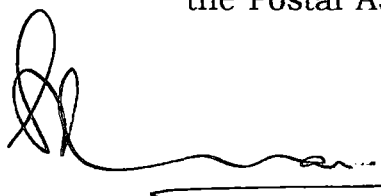
5. The applicant is aggrieved that before ordering the recovery of the said amount of Rs.14,409/- made from his retiral benefits, no opportunity of hearing was provided to him. Further, his retiral benefits were released after about 9 months from the date of his superannuation. The applicant, therefore, took the ground that the recovery from his retiral benefits had been effected in an arbitrary manner, without following the procedure as prescribed under the CCS (Pension) Rules, 1972, and that the amount had been ordered to be recovered only on the ground that the appointment of the applicant as Post Master on temporary basis during the period concerned was not made by the Competent Authority. The applicant submitted that work of the Post Master had been taken from him during the concerned period, and once



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the work of a higher post had been taken from him, he is entitled to get the pay and allowances attached to that higher post during the period, and no amount can be held as having been over-paid, and recovered in an arbitrary and illegal manner, and against the mandate of Article 14 of the Constitution of India. The applicant had, therefore, prayed that the impugned Annexure A/1 dated 24.03.2009 passed by Respondent No.3, and the Annexure A-2 dated 28.3.2009 passed by respondent No.2, be quashed and set aside, in so far as they relate to the deduction of the amount of Rs.14,409/- from his retiral benefits, and that the respondents may be directed to return the amount so recovered, and that the respondents may further be directed to pay the interest at the rate of 12 % per annum to the applicant for delayed payment of his retiral benefits.

6. In their reply written statement, the respondents had taken a stand that the arrangement of his being sent as a officiating Post Master at Sri Gangnagar H.O., because the incumbent there was about to retire, was purely ad-hoc and temporary, and was extended from time to time. It was further submitted that the post which applicant had held as In- charge during the period was a HSG-I cadre post, and promotion to that HSG-I cadre is always from HSG-II cadre, and no official who is in the Postal Assistant cadre, or LSG cadre, can be directly promoted to HSG-I cadre. It was further submitted that in the year 2004 applicant was only in the Postal Assistants' Cadre, and he was promoted in substantive



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capacity to HSG -II cadre only on 23.3.2006, and subsequently to HSG-I cadre only on 21.12.2006. It was further submitted that even though the applicant was posted in the current duties of Postmaster only in officiating capacity, and the arrangement was purely temporary, since the applicant was In-charge of the Office, he had himself got his pay fixed wrongly, and this wrong fixation of his pay provided him an undue benefit till 21.11.2006. It was submitted that when his substantive appointment was only in the pay scale of Rs.5000-8000, fixation of his pay in the HSG-I pay scale of Rs.6500-10500 during the concerned period was wrong. Further, there was an overpayment of Transport Allowance also @ Rs.200/- for a period of 17 months, and therefore the net amount of Rs.14409+3400 = Rs.17809/- was ordered to be recovered from the applicant's retiral benefits.

7. It was further submitted that any such overpayment of salary can be recovered from DCRG as per Rule-73 and Rule-80 (C) of CCS (Pension) Rules, 1972. It was submitted that in such cases of recovery of excess payment, there is no need for the consent of the official, or the issuance of a show cause notice to him.

8. It was further submitted that during the period, in question, the applicant had held the post only on a purely ad-hoc^{and} temporary arrangement, and that he was not a full fledged Postmaster of HSG-I/ BCR Selection Grade, which promotion could have been made only by the Chief Post Master General, Jaipur. Since the



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applicant was the officiating Postmaster, and he himself was the drawing and disbursing authority in respect of his salary, on joining as such officiating Postmaster he had himself got his pay fixed in HSG-I cadre at Rs.7300/-, for which he was not entitled.

9. It was further submitted that when the service record of the applicant was examined near the date of his retirement, it was further found that there was some excess payment to the applicant on account of leave salary also, which was Rs.2145/-, but the applicant had credited that excess payment on 31.7.2008, in order to expedite the settlement of his retiral dues. However, in the meanwhile, the Sixth Pay Commission report came and the pension case of the applicant came back for re-fixation of his pay last drawn at the time of the retirement, which pay was re-fixed, and again the case was submitted to Audit on 21.10.2008. The Audit had raised some objections, which took some time to get settled, and the Service Book was sent to Directorate of Audit Postal on 09.3.2009, and the pension case of the applicant was settled by the Audit on 24.3.2009. The delay was, therefore, not on account of any element of bias or negligence, but was explained by the respondents on account the aforesaid sequence of events.

