

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 361 of 1990
T.A. No.

DATE OF DECISION 30-4-1991

M Mathew Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India & 2 others Respondent (s)

Mr Mathew J Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? ~
3. Whether their Lordships wish to see the fair copy of the Judgement? ~
4. To be circulated to all Benches of the Tribunal? ~

JUDGEMENT

AV Haridasan, Judicial Member

The applicant has filed this application under Section 19 of the Administrative Tribunals Act praying that the order dated 24.4.1990 issued from the Directorate General of All India Radio directing the Pay & Accounts Officer to recover and special pay paid to the applicant/similarly situated persons (Annexure-I) several years ago/may be quashed and that it may be declared that he is entitled to Special Pay for the whole period during which he was under deputation in the Cabinet Secretariat as Field Officer(Technical).

2. While working as a Senior Engineering Assistant in All India Radio at Trichur, the applicant was deputed as

Field Officer (Technical) to the Cabinet Secretariat w.e.f.

2.12.1971. While he was working there on deputation, on the basis of the recommendation of the Third Pay Commission, the Department of Cabinet Affairs issued a letter No.27/1/73-SC dated 11.3.1975 granting a Special Pay of Rs.75/- per month to the applicant and some others w.e.f. 1.1.1973. Annexure-II is a copy of the extract from the office memorandum No.742-E-6/75 dated 26.4.1975 by which the applicant and some others were granted Special Pay of Rs.75/- per month w.e.f. 1.1.1973. The initial period of deputation was for 2 years. But the applicant continued on deputation till December 1977 on the basis of willingness obtained from him. The deputation allowance which was granted at the initial stage of deputation was discontinued after 4 years and 9 months from 2.12.1971 and thereafter the only benefit that the applicant was getting on account of his deputation was this Special Pay of Rs.75/-. After December 1975, the applicant was on another deputation without any Special Pay and when he came back to the Cabinet Secretariat in 1981, he was not getting any Special Pay as by message dated 6.5.1980, the practice of paying Special Pay was stopped. But he was never informed earlier that the Special Pay paid to him from 1.1.1973 till 1977 was to be refunded. Now without any notice, by the impugned order at Annexure-I, the Directorate General, All India Radio has directed the Pay & Accounts Officer to effect recovery of Rs.4456.20 from the applicant on the ground that this amount was paid to him as Special Pay inadvertently during the period

when he was on deputation as he was not entitled to Special Pay as per rules. The applicant has challenged the impugned order on the ground that Special Pay granted to him as per the existing rules while he was on deputation, cannot now be recovered without the order granting Special Pay being cancelled. It was also been contended that the direction to recover the amount in a lump without giving an opportunity to the applicant to be heard in the matter, is violative of principles of natural justice.

3. Though several adjournments were granted to the learned Additional Central Government Standing Counsel, no reply affidavit has been filed. Therefore we heard the learned counsel for the parties on 10.4.1991 with the available pleadings. The learned counsel for the applicant argued that a direction to recover a sum of Rs.4456.20 alleged to have paid prior to 13 years spreading over a period of 4 years as a Special Pay sanctioned by a valid order without that order being cancelled and without giving an opportunity to the affected persons to be heard in the matter is unjustified and violative of principles of natural justice. The impugned order Annexure-I reads as follows:

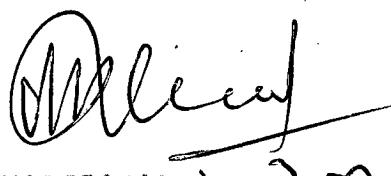
"I am directed to say that officials of AIR/Door-darshan, whose particulars are at Annexure-I while on deputation to the Cabinet Secretariat, were paid special pay in addition to deputation allowance by the Cabinet Secretariat inadvertently, as the special pay was not admissible to them under the Deputation Rules. The amount of over payment made to them as intimated by the Cabinet Sectt. has been indicated against their names in Annexure-I.

You are now requested to recover the amount of over payment made to them and remit the same to the Accounts Officer, Cabinet Secretariat, New Delhi under intimation to this Directorate."

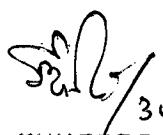
This was issued from the Government of India, Directorate General, All India Radio, i.e. the second respondent, to the Pay & Accounts Officer, Ministry of Information & Broadcasting, New Delhi. The name of the applicant is No.1 at Annexure-I to this order. The period to which the alleged over-payment is from 1.1.1973 to the year 1977. From Annexure-II, it is obvious that by order dated 26.4.1975, on the basis of the orders of the Cabinet Secretariat dated 11.3.1975, Special Pay of Rs.75/- per month was sanctioned to the applicant and other persons with effect from the dates noted against their names. The applicant was granted Special Pay w.e.f. 1.1.1973. There is no indication in the impugned order Annexure-I that this order sanctioning Special Pay to the applicant has ever been cancelled or set aside. Apart from stating that the Special Pay in addition to deputation allowance was paid to the applicants and other persons inadvertently, no details as to whether the decision has been varied and cancelled has been stated in the Annexure-I order. As argued by the learned counsel for the applicant, to recover a fairly large sum of money after more than a decade of the payment saying that the above payment was made by a mistake without giving a notice to the person from whom the amount is sought to be refunded to offer his view in the matter is undoubtedly opposed/principles of natural justice. If a notice and an opportunity are given to the applicant and the similarly situated persons, they may have to raise their own contentions regarding their liability or non-liability to refund the amount, the correctness of the amount etc.

So the impugned order without giving the applicant an opportunity to dispute the claim made therein is unsustainable as it has been made without observing the principles of natural justice. The learned counsel for the respondents also ~~conceded~~ conceded that no notice was given to the applicant before the impugned order was issued. Therefore we find that the impugned order at Annexure-I is unsustainable inasmuch as the applicant is concerned, since he has not been given a notice in the matter before the decision to recover the money from him was taken.

4. In the result, the application is allowed, the impugned order at Annexure-I is quashed and set aside to the extent it directs recovery of Rs.4456.20 from the applicant. If the respondents deems it necessary to take steps for recovery of any amount paid under a mistake, they may do so after giving a notice and a reasonable opportunity to the applicant to put forward his defence in the matter. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

30-4-91


30-4-91
(SP MUKERJI)
VICE CHAIRMAN

30-4-1991

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