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## **CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH AT JODHPUR**

### **Original Application No.367/2012**

Jodhpur, this the 26<sup>th</sup> April, 2013

#### **CORAM**

#### **HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)**

Prakash Chandra Bothra S/o Shri Chintamani Dass, aged about 60 years, by caste Oswal, R/o 208 Dhani Bazar, District Barmer. Office Address: Ex. Employee (Postal Assistant), Postal Department.

.....**Applicant**

**Mr. S.P.Singh, counsel for applicant.**

#### **Vs.**

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
3. The Director, Post Master General, Western Region, Jodhpur-342 001.
4. Superintendent of Post Offices, Churu Division, Churu.
5. Director, Accounts (Postal), Jaipur.
6. Sachin Mittal, Director, Postal Services, Western Region, Jodhpur.
7. Bihari Lal, SPO, Churu Division, Churu.

...**Respondents**

**Mr. D.P.Dhaka, present on behalf of  
Mr. Vinit Mathur, counsel for respondents No.1to5.  
None present for respondents No.6&7.**

#### **ORDER (ORAL)**

The short facts of the case as averred in the OA are that the applicant was appointed on the post of PA since 1972 and completed 40 years of services, and superannuated on 31.07.2012. The respondents without complying with the FR 56 (j) directed the applicant to go premature retirement. The applicant presented

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representation and submitted that it is not a fit case for premature retirement. The respondents while accepting the representation of the applicant declared the intervening period as leave due admissible. The applicant, therefore, filed an OA No.88/2010 in which this Tribunal directed the respondents to comply the Annexure-A/15 & Annexure-A/16 of OA, which is about fixation and refixation, and the intervening period of the applicant was directed to be treated as duty for all purposes. In compliance of the order passed in OA No.88/2010, refixation was done, but the respondents passed an order of recovery of Rs.9,40,619/- two months before his retirement and that too after 2 years of the refixation. The recovery has been started from the full salary of two months i.e. June & July, 2012, and from retiral benefits of the applicant. It is averred in the OA that the applicant never misrepresented and received the amount by fraud. The applicant further averred that recovery order is illegal as the respondent department failed to interpret the office memorandum dated 30.03.1978 (A/5) in the right perspective, and while interpreting para (v) ordered to recover the excess amount because in no case such recovery can be made on refixation as per CCS (CCA) Pension Rules, 1972. Hence, this OA has been filed for the following relief(s):-

- (a) *By writ, order or direction the impugned order Memo No.SP/Con/2012-2013 dated 24.07.2012 (Annexure-A/1) may kindly be declared illegal, unjust and improper and deserves to be quashed and set aside.*
- (b) *By any writ, order or direction the recovered amount from the applicant may kindly be directed to refund @ 18% interest p.a.*
- (c) *By any writ, order or direction the respondents may kindly be directed to pay the arrears due which is not paid after refixation in view of 6<sup>th</sup> CPC @ 18% interest p.a.*
- (d) *Any other order or direction may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (e) *That the costs of this application may be awarded to the applicant.*

2. By way of counter, the respondents averred that the refixation was made as per the office memorandum dated 30.03.1978 and incompliance of the order of this Tribunal passed in OA No.88/2010. The Hon'ble Tribunal in OA No.88/2010 directed the respondents for fixation of pay and allowances in accordance with Annexure-A/15 and A/16 of that OA. But the Annexure-A/16 of that OA relates with re-employment, therefore the same was not applicable in the pay fixation case, and as per the Annexure-A/15 of that OA, the pay and allowances of the applicant were fixed. As per Annexure-A/15, which is the G.I. M.F. OM dated 30.03.1978, the amount of pension drawn by the applicant was required to be adjusted against the salary payable and the pay of the Government whose pension has been partially commuted shall on reinstatement be reduced by the amount of pension including the amount commuted and pension equivalent of gratuity and he shall draw such reduced pay plus pension after commutation till he finally retired. As per this memorandum dated 30.03.1978, the amount of pension which has been paid to the applicant was required to be reduced from the amount of monthly pay and allowances payable to the applicant during the period of 24.08.2004 to 31.05.2012, but the monthly pay and allowances in such period has been paid to the applicant without reducing the pension paid during such period. Therefore, an amount of Rs.9,40,619/- excess to actual amount payable to the applicant has been paid in contravention of relevant rules. They further averred that during the course of enquiry, this fact came to the knowledge of the Department and therefore, this excess amount has been ordered to be recovered from the applicant. It has been

averred that the refixation has been made with the approval of the competent authorities and the recovery order was also made with the approval of the competent authority and there is no malafide on the part of the respondent department. The case of the excess amount and the recovery of the excess payment are based on these clear facts.

3. By way of rejoinder, the applicant reiterated the same facts and further averred that the refixation has been made in contravention to memorandum dated 30.03.1978, and therefore, the excess amount has been wrongly calculated by the respondent department.

