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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 411/2012

Jodhpur this the 28th day of May, 2013.

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)

Prem Lal Chaturvedi S/o Shri Mangal Sen aged 63 years resident of A-56, Karni Nagar, Pawan Puri, Near Vasu General Store, Bikaner (Raj), retired Divisional Cashier, North Western Railway, Bikaner.
....Applicant

(Through Advocate Mr. Rajeshwar Vishnoi)

Versus

1. The Union of India through the General Manager, H.Q., North Western Railway, Jaipur.
2. The Divisional Finance Manager, North Western Railway, Bikaner.
3. The Chief Cashier, North Western Railway, Jaipur.
4. The Financial Advisor and Chief Accounts Officer, North Western Railway, Jaipur.

(Through Advocate Mr. Vinay Jain)

..Respondents

O R D E R (Oral)

The applicant by way of this application has challenged the legality of the order Annex.A/1 passed by the Divisional Financial Advisor, North Western Railway, Bikaner, by which the applicant has been informed by the respondent-department to pay the excess amount paid to him during the tenure of his service after attaining the age of superannuation.

2. The short facts of the case are that Shri Prem Lal Chaturvedi, applicant, was appointed on the post of Divisional Cashier on 16.05.1968. He served the respondent department till

his superannuation i.e. retired on 01.08.2009. The respondent No. 2 passed an order and informed the applicant that he has been paid Rs. 48,271/- in excess under the North Western Railway payment policy and Rs. 20,680/- has been adjusted with the arrears paid to the applicant and further he was directed to pay Rs. 27,591/- within 15 days failing which the same shall be recovered from his dearness relief. The applicant approached the respondent – department vide representation Annex.A/7 but no heed was paid to decide the representation, therefore, he has challenged the order Annex.A/1 before this Tribunal with the following reliefs :

"A. The respondent authorities may kindly be restrained from recovering any excess money paid to the applicant and the impugned order dated 03.09.2012 (Annex.A/1) may kindly be quashed and set aside.

B. The letter of Railway Board No. PC6th/2012/1/RSRP/1 dated 23.03.2012 which has been referred in the impugned communication Annex. A/1 by which recovery has been made from the petitioner may kindly be quashed and set aside.

C. The respondent authorities may kindly be directed to refund the recovered money which has been recovered from the applicant after his retirement with interest @ 18% p.a.

D. Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

E. Application of the applicant may kindly be allowed with costs."

3. By way of counter, the respondent-department contended that inadvertently the applicant was paid 10% of the basic pay as Cash Allowance which ought to have been paid @ 5% because there were two Cashiers working in the respondent – department and thus the applicant has been paid excess amount inadvertently, therefore, it is a public money and can be recovered at any time by the Railway department.

4. It has been averred in the reply that no undue amount is being recovered from the applicant but, respondent has informed the applicant to recover the undue payment made to him in support of the reply the respondents have also filed some documents.

5. Heard both the counsel for the parties.

6. The counsel for the applicant contended that the respondents ordered to recover the amount unilaterally without giving any opportunity of being heard to the applicant and being a pensioner the responsibility lies upon the respondents to serve a notice before taking any action of recovery against him and any recovery order made without hearing the applicant, cannot be sustained in the eye of law and, therefore, the order Annex.A/1 deserves to be quashed.

7. Per contra, the counsel for the respondents contended that the excess amount paid to the applicant has been determined by the department and the competent authority served a notice on the applicant and excess amount comes within the definition of the public money and any public money paid in excess to the public servant, can be recovered at any stage even without notice.

8. I have considered the rival contentions raised by both the parties and perused the relevant documents placed on record.

9. It is not the case of the respondents that the applicant has been heard prior to passing of the order Annex.A/1 and he was

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directly served the order Annex.A/1 for which the applicant has made a proper representation Annex.A/7 which has not been decided by the competent authority and the same is still pending before the respondent – department. It is a settled principle of law that no one can be put to adverse position without giving an opportunity of hearing and thus, the Annex.A/1 order is against the principles of natural justice and, therefore, cannot be sustained.

10. In view of the discussions hereinabove made, the Annex.A/1 is quashed and the respondents are directed to consider the representation of the applicant A/7 or he may file a fresh representation within 7 days from the date of receipt of a copy of this order, to the competent authority and the concerned authority shall decide the representation within two months' from the date of receipt of the representation and pass a reasoned and speaking order regarding the issue. If any grievance still remains with the applicant, he can file a fresh O.A. No order as to costs.


(Justice K.C. Joshi) JM

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