It was, therefore, submitted that there was no advertent delay in the case, and that the actions of the respondents have been just and proper, and in accordance with the rules and policy on the subject, and therefore the applicant is not entitled for any relief from this Tribunal and the OA should be dismissed.



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10. The applicant had filed a rejoinder on 28.7.2010. In this he had taken a stand that when the work of HSG-I Grade post was taken from him by the respondent department, even though in officiating capacity and not by way of regular promotion, if there was any lacking in his performance and discharge of all the responsibilities and liabilities of the post, he could have been held liable for such wrong by the respondents. But, once he had discharged the liabilities and responsibilities of the post satisfactorily, he is entitled to get the pay scale associated with the post, and, therefore, recovery of the amount effected from the retiral benefits by the respondents is illegal. He further denied that he himself was the drawing and disbursing authority at the relevant time, and stated that an Assistant Post Master, HSG -II, working under him had prepared the salary bills with the help of the accountant concerned. It was further submitted that a copy of the order through which he was placed to be In charge of HSG-I Grade post was sent to the competent authority, i.e., the Post Master General Rajasthan, Western Region, Jodhpur, and therefore, it cannot be said that the order was issued by an incompetent authority. He further submitted that for whatever reasons it may have been, the time of nearly 10 months had been taken by the respondents in settling his retiral dues, and no provisional pension was paid to him during the period, and, therefore, he is entitled to get interest on the delayed payment of his retiral dues.

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11. Heard in detail. The learned counsel for the applicant relied upon the submissions as mentioned in detail in above as per his pleadings, as well as the case law in the following cases:-

- i) Secretary cum-Chief Engineer, Chandigarh v. Hari Om Sharma; 1998 (3) SCT 90;
- ii) Selva Raj v. Lt. Governor of Island, Port Blair; 1999 (2) SCT 286;
- iii) State of Bihar and Others v. Industrial Corporation (P) Ltd. & Others; (2003) 11 SCC 465; and
- iv) State of Rajasthan vs. Lal Das Vaishnav & Anr.; 2002 (2) CDR 1715 (Raj).

12. In his reply, the learned counsel for the respondents relied upon the following two cases:-

- i) Union of India and others vs. Sujatha Vedachalam (Smt.) And Another; (2000) 9 SCC 187;
- ii) Col. B.J. Akkara (Retd.) vs. Government of India & Others; (2006) 11 SCC 709.

13. It is seen that in the case of Secretary-cum-Chief Engineer Chandigarh (supra), the case was concerning promotion to the post of Junior Engineers Grade-I for which appointments were being made by promotion from three different feeder posts, by making an integrated seniority cum merit list. The respondent in that case, Hari Om Sharma, had been promoted from integrated seniority cum merit list, and had been continuing on the promotional post, without being paid salary for that post, or without being substantively promoted on regular basis. He approached the Chandigarh Bench of this Tribunal, which allowed the claim with



the direction that the respondents therein shall pay him the appropriate salary for the period he had worked against the post of Junior Engineer Grade-I, since he was the senior most person among the cadre of non-diploma holders, who had put in 10 years of service, and had become eligible for promotion on regular basis.

The Hon'ble Apex Court had in the appeal case held as follows:-

"6.....The Tribunal was also justified in ordering payment of salary to the respondents for the post of Junior Engineer-I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer-I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer-I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

7. Learned counsel for the appellant has placed reliance on **Shreedaran Chandra Ghosh v. State of Assam & Ors.**, 1996 (10) SCC 567, as also on **State of Haryana v. S.M. Sharma & Ors.**, JT 1993 (3) SC 740: 1993 (3) SCT 346, to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer-I as he was given only current duty charge of that post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer-I, though in stop-gap arrangement, was continued on that post and, therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal".

14. However, it is seen that the facts of that case are not on all fours with the instant case, since the order at Annexure A-3 placed ~~ed~~ the applicant, who was only an LSG Postal Assistant at

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H.O. Sri Ganganagar, and transferring him and posting him as Post Master Sri Ganganagar, on purely ad-hoc and temporary basis, as the regular incumbent was about to retire, and the applicant was not at all within the zone of consideration for substantive promotion to the scale attached to that post at that point of time. The applicant before us has also not asserted that he was the first person, and the senior most in his cadre, and, therefore, he was eligible to hold the post in substantive capacity on promotion also. The fact remains that he had yet not been promoted even from LSG cadre to HSG-II cadre, and his promotion to HSG-I cadre could have only followed his promotion to HSG-II cadre first, as has subsequently happened in the case of the applicant much later. Therefore, the benefit of this cited judgment cannot be granted to the applicant before us.

