

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 290 of 2011
AW

Original Application No. 298 of 2011
AW

Original Application No. 349 of 2011

This, the 13th day of December, 2013.

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Original Application No. 290 of 2011

Hira Lal Singh, aged about 53 years, S/o late Sri Ram Samujh Singh, Resident of 494/91, Sarai Hasan Ganj, Daliganj, Lucknow.

Applicant

By Advocate Sri Vikas Singh

Versus

1. Union of India through the Secretary, Ministry of Post & Telegraph, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.

Respondents

By Advocate Sri Rajendra Singh.

Original Application No. 298 of 2011

1. Rakesh Chandra Srivastava, aged about 50 years, S/o late Saraswati Prasad Srivastava, R/o Ratnagiri Avenue, B-Block, Rajajipuram, Lucknow.
2. Yogendra Singh, aged about 54 years, S/o Shri Jwala Bux Singh, R/o Mohalla-Bagh Shahjeet, House No. 480/85, Near Mohan Mikin, Daliganj, Lucknow.
3. Om Prakash Sharma, aged about 52 years, S/o Shri Nain Chandra Sharma, R/o 30, Gayatripuram, Kursi Road, Lucknow.
4. Ramesh Chandra, aged about 52 years, S/o late Chandrika Prasad, R/o 411/77, Pulgama, Hata Bhikham Khan, Chowk, Lucknow.

Applicants

By Advocate Sri Vikas Singh.

Versus

1. Union of India, through the Secretary, Ministry of Post & Telegraph, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.

Respondents

By Advocate Sri R. Mishra.

Original Application No. 349 of 2011

1. Mohd. Saleem, aged about 55 years, S/o lae Barkatullah, R.o 14/131, old Baraf Khana, Udaiganj, Lucknow.

2. Muneshwar Bux Singh, aged about 54 years, S/o late Shri Kishan Singh, R/o E-6 Sector -N-2, House No. 186, Kursi Road, Aliganj, Lucknow.

Applicants

By Advocate Sri Vikas Singh.

Versus

1. Union of India, through the Secretary, Ministry of Post & Telegraph, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.

Respondents

By Advocate Sri Raj Singh for Sri Deepak Shukla.

(Reserved on 29.11.2013)

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The above O.As are filed by the applicants before this Tribunal for quashing of the order dated 29.3.2011 as well as the order dated 16.3.2011 whereby the respondents has cancelled the benefit of the MACP granted earlier to the applicants. The learned counsel for the applicant has categorically pointed out that before passing the order of canceling the benefit granted to the applicant, no opportunity of hearing is provided to the applicant and the respondents have passed the order of recovery from the salary of the applicant in gross violation of principles of natural justice in as much as no show cause notices was given to the applicants before passing the order of recover from the salary of the applicants on account of excess payment due to wrong fixation of the date of granting the benefit of financial up gradation under the MACP Scheme.

2. As observed by the Hon'ble Apex Court in the case of **State of Orissa Vs. Dr. M.S. Binapani Dei reported in 1967 Supreme Court Cases 1269** 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."

3. The learned counsel appearing on behalf of the respondents filed there reply and through reply, it was pointed out by the respondents that the MACP Scheme has been introduced in the Department of Posts w.e.f. 1.9.2008 in compliance of Ministry of Communications & IT, Department of Posts, New Delhi and the same was circulated to all Postal units of U.P. Circle and as per the said scheme, benefit is to be extended after 10,20,30 years of continuous

regular service in respect of Central Government civilian employees of the Department of Posts. It is also pointed out by the learned counsel for the respondents that the number of officials including the applicants were examined on the basis of date of entry including the applicants, the benefit was extended and the review screening committee meeting was held on 22.3.2011 for reconsidering the issue of financial up gradation under MACP scheme, the revised orders were issued on 29.3.11. As such, after the said meeting, the authorities have re-fixed the pay of all the officials including the applicants and started recovery of excess amount already paid to them, which is under Rules. It is also pointed out by the learned counsel for the respondents that the authorities are competent to recover the excess amount paid to the ex employee.

4. Learned counsel for the applicant has filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. However, it is once again pointed out by the applicants that the action of the respondents in passing the order of recovery from the salary of the applicants is in gross violation of the principles of natural justice and without any show cause notice whatsoever.

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

6. Admittedly, the applicants are employees of the respondents organization and they were granted MACP benefit by the respondents and after the said benefit was extended to the applicants, their pay was enhanced. Subsequently, after the review meeting, it was found that the pay fixed on the basis of the MACP benefit granted to the applicants is not correct and as such, the respondents have issued the order of recovery. The applicants have alleged that such withdrawal of their second MACP was ordered without issuing any show cause notice as well as without affording any opportunity of hearing as to how the respondents have analyze the fact. It is also pointed out that the recovery is made in respect of the excess payment of wrong fixation of pay on the wrong date for granting financial up gradation under MACP Scheme. Apart from this, it is pointed out by the Ld. Counsel for the applicant that the over payment has not been made as result of fraud representation on the part of the applicant, but apparently, it is because of the error on the part of the respondents but without affording any opportunity of hearing.

7. 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.”

8. As observed by the Hon'ble Apex Court in the case of State of Orissa Vs. Dr. M.S. Binapani Dei reported in 1967 Supreme Court Cases 1269 “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.

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 as observed in the case of State of Orissa Vs. Dr. Ms. Bina Panij Dei and Davinder Singh and Others Vs. State of Punjab (Supra), the O.As are deserves to be allowed.

12. Accordingly the OAs are allowed. The impugned orders dated 29.3.11 and memo dated 18.1.11 in O.A. 290/11, order dated 16.3.11 and memo dated 18.1.11 in O.A. No. 298/11 and impugned order dated 29.3.11, in O.A. No. 349/11 stands quashed in respect of the applicants only. However, the respondents are at liberty to pass a fresh order after due opportunity of hearing is given to the applicant. The applicant shall co-operate in disposal of the case. No order as to costs.

(i) Date of Order 13-12-2013

(ii) Date of Receipt 16-12-2013

Date of Receipt

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Rygar
Section Officer
Central Administrative Tribunal
Lucknow Bench

16-12-2013

(Navneet Kumar)
Member (J)