

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**O.A. No.225/2008**

This the <sup>10th</sup> day of February, 2009

**Hon'ble Sri A.K. Mishra, Member (A)**

Subhas Chandra Tripathi, aged about 53 years son of Sri Badri Prasad Tripathi, resident of 615/252, Gayatri Nagar, Lucknow at present working as Wireman, Azamgarh in the office of Senior Superintendent of Post Offices.

Applicant

By Advocate: Sri R.S.Gupta.

Versus

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, U.P.Circle, Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Senior Superintendent of Post Offices, Lucknow.
5. Senior P.M./Senior Superintendent of Post Offices, Azamgarh.
6. Sri Rajeev Umrao, the then Senior Superintendent of Post Offices, Lucknow now Assistant Pos Master General, in the office of Chief Post Master General, U.P. Lucknow.

Respondents

By Advocate: Sri S.K. Awasthi

**ORDER**

**BY HON'BLE SHRI A.K. MISHRA, MEMBER (A)**

The facts of the case have been described in my order dated 30.1.2009. It may be examined whether the case of *Union of India and others Vs. Sujatha Vedhachalam (Smt. ) and another reported at (2000) 9 Supreme Court Cases, 187* cited by the learned counsel for the respondents is of any help to them. In this case, the Hon'ble Supreme Court was dealing with the facts relating to a person who had voluntarily sought for a transfer from Hyderabad to Bangalore on condition that she was willing to accept a lower scale of pay. The transfer was also effected with specific condition that she should resign from her post at Hyderabad and accept a lower post at Bangalore. In view of such specific terms and conditions attached to her transfer to Bangalore, it was held that any excess payment made to her beyond the agreed terms and conditions was correctly recovered from her pay in easy installments. This case also made a reference to another case Comptroller and *Auditor General of India and others Vs. Farid Sattar reported at (2000) 4*

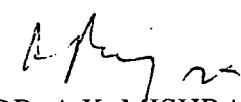
**Supreme Court Cases 13**, which also was dealing with the similar circumstances of transfer under specific terms and conditions. These facts do not apply to the present case before us.

2. Learned counsel for the applicant cited the case of ***Sahib Ram Vs. The State of Haryana and others JT 1995 (1) SC 24***, in which it was specifically held that excess amount paid to respondents of this case should not be recovered as the employee was not at fault nor did he misrepresent on the basis of which the excess payment was made.

3. In the present case, the applicant had filed O.A. No. 98/2000 claiming stepping up of pay to that of his juniors. A direction was issued to the competent authority to consider his representation and pass a speaking order. The competent authority came to a finding vide his order at Annexure 6 that Dhani Ram, Wireman, who was appointed on 3.5.1986 had been allowed a basic pay of Rs. 950/- whereas the applicant who was appointed on 1.5.1986 was allowed a lower basic pay of Rs. 825/-. Therefore, he came to a conclusion that the claim of the applicant was justified and hence ordered for stepping up of his pay to that of his juniors.

4. There is no misrepresentation involved in this case. The competent authority has given his findings on the basis of materials before him and on that basis, the office order dated 7.10.2004 was issued fixing his pay at Rs. 950/- w.e.f. 1.5.1986. The respondent authorities have never challenged this order, neither cancelled it at any point of time. Therefore, it does not lie with them to say that there was excess payment on the basis of any misrepresentation from the applicant. The facts of this case are squarely covered by the decision of the ***Hon'ble Supreme Court in Sahib Ram Vs. The State of Haryana and others (Supra)***. Under the circumstances, we find that there is merit in this application.

5. In the result, the impugned orders are set aside and the excess amount recovered should be refunded to him within a period of 3 months from the date of receipt of copy of this order. No costs.

  
(DR. A.K. MISHRA)  
MEMBER (A)