

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

Original Application No. 257/2011

Order Reserved on 14.2.2014

Pronounced on 27<sup>th</sup> February, 2014

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

U.P. Pandey aged about 51 years son of late Sri Parasuram Padeny r/o 227- Samar Vihar Colony, Alambagh, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through-

1. The General Manager, Electrification (CORE), Head Quarter Office, Allahabad.
2. The Chief Project Manager, Railway Electrification, Charbagh, Lucknow.
3. The Assistant Personnel Officer, Railway Electrification, Charbagh, Lucknow.
4. The Chief Works Manager, POH, Central Railway, Bhusawal.

Respondents

By Advocate: Sri Rajendra Singh

**ORDER**

**By Hon'ble SriNavneet Kumar, Member (J)**


The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- i) To quash the impugned order dated 9.6.2011 contained as Annexure No.A-1 with all consequential benefits.
- ii) To restrain the respondents from imposing recovery in terms of order dated 9.6.2011.
- iii) To restrain the respondents from reducing the pay of the applicant in terms of order dated 9.6.2011.
- iv) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case may also be passed.
- v) Cost of the present case may also be awarded as the applicant has unnecessarily been dragged into litigation.

2. The brief facts of the case are that the applicant who was working in the respondents organization was promoted on the post of Assistant Electrical Foreman on adhoc basis. Thereafter, vide order

dated 10.6.1999, the applicant was promoted on the post of JE-I in the grade of Rs. 5500-9000 and subsequently promoted on the post of Section Engineer (Electrical) in the grade of Rs. 6500-10500 on adhoc basis. Subsequently, a notification was issued inviting application for deputation by RITES for which, the applicant submitted his willingness and he was found suitable for posting at Sharjah and an order was issued in 2000, whereby the sanction was granted for deputation to out of India and in pursuance thereof, the applicant was relieved by the concerned authority. Subsequently, in 2002, the applicant was repatriated back to the Railway with immediate effect and was posted as Section Engineer (Electrical) on adhoc basis in grade Rs. 6500-10500/-. In pursuance thereof, the applicant submitted his joining in July, 2002. After serving for a quite long time, the respondents No. 1,2 and 3 granted the benefit of MACP to the applicant but subsequently another order was issued and the said benefit was withdrawn. When the said benefit was not granted to the applicant, he met with the authorities and finally an order was issued on 9.6.2011 whereby a recovery of Rs. 15 lakh was imposed upon the applicant and an amount of Rs. 10000/- per month was proposed to be recovered from the month of June, 2011. Learned counsel for applicant has categorically pointed out that without issuing any show cause notice whatsoever, the applicant was served with such a notice, whereby it is informed that while he was on deputation to work in foreign service in the year 2002, certain rules were not applied and he was paid some excess amount due to mistake, as such excess amount which was paid to the applicant on the basis of adhoc pay is liable to be recovered. Feeling aggrieved by the said order, applicant preferred the present O.A.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that after due investigation, the recovery was ordered against the applicant and during enquiry, it was found that an amount of Rs. 15 lakhs has been paid in excess to the applicant for which the competent authority



has decided to recover the same @ Rs. 10000/- per month from June 2011 as the applicant is getting salary which is more than 45000/- per month. It is also indicated that the applicant was deputed to work in Railway Electrification and was promoted in higher grade purely on adhoc basis which was subsequently regularized after getting promotion but the salary was being paid on adhoc basis and the aforesaid benefit was not permitted as such the recovery was ordered. The learned counsel for respondents failed to indicate that any notice whatsoever was given prior to issuing the impugned order or not.

4. The learned counsel for applicant has filed their Rejoinder reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated. It is once again pointed out by the learned counsel for the applicant that no notice whatsoever was given to the applicant before passing of impugned order of recovery, as such the same is liable to be quashed and O.A. deserves to be allowed by this Tribunal.

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

6. Admittedly, the applicant was initially appointed with the respondents organization and was promoted upto the post of Section Engineer in grade Rs. 6500-10,500/- on adhoc basis. He was subsequently posted to Sharjah in 2000 and thereafter he repatriated back to the Railway in 2002. After that, the applicant served with the respondents but without any notice whatsoever, suddenly applicant received an order dated 9.6.2011 whereby a recovery of Rs. 15 lakhs was ordered to be recovered and an amount of Rs. 10000/- per month is proposed to be recovered from the month of June, 2011. The applicant vehemently argued that without issuing any notice before an recovery order dated 9.6.2011 due to excess amount paid to the applicant on the basis of adhoc pay is not permissible in accordance with law. It is also indicated by the respondents that as per rule only cadre pay should be paid during deputation and after returning back, an excess payment of Rs. 15 lakhs has been made which was proposed

to be recovered from June, 2011 in installments of Rs. 10000/- per month.

7. The learned counsel for applicant has vehemently argued that the applicant is entitled for the pay and he was paid accordingly and there is no excess amount has been paid to the applicant. Apart from this, it is also indicated by the learned counsel for the applicant that reduction of pay and consequential recovery, both are bad in the eyes of law because before issuing such recovery order, the applicant remained unheard in the matter. Therefore, the impugned order imposing reduction of pay and consequential recovery is bad in the eyes of law.

8. Learned counsel for respondents also failed to indicate that before passing of impugned order, they issued any show cause notice to the applicant to explain as such the applicant did not get an opportunity to rebut his case and explain the reasons to the authorities. Undoubtedly the excess salary paid to the delinquent due to irregularity/ wrong pay fixation is liable to be recovered and there is no law which provides that only if there is misrepresentation or fraud on the part of the applicant, money can be recovered.

9. As observed by the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal and others Vs. State of Uttrakhand and others reported in (2012) 8 Supreme Court Cases, 417,*** the Hon'ble Apex Court has been pleased to observe as under:-


***“8. We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.”***

10. Undoubtedly, the amount can be recovered if it is a wrong calculation on the part of the respondents and any amount excess paid to the applicant but the applicant is entitled to have an opportunity of hearing and the principles of natural justice cannot be violated.

11. As observed by the Hon'ble Apex Court in the case of **State of Orissa 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.***

12. 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.”***

13. In the instant case, it is specifically clear that before passing of impugned order, no opportunity of hearing is given to the delinquent employee, as such, considering the submissions made by the learned counsel for 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 9.6.2011 is quashed. However, the respondents are at liberty to pass a fresh order after due opportunity of hearing is given to the applicant. No order as to costs.

  
(Navneet Kumar)  
Member (J)

HLS/-