

446

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No.625/2005 A.W. O.A. NO. 57/2006

This, the 19th day of December 2007.

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

(O.A. 625/2005)

Shiv Kumar Verma, S/o Sri Sarvjeet Verma, aged about 45 years, R/o, Village Badalikhera, P.O. Manasnagar, District Lucknow-23, presently working as Chaukidar (Group 'D') in Aliganj, P.O., District Lucknow (U.P.)

Applicant.

By Advocate :Shri R.K. Dubey.

Versus

1. Union of India through its Secretary Deptt. Of Posts, Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General, U.P. Circle Hazratganj, Lucknow-1.
3. Director Postal Services (HQ), Office of the Chief Post Master General, U.P. Circle, Lucknow-1.
4. Senior Superintendent of Post Offices, Lucknow Division, Lucknow-
5. Chief Post Master, Lucknow, G.P.O., Lucknow, 1.

Respondents.

By Advocate: Shri S. P. Singh for Smt. Jyotesna Pal

(O.A. 57/2006)

1. Vimlesh Narain Tiwari ~~S/o~~ Late Sri S. P. Tiwari aged about 42 years, R/o Motijheel Colony. P.O. Rajendra Nagar, District Lucknow (U.P.)

- | | | | |
|-----|--------------------------|----|------------------------------------|
| 2. | Roop Narain Pandey | MM | presently employed at HRO Lucknow. |
| 3. | Dinesh Kumar Misra | MM | Presently employed at HRO Lucknow |
| 4. | Umesh Kumar | SA | Presently employed at HRO Lucknow |
| 5. | Mahesh Chandra | SA | Presently employed at HRO Lucknow |
| 6. | Shiv Prasad | MM | presently employed at HRO Lucknow |
| 7. | Rakesh Kumar Soni | MM | presently employed at HRO Lucknow |
| 8. | Vijai Kumar Singh | MM | presently employed at HRO Lucknow |
| 9. | Ramesh Kumar | MM | presently employed at HRO Lucknow |
| 10. | Mohammd Hasan | MM | presently employed at HRO Lucknow |
| 11. | Naresh | MM | Presently employed at HRO Lucknow |
| 12. | Jai Prakash, Faizabad | MM | presently employed at HRO Lucknow |
| 13. | Hrishkesh Misra | MM | presently employed at HRO Lucknow |
| 14. | Uday Raj Misra | MM | presently employed at HRO Lucknow |
| 15. | Ram Salab Yadav Faizabad | MM | presently employed at HRO Lucknow |
| 16. | Ram Dev | SA | Presently employed at HRO Lucknow |
| 17. | Irshad Ali | MM | Presently employed at HRO Lucknow |
| 18. | Nageshwar Shukla | MM | presently employed at HRO Lucknow |
| 19. | Shiv Pal | MM | presently employed at HRO Lucknow |

- 2
20. Kashi Prasad MM presently employed at HRO Lucknow
 21. Chandra Bhan, Faizabad MM presently employed at HRO Lucknow
 22. Suresh Yadav JNP MM presently employed at HRO Lucknow
 23. Ram Dhari Yadav JNP MM presently employed at HRO Lucknow
 24. Jai Prakas Asadhana-Jaunpur MM presently employed at HRO Lucknow
 25. Dinanath SA Presently employed at HRO Kanpur

Applicants

By Advocate Shri R. K. Dubey

Versus

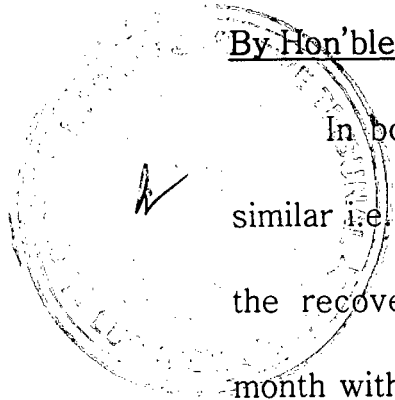
1. Union of India through its Secretary Deptt. Of Posts, Ministry of Communications, & I.T. Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General, U.P. Circle Hazratganj, Lucknow-1.
3. Director Postal Accounts Aliganj, P.O. U.P. Circle, Lucknow-020.
4. Senior Superintendent of RMS, 'O' Division, Lucknow-226004.
5. Senior Superintendent of RMS RMS KP Division, Kanpur-1 (U.P.)

