

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 585 of 2005

Reserved on 19.2.2014

Pronounced on 24th March, 2014

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

S.K. Shukla, aged about 60 years, S/o Sri D.D. Shukla, R/o 4/293, Prem Nagar Maholi (retired complaints Inspector), Sitapur.

1/1. Akhilesh Kumar Shukla, aged about 39 years, S/o late Sri S.K. Shukla, R/o 4/293 Prem Nagar Colony, Maholi Station at present R/o Gulabchand Colony, Hardoi Road, Sitapur.

.....Applicant

By Advocate : Sri R.S. Gupta

Versus.

1. Union of India through the Chief Postmaster General, U.P., Lucknow.
2. Director Accounts (Postal), U.P. at Aliganj, Lucknow.
3. Superintendent of Post Offices, Sitapur.

.....Respondents.

By Advocate : Sri Praveen Kumar for Sri G.K. Singh

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- "(a) quashing impugned orders dated 25.2.2005, 11.8.2005 and 23.4.2005 as contained in Annexure nos. 1, 1-A and 1-B.*
- (b) to refund Rs. 59,708/- recovered from DCRG and pay for July 2005 as indicated overleaf to Annexure no. 1-A.*
- (c) to refund of Rs. 30,344/- being reduced amount of DCRG.*
- (d) to refund of Rs. 13620/- being reduced amount of leave encashment.*
- (e) to refund of Rs. 28370/- being reduced amount of commuted value of pension.*
- (f) to allow pension Rs. 6525/- P.M. with DAR w.e.f. 1.8.2005.*
- (g) to refund the entire amount of pay in consequence of relief no. (a) approximately amounting to Rs. 84942/-*
- (h) to allow interest @ 18% p.a. on above payments w.e.f. 1/8.2005 to date of payment.*

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- (i) *any other relief deemed just and proper in the circumstances of case with cost of O.A."*

2. The O.A. has been filed against the impugned order dated 21.2.2005 by which representation submitted by the applicant has been decided as per directions given in O.A. no. 350 of 1999. The concluding segment is as follows:-

- " (i) Recovery of overpayment as required vide Annexure A-3 is bad in law and if any recovery has been made, the same shall have to be refunded to the applicant forthwith after the receipt of copy of this order.
- (ii) If any re-fixation of Pay of the applicant as directed vide Annexure A-3 is proposed, the applicant shall be given an opportunity to make a representation before the respondents within 15 days and the respondents shall take a decision within 2 months in the light of Note II (a) appended under FR 22(C) (Annexure SR-5) by passing a reasoned and speaking order intimating the applicant as to why he is not eligible for the benefit accorded to him earlier which he enjoyed till the objections IR No. 95 (item no. 24-A (Annexure A-3) was raised by the audit."

3. By the impugned order dated 11.8.2005, contained at Annexure no. 1-A, the pension has been sanctioned to the applicant as per pay wrongly fixed and by the order, contained at Annexure no. 1-B the applicant has been held as in-eligible for grant of pay up-gradation under TBOP scheme and the amount so earned as a consequence of promotion under ACP scheme after re-fixation of his pay is directed to be recovered.

4. The facts, in brief, are that the applicant had joined the department as Postal Assistant (in short P.A.) on 20.2.1965. He passed an examination of PO RMS Accountant in the year 1975 and was promoted as Accountant on 25.7.1981. He was given his earlier pay scale of P.A. being Rs. 260-480/- with Special Pay of Rs. 45/- per month. He was further promoted as LSG Accountant on 27.11.1983 and was also promoted as Inspector of Post Offices on 5.1.1984. He was also given the benefit of ACP in the year 1999. The applicant had continued to draw the salary as fixed at the various grades in accordance with the promotion as narrated above, but as a consequence of audit objection raised in 1996 an

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order of recovery of was passed against him. This order was challenged in O.A. no. 354 of 1999, which was disposed of vide order dated 12.8.2004 holding the recovery as made from him as bad in law and the same was ordered to be refunded. Consequently an amount of Rs. 34000/- was refunded to the applicant. The second part of the direction was that the applicant would prefer a representation before the respondents for correct fixation of his pay and the respondents would take a decision in the light of note II(a) appended under FR 22 (c) by passing a reasoned and speaking order under intimation to the applicant as to why he was not eligible for the benefit accorded to him earlier. The respondents have passed the impugned order dated 25.2.2005 once again misinterpreting the rule as applicable to him. The applicant was assigned the work of Accountant on 25.7.1981. Earlier, there was a post of Accountant in the pay scale of Rs. 380-620/- which by orders of D.G. dated 24.2.1981 was abolished. Instead, it was provided that the work of Accountant will be carried out by the Postal Assistant as Accountant in the pay scale of Rs. 260-480/- with Special Pay of Rs. 45/- per month and that the special pay will be counted for the purposes of fixation of pay in LSG cadre under TBOP Scheme.