15. In the case of Selva Raj (Supra), the applicant, who was a Primary School Teacher, was placed in charge of the post of Secretary (Scouts) and claimed that his salary should be drawn against the post of Secretary (Scouts) under GFR 77. The Hon'ble Supreme Court took notice of the fact that the appellant was not regularly promoted to the said post, and that had this temporary arrangement not been done, the appellant would have been transferred to an interior island, where a post equivalent to his substantive post was available, but the temporary arrangement was given to him only since he was keen to stay in Port Blair. The Apex Court held as follows:-



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✓ "3.....Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

✓ "4. The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of Rs.1640-2900 during the period from 29.1.1992 to 19.9.1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs".

16. Since the facts of the case are quite different in the instant case, it appears to us that the finding arrived at by the Hon'ble Apex Court would not come to the rescue of the applicant in the instant case, since the principle of "quantum meruit" cannot be applied in this case when the applicant was only placed in-charge of the post on ad-hoc and temporary basis, and not in his own right. In the case decided by the Apex Court, appointment as



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Secretary (Scouts) was in a substantive capacity, and not merely on ad-hoc or temporary basis.

17. In the case of State of Bihar & Ors. (supra), the Hon'ble Apex Court had held that a recovery if any could be made only in terms of a statute (or a Rule), and not by way only of an executive fiat. Here, in the instant case, the respondents have submitted that since the applicant was not entitled for the amount, and recovery of the excess payment was permitted and allowed under Rule 73 of the CCS (Pension) Rules, read with Rule 80 (C) of the same Rules, it appears that the benefit of this Judgment of the Hon'ble Apex Court would also not be available to the applicant.

18. In the 4th cited case of State of Rajasthan (supra), the case before Hon'ble Rajasthan High Court related to the recovery of an amount paid long back as Travelling allowance to the respondent therein, since he was taking treatment from a place other than the place of his posting. In that case Hon'ble Rajasthan High Court had held that the amount was paid by the Competent Authority without any objection, and the objection if any should have been raised at the proper time, and the quashing of the recovery ordered by the Services Appellate Tribunal was upheld since there was neither an allegation that the petitioner had manipulated something, nor a statement that he was not sick. The Hon'ble Rajasthan High Court had further held that no recovery can be made on the basis of the audit objection only, when the amount had been paid by the Competent Authority without any objection.



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In the instant case, it is seen that the amount of higher pay and allowances was not paid to the applicant by a Competent Authority, as the applicant himself was the Head of the Office in which he was posted, and the averment of the respondents that his pay was wrongly fixed in a pay scale two levels above his substantive pay scale in HSG-I pay scale, by the Assistant Post Master working under him, has not been effectively denied by the applicant even in his rejoinder. Therefore, the benefit of this cited case also cannot be made available to the applicant herein, as it is not a case of payment having been authorized by a Competent Authority, and thereafter being recovered merely on the basis of Audit objections.

19. The learned counsel for the respondents had, in turn, cited the case of Union of India & Ors. Vs. Sujhata Vedachalam and Another (supra). This cited judgment has, in turn, followed the detailed reasoning and logic provided in the case of C&AG of India and others Vs. Farid Sattar; (2000) 4 SCC 13. On a combined reading of these two cases, it is seen that in the case of Farid Sattar (supra), the Hon'ble Apex Court had examined the applicability of FR 22(1) (a) (2) and FR 22 (1) (a) (3) as well as FR 15, and that the facts of that case have no relation to this instant case before us. However, in the case of Sujhata Vedachalam (supra), it was held by the Hon'ble Apex Court that when the pay of the respondent therein, Sujhata Vedachalam, had been wrongly fixed, and subsequently when the mistake came to light, her pay



was fixed correctly, and order for recovery of excess payment to the respondent was also passed, the appellants Union of India & Ors could recover the excess amount paid, in easy installments.

20. The learned counsel for the respondents had also relied upon the case of Col B.J.Akkara (supra), where the question of practice and procedure regarding relief, if any, which may be granted by the Courts against recovery of excess payments made by the Government, had been examined in detail. The law in this regard was laid down in Paragraph 28 of the said judgment as follows:-

“Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due to wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery”.