Respondents.

By Advocate Shri J.S. Walia

Order (Oral)

By Hon'ble Mr. M. Kanthaiah, Member (J)



In both these matters, the claim of the applicants are one and the similar i.e. they have questioned the action of the respondents, deducting the recovery of bonus already paid from the monthly salary Rs. 500/- per month without any show cause notice or opportunity of hearing. Hence, both these matters are taken up commonly.

O.A. 625/2005

2. The facts relating to this O.A. are as follows:

3. Applicant, who was granted temporary status w.e.f. 29.11.1989, covered under Annexure A-3 was subsequently, conferred the status of temporary Group D employee w.e.f. 30.11.1992 covered under Annexure 4 and 5 dated 17.12.1992. While, the applicant was working on temporary group D employee, the respondent authorities granted bonus, since 30.11.1992. But surprisingly, the respondents have started recovery of the paid amount of bonus on the ground of excess payment from February

2004 at Rs. 500 per month from the salary of the applicant in arbitrary manner without any show cause notice and no opportunity was given to him. Annexure 1 is the pay slip for the month of October, 2005. In spite of his representation, along with other employees Annexure A-6, dated 30th August 2005, there was no response from the respondents. Hence he was constrained to file this O.A. questioning the recovery from his salary on the ground of excess payment.

4. The respondents have filed counter affidavit admitting that they started recovery of Rs. 500 per month from the salary of the applicant, which is in accordance with the policies of the department. In respect of payment of bonus, for the year 1999-2000, a new para was introduced by the department in which it has been clearly mentioned that temporary status workers are not entitled for the bonus equal with regular group D employees and calculation ceiling has been fixed at 2500/- and Rs. 1200/- for regular employees and temporary status casual labourers respectively for payment of productivity linked bonus and ad hoc bonus. Annexure CR-1 is the copy of the said letter dated 26.9.2000 issued by the department. As per the policy decision, the bonus for temporary status group D employees to be drawn on the basis of notional monthly wages of Rs. 750/- and as such, excess drawn bonus as per calculation ceiling Annexure -CR-3 was to be recovered from the applicants salary and the concerned respondents acted accordingly.

5. The respondents further stated that the applicant was entitled for payment of bonus on notional monthly wages of Rs. 750/- from the year 1991-92 to 1998-99, but inadvertently, he was paid bonus, @ monthly wages of Rs. 2500/- as a result of which the bonus was paid in excess to

the applicant which is being recovered. The clarification issued by the concerned ministry covered under Annexure CR-2 dated 16.10.2001 also clearly says that temporary status workers are not eligible for grant of bonus applicable to casual workers at par with regular group 'D' employees. They also contents that the order is also very clear about payment of bonus to casual CP temporary status employees and they will not be treated at par with regular group 'D' employees with regard to payment of bonus.

6. The respondents further stated that as per government policy, recovery is being made from the pay and allowance of the applicant as excess amount on account of bonus, was paid to him as such there was no necessary ^{city} ~~to~~ ₂ to issue a notice for recovery of excess amount paid to him and thus there is no violation of any orders and as such, the O.A. is liable to be dismissed.

(O.A. 57/2006)

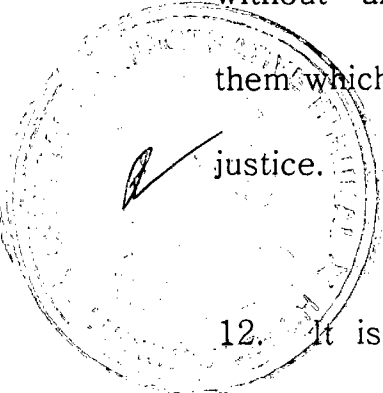
7. The facts relating ^{to} ₂ O.A. No. 57/2006, are also same to the applicant in O.A. 625/2005 and pleadings of both parties are similar with O.A. 625/2005.