5. The respondents have incorrectly applied the provisions of instructions as available in letter dated 4.1.1962 (Annexure-8) by which it was provided that the special pay may be included for the purpose of fixation of pay only if the same has been drawn for a period of three years. Admittedly, the applicant had not worked as Accountant with Special Pay for a period of three years. However, his case is covered under the revised instructions dated 24.2.1981 (Annexure-9) in which no such time limit has been provided, rather it is held that the consideration of higher pay scale should be made after counting the special pay. He has further stated he was granted promotion under ACP Scheme by the CPMG, U.P. Circle, Lucknow vide order dated 18.3.2002 (Annexure-15), hence deduction of the same from his pay and allowance is illegal without cancelling the order dated 18.3.2002. The respondents have ordered composite recovery on the ground of alleged fixation of pay at the level of Accountant and subsequently on account of ACP. More-over the respondents have recovered the amount

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which was already directed to be refunded as per order passed in O.A. no. 354 of 1999.

6. The respondents have contested the claim of the applicant by filing a detailed Counter Reply and their contention is that the applicant's case was examined by the internal audit party in the year 1996 and it was found that he has been paid an excess amount of Rs. 34217/- due to wrong fixation of pay by taking into account the Special Pay of Rs. 45/- granted to him at the stage of Accountant. Aggrieved by this action, the applicant had filed O.A. no. 354 of 1999 in which the issue of correct fixation of pay was not adjudicated upon, rather the respondents were given liberty to take the decision on the representation of the applicant regarding correct fixation of pay to be given to the applicant. Accordingly, entire pay admissible to the applicant has been examined and it has been found that the pay of the applicant should have been fixed in accordance with the communication dated 4.1.1972 without giving the benefit of special pay in fixation of pay as he had not completed three years as Accountant in the pay scale of Rs. 260-480/- with Special Pay of Rs. 45/- per month before his promotion to LSG cadre. Further, it was noticed that the applicant had already been promoted in TBOP on 30.11.1983 and in IPO cadre w.e.f. 5.1.1984, hence promotion under ACP scheme w.e.f. 9.8.1999 has been erroneously granted to him, hence total amount of Rs. 59708/- had to be recovered from him on account of over payment. A sum of Rs. 14908/- was recovered from pre-retirement salary of the applicant for the month of July, 2005 and remaining amount of Rs. 44800/- was adjusted from DCRG of the applicant. The respondents have further stated that the pension of the applicant has also been fixed and other retiral dues have been paid in accordance with the correct fixation of pay.

7. In the Rejoinder, the applicant has reiterated his points which have already been taken in the O.A. With regard to specific contention of the respondents that he was wrongly granted the benefit of ACP, the applicant has stated that the contention is misconceived and misinterpreted and stated that such deduction in pay and pension were done arbitrarily without giving him any show cause notice. During the pendency of the Original

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Application, the applicant died and in his place his son namely Akhilesh Kumar Shukla has been arrayed as applicant no. 1/1.

8. As directed by this Tribunal vide order dated 16.8.2012 although the written arguments has been filed on behalf of the applicant, but no written argument has been supplied by the respondents. This case was finally heard after gap of so many years.

9. Learned counsel for the applicant has placed reliance on the order passed in O.A. no. 737 of 1995 in re. **M.S. Sadananan Vs. Executive Engineer & Others reported in (1997) 35 ATC 554** wherein it was held that the role of auditor is advisory in character and the decision making authority has to make his decision after following principles of natural justice.

10. We have heard the learned counsel for the parties at length and have also perused the material on record.

11. The basic grievance of the applicant is that an amount of Rs. 59780/- of which Rs. 14908/- has been recovered from the salary of July, 2005 and the remaining Rs. 44800/- was adjusted from DCRG. The respondents have calculated the cumulative amount recoverable on account of excess payment being made to the applicant on two separate wrong fixations of pay. They have held that the first wrong fixation occurred at the level of the applicant's placement in LSG cadre w.e.f. 27.11.1983. He was earlier placed on the post of Accountant with pay scale of Rs. 260-480/- alongwith special pay of Rs. 45/- per month. He had not put in three years of service on the said post of Accountant prior to his placement in LSG cadre. The respondents have held that in accordance with the communication received vide letter no. 2-96/68/PAP dated 4.1.1972 special pay of Rs. 45/- should not have been counted as part of the basic salary when he was promoted to LSG cadre. This matter was looked into under the directions issued in O.A. no. 354 of 1999 and the impugned orders dated 25.2.2005 had been passed by the respondents, which is under challenge in the instant O.A. The applicant, on the other hand, has placed reliance on the letter dated 24.2.1981