21. The learned counsel for the respondents argued that when the employee had knowledge that the payment received by him was in excess of what was due to him, or was wrongly paid, or where the error has been detected or corrected within a short time of



wrong payment, the Courts will not grant relief against recovery. Learned counsel for the respondents argued that in the instant case before us, the applicant was fully within the knowledge that the pay being drawn by him during the concerned period in HSG-I pay scale was not what was due to him in his substantive pay scale of LSG/P.A., and was being wrongly paid to him. The learned counsel, therefore, argued that as per the law laid down by the Apex Court, the respondents were fully within their rights to recover the excess amount drawn by the applicant, without being entitled to draw the same in a substantive capacity.

22. We have given our anxious consideration to the facts of the case. This is not the first time in service jurisprudence when an employee substantively holding a lower post has been placed in current charge of the duties and responsibilities of a post in a higher pay scale, without being so promoted substantively. The Government Rules do provide that when one is placed in additional charge of the duties of a second post, in addition to his substantive post, the employee can be granted a charge allowance, which is a fraction of the emoluments attached to the second post, while he continues to draw his full emoluments attached to the substantive post. However, service jurisprudence does not recognize anybody drawing salary other than that attached to his substantive post, and of the post in which the employee has been placed only on an ad-hoc and temporary basis.



23. In that sense, though in the case of Selva Raj (supra), the Hon'ble Apex Court had held that on the principle of quantum meruit, the respondent authorities should have paid the appellant before them as per the emoluments applicable to the post in the higher pay scale, during the time he actually worked on the said post of Secretary (Scouts), in substantive capacity, but not as a regular promotee, in the instant case, it is seen that the applicant, herein, has drawn the excess salary without the knowledge of his official superiors, and only through being the Head of the Office to which his services had been temporarily assigned. This payment of higher salary to him was done in such a manner that this discrepancy was not discovered till the service book of the applicant was examined at the time closer to his superannuation. Such being the case, it does not appear that the applicant can in any manner be held to be entitled to the benefit of the judgment of the Hon'ble Apex Court in the case of Selva Raj (Supra) even in an oblique manner, but rather it appears that the law as laid down by the Apex Court in Col. B.J.Akkara (supra) would prevail.

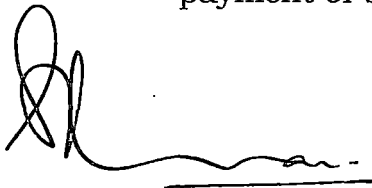
24. Further, U.K. and U.S. Courts have crafted four basic elements that must be proved for the doctrine of "quantum meruit" to be applicable:- (1) that valuable services were rendered; (2) that the services were rendered to the defendant; (3) that the services were accepted, used, and enjoyed by the defendant; and (4) that the defendant was aware that the plaintiff, in performing the services, expected to be paid by the defendant.



25. It is seen that in the instant case the fourth element was totally missing, in as much as the respondents were never aware that the applicant expected to be paid the salary of HSG-I grade. Therefore the principle of "quantum meruit" cannot be applied in this case.

26. Therefore, we do not find anything wrong with the impugned order, in so far as the challenge to the order of recovery of the excess payment amounts from DCRG of the applicant is concerned. It is further clarified that recovery from DCRG is not the same as recovery from pension, and those amounts which cannot be recovered from pension, can still be recovered from the Death-Cum-Retirement Gratuity payable.


27. However, the plea of the applicant that there was a delay, though inadvertently, on the part of the respondents, in settling the retirement claims of the applicant, is upheld, and the plea of the applicant in regard to grant of interest on the delayed payment of retiral benefits deserves to be allowed. It is, therefore, ordered that the respondents shall calculate the interest payable for the delayed payment of the retiral dues of the applicant after 90 days from the date of his superannuation, and after computation of such interest, adjust the interest amount so payable by them (at the rate of GPF interest rate) to the applicant, and after adjusting the same as against the amount to be recovered, in view of excess payment of salary and Transport Allowance, either pay the balance



amount, or recover the balance amount, as the case may be. The interest amount for delayed payment of DCRG payable will be calculated on the full amount of DCRG admissible to the applicant, which had accrued in favour of the applicant, without deducting the recoverable amount of excess payment of salary from such DCRG.

28. To that limited extent, the OA is allowed. There shall be no order as to costs.

V. J. Kumar
(V. Ajay Kumar)
Member (J)


(Sudhir Kumar)
Member (A)

cc.

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