

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 449/2007

This, the ^{17th} day of February 2009

Hon'ble Dr. A. K. Mishra, Member, (A)

1. Merhu Lal Maurya aged about 52 years S/o Sri Raj Pal R/o Mastan Ka Purva Saadatganj Faizabad at present working as JAO o/o DAP Aliganj, Lucknow.

2. Mahendra Nath Yadav aged about 53 years S/o late Sri Palakdhari Yadav R/o Mohalla Modaha (South) Behind Rama Bakery Faizabad at present working as J.A.O. o/o superintendent C.S.D. Lucknow.

Applicants

By Advocate Sri R.S. Gupta.

Versus

1. Union of India through the Secretary Cum Director General Department of post Dak Bhawan, New Delhi.
2. Chief Postmaster General U.P. Lucknow.
3. Director Accounts (Postal) U.P. Circle Sector D Aliganj, Lucknow.
4. Senior Superintendent of Post Offices Faizabad.
5. Senior Postmaster Faizabad.
6. Sri S.r. Pandey the then Senior Postmaster Faizabad.

Respondents.

By Advocate Sri K.K. Shukla.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made by applicants No. 1 and 2 jointly challenging the order dated 11.5.2007 of Respondent No. 5 directing for recovery of Rs. 3,34,013/- from the salary of both the applicants.

2. Brief facts of the case are summarized below:-

Both applicants were working as Accountants in the relevant years when they were responsible for re-fixing the salaries of Postal Employees on the basis of the recommendation of Vth Pay Commission. Some of the employees had filed O.A. 283/2003 before the Principal Bench of Central Administrative Tribunal, New Delhi (C.A.T) challenging the orders of excess recovery made against them on account of incorrect fixation of pay. This Tribunal decided that such recoveries would be justified only if undertakings had been obtained from the employees before fixation of pay in terms of the instructions of the

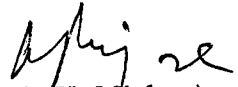
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Government regarding implementation of Revised Pay Rules. In those cases considered by the Principal Bench no such undertaking had been obtained, and it was held that the department would not be entitled to recover excess payment and should refund the recovered amount. In the present case, the applicants were paid honorarium for doing the extra work in connection with fixation of pay of the Postal Employees, but they had, by mistake, given the benefit of two extra increments at the time of original fixation and were remiss in obtaining the undertakings from the employees for recovery of excess payment. The claim of grant of two increments was examined in many O.As decided by various coordinate benches of this Tribunal and rejected. One such order was passed in respect of O.A. No. 387/99 decided on 28.4.2003 by Lucknow Bench of this Tribunal. However, the recovered amount had to be refunded as the department had not obtained undertakings from the employees about recovery of excess payment. Therefore, the department fixed responsibility on the applicants for the loss sustained by the Govt. on this account and ordered for recovery of the amount mentioned in the impugned order from the applicant.

3. The short point canvassed before us by the learned counsel for the applicant is that no opportunity had been given to the applicants before fixing responsibility on them. As such, recovery of such huge amount from them has been effected without giving them due opportunity to put forward their explanation. The recovery amounts to a penalty which has been imposing in denial of natural justice. The respondents have sought to explain the recovery on the basis of the office memorandum of the department in which, it has been directed that responsibility for excess payment should be fixed and appropriate action taken. It is the admitted case that recovery of loss sustained to the Government on account of negligence of an employees would constitute a minor penalty under CCS (CCA) Rules. Admittedly, no proceeding has initiated against them. Neither any opportunity has been afforded to the applicants to explain their case.

4. In the result, I find that this application has merit. The impugned order dated 11.5.2007 is set aside. However, the respondents are at liberty to start disciplinary proceedings after issuing appropriate charge sheet to the applicants, give them due opportunity to explain their case and thereafter pass reasoned orders.

5. In the result, the application is allowed with the above observations. No costs.


(Dr. A. K. Mishra)
Member (A)

13/02/09