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(Annexure-9) by which he has pleaded that the condition of three years is not binding on him as by this letter of 1981, the earlier provisions contained in the letter of 1972 has been superseded. However, on examination of the order dated 24.2.1981 it reveals that it deals with the revision of pay scale of PO and PMS PDTO/CTD Accountants and Assistant Accountants. The sum and substance of this order is that the posts of PO and PMS PDTO/CTD Accountants and Assistant Accountants in the pay scale of Rs. 380-620/- is declared as defunct and the incumbents of these posts are to be brought down to the scale of Rs. 260-480/-. Any loss of salary by such re-fixation in lower scale is to be protected by means of grant of uniform rate of pay of Rs. 45/-. The relevant portion of the order reads as under:-

"The President I now pleased to decide that the cadre of PO, RMS/DTO/CTO Accountants in the pay scale of Rs. 380-620/- be declared as defunct and the incumbent of these posts be brought on to the scale of Rs. 260-480/- plus a uniform rate of special pay of Rs. 45/-p.m. The existing incumbents in the pay scale of Rs. 380-620/- have the option to retain the promotion to any higher post in the General line. The operation should be exercise on or before 31.5.1981. If no option is exercised within the stipulated date, the officials shall be deemed to have automatically elected the pay scale of Rs. 260-480/- plus special pay and their pay will be fixed as under. The individual who opt for the pay scale with special pay now introduced will be eligible for promotion to higher post in the normal channel of promotion as were available on or before the issue of this O.M. 31.3.74 P.S I dated 10.11.73."

Para 5 of the said letter further provides that this letter is only with regard to pay scale of existing PO and PMS PDTO/CTD Accountants and Assistant Accountants. The applicant was holding the post of Postal Assistant till he was promoted by order dated 25.5.1981 to the post of Assistant Accountant. Therefore, his case is to be covered under the letter dated 4.1.1972. Therefore, there is no infirmity in the impugned order dated 25.2.2005.

12. The next stage of wrong fixation of pay is said to be at the level of being promoted under ACP scheme w.e.f. 9.8.1999. The applicant has stated that the recovery order passed by the 2nd and 3rd impugned order, which have also been implemented through recovery order of Rs. 54,000/- is not justified as no order has been

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passed canceling the promotion order dated 18.3.2002 granted under ACP scheme. Learned counsel for the applicant during the course of arguments has pleaded that the upgradation was given to the applicant after completion of 24 years of service under ACP Scheme. The TBOP Scheme was introduced w.e.f. 30.11.1981. The applicant was already given one promotion to the post of APM (Accounts) cadre on 27.11.1983, which was prior to introduction of TBOP scheme. Therefore, his first promotion in LSG cadre as APM cannot be held to be a promotion within the meaning of time bound promotion scheme/ACP. The respondents, on the other hand, have stated that the applicant has been given two sets of promotion, one on 30.11.1983 and second on 5.1.1984. None of the rival parties have produced a copy of ACP Scheme. But it is clear that the issue of eligibility or otherwise could not have been included in the representation made by the applicant as directed in O.A. no. 354 of 1999 as this was not the issue in that O.A. More-over, no order cancelling the earlier promotion has been filed by either of the parties.

12. The Hon'ble Supreme Court in catena of decisions has been pleased to dealt with the question of wrong pay fixation and question of recovery from serving/retired employees. In the case of Chandi Prasad Uniyal And Ors. Vs. State Of Uttarakhand and others reported in 2012 (5) SLR 607 (SC) has held as under:

"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

*16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. **Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake.** Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both*

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*the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. **Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.***

13. In view of the above, the O.A. is allowed in part. The 3rd impugned order dated 23.4.2005 is quashed. The matter is remanded back to the respondent-authorities to determine the eligibility of the applicant for grant of ACP scheme or not. If it is found that the applicant is entitled for promotion under ACP scheme, then only the amount recovered under the pretext that the promotion under ACP has been given erroneously shall be refunded to the applicant and also issue the revised PPO. The entire exercise shall be completed within a period of six months from the date of receipt of a certified copy of this order. No costs.

J. Chandra.

(Ms. Jayati Chandra)
Member-A

Girish/-

V.R. Arora

(Naveent Kumar)
Member-J