

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 331/2009

This, the 4th day of October, 2013

Hon'ble Sri Navneet Kumar, Member (J)

Anand Kumar Tripathi aged about 61 years son of late Ram Padarath Tripathi resident of Village Dewai, Post Office Deorhi, District- Faizabad

Applicant.

By Advocate: Sri Surendran P

Versus

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Sultanpur.

Respondents.

By Advocate: Sri K.K.Shukla

(Reserved on 25.9.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) Quash the order dated 30.5.2009 contained in Annexure No.1.
- ii) Issue a direction to pay gratuity of Rs. 81,543/- on account of revision of pay in consequence of implementation of the report of 6th Pay Commission with interest.
- iii) Any other order which this Hon'ble Court deems just and proper.

2. The brief facts of the case are that the applicant who was working with the respondents organization was granted certain benefits as per the recommendations of the Pay Commission. Thereafter after attaining the age of superannuation, applicant superannuated on 31.5.2008. The learned counsel for applicant has pointed out that all of a sudden, the applicant received an order on 30th May, 2009 whereby it was directed that an amount of Rs. 1,00,109/- is required to be deposited by the applicant in govt. account within a fortnight. It is also pointed out on behalf of the applicant that prior to issuance of said order, no notice whatsoever was given to the applicant and after receiving the entire retirement dues and also after a period of one year from the date of retirement, said order



was issued. Aggrieved by the said order, the applicant preferred the present Original Application.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed out that after the recommendation of the 5th Pay commission, the work of fixation of pay in revised pay structure and drawl of arrear of pay was carried out in the month of October/November 1997 in Sultanpur Head Office. The applicant of this O.A. was working as Assistant Post Master Accounts Sultanpur Head Post Office at the time of pay fixation as well as drawl and disbursement of revised pay from 1.1.1996. All drawing and disbursing authorities to take an undertaking from all employees to which they would be agreeing to refund the amount of overpayment if wrong pay fixation is done. The learned counsel for the respondents has also pointed out that unfortunately the pay of the postman was fixed wrongly in revised pay structure w.e.f. 1.1.1996 and due to that an amount of Rs. 100109/- was ordered to be recovered and a notice to that effect was given to the applicant for refunding the said amount. The learned counsel for the respondents failed to indicate that any notice whatsoever was given to the applicant before passing the impugned order and also the undertaking given by the applicant.

4. Learned counsel appearing for the applicant has filed Rejoinder Reply and through Rejoinder reply, it was pointed out that the impugned notice is not a notice but it is an order of refunding the amount and this order was passed without any show cause notice whatsoever and the said order was passed after about an year from his date of retirement.

5. Heard the learned counsel for parties and perused the record.

6. Admittedly, the applicant who joined the respondents organization superannuated from service on 31.5.2008. The bare reading of this order dated 30th May, 2009, which was issued after an year from the date of retirement of the applicant clearly says as under:-

"Now, in the context of above matter, you are hereby advised to credit a sum of Rs. 100109-00 (Rs. one lac one hundred nine only) in govt. account (UCR) within a fortnight in view of lapses on your part in the case and intimate credit particulars to this office."



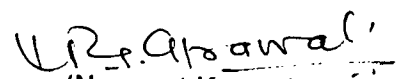
7. The contention of the applicant cannot be denied to the extent that this order cannot be treated as a notice because it is a direction that the amount mentioned in that letter may be deposited within a fortnight and also intimate the credit particulars. Upon query by the learned counsel for the respondents, he failed to indicate that any notice whatsoever was given to the applicant before passing this order and also the undertaking given by the applicant.

8. As observed by the Hon'ble Apex Court in the case of **State of Orrisa Vs. Dr. Ms. Binapani Dei reported in 1967 Supreme Court Cases 1269** where the Hon'ble Apex Court has been pleased to observe that ***"Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice."***

9. In the case of **Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88**, the Hon'ble Apex Court has also been pleased to observe that ***"opportunity of hearing is to be given to the delinquent before passing an order."***

10. In the instant case, it is specifically clear that before passing of impugned order, no opportunity of hearing is given to the delinquent who has already superannuated an year before, the date of impugned order.

11. Considering the submissions made by the learned counsel for the parties as well as on the basis of observations made by the Hon'ble Apex Court, the O.A. deserves to be allowed. Accordingly, the O.A. is allowed. The impugned order dated 30th May 2009 is quashed. However, the respondents are at liberty to pass a fresh order after due opportunity of hearing to the applicant. No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-