4. Heard both the counsels. Counsel for the applicant contended that the respondent department themselves misinterpreted clause (v) of Rule 6 of Appendix-5 of the CCS (Pension) Rules, 1976, instructions regarding premature retirement, which is reproduced as under:-

***"(v) Where part of the pension has been commuted, the commuted amount may not be recovered from the Government servant concerned but for the purposes of sub-paragraphs (ii) (iii) and (iv) above, the full amount of pension before commutation and the pension equivalent of gratuity shall be taken into account for the purpose of pay fixation. The pay of a Government servant whose pension has been partially commuted, shall, on reinstatement, be reduced by the amount of pension including the amount commuted and pension equivalent of gratuity and he shall draw such reduced pay plus pension after commutation till he finally retires. He will be entitled to increments admissible from time to time. If any occasion arises to refix his pay as a result of transfer, deputation or promotion, the notional pay, pay being drawn plus pension, shall be taken as "pay" for purposes of refixation. On his final retirement, the pension shall be re-calculated and the pension already being drawn will be revised suitably."***

5. Learned counsel for the applicant submits that while stressing upon these words i.e. ***"If any occasion arises to refix his pay as a result of transfer, deputation or promotion, the notional pay, pay being drawn plus pension, shall be taken as "pay" for***

*purposes of refixation.*”, he contended that the pay/pension being drawn shall be taken as pay for purposes of refixation.

6. Per contra, the counsel for the respondents contended that this clause is applicable only if the refixation is being made as a result of transfer, deputation or promotion. The short controversy between the parties as regarding the interpretation of these words “*if any occasion arises to refix his pay as a result of transfer, deputation or promotion*”.

7. In my considered view, the argument advanced by the counsel for the applicant does not carry any force because this clause is applicable only in case of refixation of the pay as a result of transfer, deputation or promotion, because these 3 words qualifies the occasion to refix the pay, and therefore, the arguments advanced by the counsel for the respondents carries the weight. In my considered view, the respondent department refix the salary of the applicant in accordance with the Memorandum dated 30.03.1978.

8. Counsel for the applicant contended that Annexure-A/6 i.e. enquiry report submitted by the Accounts Officer, I.C.O. (S.B.), Rajasthan Western Region Zone, Jodhpur, reflects that an approval is required to be taken regarding the verification of the excess amount from the Director, Postal Accounts, Jaipur, but the order of recovery has been passed without there being approval from the competent authority.

9. Per contra, counsel for the respondents contended that the Annexure-A/6, does not refer any mandatory approval but only

refer that it would be proper, and further Accounts Officer came to the conclusion that the excess payment made to the employee was the same, which was calculated by the Accounts Officer of Regional office.

10. I have considered over this arguments. In my considered view there is no provision for the mandatory approval of the Assistant Director Postal Accounts, Jaipur and the counsel for the applicant did not show any provision for the same. Therefore, in my considered view there is no mandatory provision.

11. Counsel for the applicant contended that the amount has been paid to the applicant without there being any misrepresentation on his part or fraud. Therefore, the respondents are not competent to recover the amount from the applicant. He referred some judgments of the Hon'ble Apex Court in the OA itself.

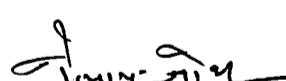
12. Per contra, counsel for the respondents contended that excess payment of the amount made to the applicant due to wrong fixation can be recovered because such amount paid or received comes within the purview of payment received without authority of law and that can be recovered, pardoning exemption, but is not matter of right otherwise it would amount to unjust payment.

13. I have considered the rival contention on this point also. There are some judgments of the Hon'ble Apex Court, in which looking to the peculiar circumstances of each and every case, the Hon'ble Apex Court quashed the order of recovery and the excess

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amount paid to the applicant on different grounds. But in the recent judgment of the **Hon'ble Apex Court in Chandi Prasad Uniyal vs. State of Uttarakhand & Ors.**, reported in 2013 (1) RLW 278 (SC), held that any such excess amount paid or received comes within the purview of payment received without authority of law and that can always be recovered, except in exceptional cases it is not a matter of right to retain such amounts received without authority otherwise it would amount to unjust payment. While relying upon the above mentioned judgment of the Hon'ble Apex Court in **Chandi Prasad Uniyal vs. State of Uttarakhand & Ors.**, I am also of the view that when the departmental authorities are refixing the salary of the applicant, inadvertently committed error in refixation of pay of the applicant and the excess amount has been paid, the same can be recovered and in the present case, there seems to be no error of the department while coming to the conclusion that salary of the applicant was wrongly refixed and the excess amount has been paid to the applicant for years.

14. In view of the discussion hereinabove made, I find no merit in the application and there are no grounds to quash the Annexure-A/1. Therefore, the OA is dismissed with no order as to costs.

  
[Justice K.C. Joshi]  
Judicial Member