8. The applicants have not filed any rejoinders.

9. Heard both sides.

10. The point for consideration is whether the applicants are ~~is~~ ₂entitled for the relief as prayed for.

11. The admitted facts of the case are that the applicants while working in the capacity of temporary Group D employees, the respondents have fixed and paid bonus on par with regular Group D employees till 2005. When the respondents authorities came to know the earlier circulars issued by the department on 16.10.2001 Annexure CR-2, they noticed that they have paid excess bonus amount to the applicants and thus they started, recovery of the said amounts in monthly installments from the salaries of the applicants. The applicants are questioning the validity of the action of the respondents in deducting the amount from their respective salaries on the ground of excess payment of bonus to them, without any show cause notice and without giving any opportunity to them which is illegal, discriminatory and against the principles of natural justice.



12. It is not the case of the respondents that the applicants have mislead the respondent department while fixing and paying bonus amount to them till they started recovery in the year 2005. Further, it is admitted case of the respondents that they have fixed such bonus amount to the applicants at par with regular group D employees which was due to inadvertence on their part and as such, there is no iota of material to find fault with the applicants for fixation of bonus by the respondents authorities at par with regular group D employees.

13. It is also not in dispute that the applicants are not questioning the validity of the scheme covered under Annexure CR-1 and subsequent circular CR-2 in respect of entitlement of bonus amount to them discriminating with regular Group D employees. As such, going into those details, is not within the scope of this O.A.

14. Thus the limited question involved in this matter is whether the respondents are justified in starting recovery from the salary of the respective applicants on the ground of excess payment without giving any show cause notice or without any giving any opportunity to them.

15. Admittedly, the respondents department itself, fixed and paid bonus amount to the applicants right from 1992 to 2005 at par with regular Group D employees. It is not the case of the respondents that there was any misrepresentation or concealment from the applicants for such fixation and payment made by the respondents authorities. Whatever bonus amount was paid to the applicants as per the orders of the competent authority after fixation, preparation of the bill, and after following the procedure.

16. But when the respondents started recoveries from the salary of the respective applicants, there was no order from the competent authority for starting deductions from the monthly salaries of the applicant, on the ground of excess payment of bonus or any recovery order. No show cause notice was issued to the applicants stating that there was any excess payment made to them, or the payment which they made was irregular and against the rules. Without giving any opportunity to the applicants, the respondents authorities have started, deductions from the monthly salaries of the applicants which is unilaterally.

17. It is not the case of the respondents that they stopped excess bonus amount from future date, but their action was in respect of deductions from the salaries on the ground of excess payment made for

the previous years. The respondents authorities are no doubt, having ample authority to bring it the notice of the applicant if there was any excess or irregularity in payment of bonus amount or in respect of earlier payments also and after giving ample opportunity to the applicants they are at liberty to take any decision in respect of recoveries for excess payment if any made either inadvertently or against the rules.

18. But in the instant case, the respondents without hearing the applicants and without giving any opportunities, they started recovery from the salaries of the applicants on the ground of excess payment made during earlier 10 years period is not at all justified and the same is against the principles of natural justice. As such, the applicants are justified in questioning the action of the respondents for recovering the amount from the salaries on the ground of excess payment of bonus made to them. At the same time, the respondents authorities are at liberty to take any action against the applicant for recovery of excess bonus amount if any made after hearing other side and after following the procedure as per rules. But in the instant case, the respondents are not justified in their action, to start deduction from the salaries of the applicants on the ground of excess payments of bonus made to them without giving any notice and opportunity to other side and as such the applicants are justified in questioning the validity of the action of the respondents.

19. In the result, both O.As are allowed as prayed by the applicants.

No costs.

(i) Date of Order 19-12-2007
(ii) Date of Preparation 28-12-2007
(iii) Date of Receipt

Certified Copy
Secretary
Central Administrative Tribunal,
Lucknow Bench, Lucknow
20-12-2007

(M. Kantharaj)
Member (J)

19.12.07