

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.101/2006
This the ^{24th} day of September 2008

HON'BLE MR. M. KANTHAIAH, MEMBER (J).
HON'BLE DR. A.K. MISHRA, MEMBER (A).

Zahiruddin Ahmad aged about 62 years, S/o Late Sri Moinuddin,
R/o 317 Phoolbagh, Lucknow.

...Applicant.

By Advocate: Shri A. Moin.

Versus.

1. Union of India through Secretary, Ministry of Communication,
Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director Postal Accounts, Aliganj, Lucknow.
4. Senior Accounts Officers, Office of Chief Post Master General
5. Superintendent Postal Store Depot, Lucknow.

... Respondents.

By Advocate: Shri D.P. Singh.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed this OA with a prayer to quash the
impugned order Dt. 14.06.2005 (Annexure-A-1) passed by the
Respondent No.4 and also the order Dt.28.09.2004 (Annexure-A-6)

passed by the Respondent No.5, so far as pertaining to recovery of Rs. 1,50,672/- from the retiral dues of the applicant and for refund of the same with penal interest @ 18 % per annum to the applicant.

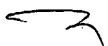
2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the pay of the applicant was wrongly fixed at Rs. 575/- instead of Rs. 260/- + 38 + 277 at the time of his joining in service by granting 10 advance increments and thus justified the order passed by the respondents.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and also reiterated his pleas in the OA.

4. Heard both sides.

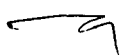
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that after taking retirement from Indian Air Force, the applicant joined in postal department as Postal Assistant in Lucknow on 26.07.1983 in the scale of Rs. 260-480/-. At the time of his retirement from Indian Air Force, he was drawing in the pay scale of Rs. 360-440+ Rs. 15/- as special pay. At the time of his reappointment in the respondent department, 10 advance increments were granted to the applicant by taking in to consideration the pay that was being received by him in the Defence services i.e. Indian Air Force in the scale of Rs. 360-440/- and accordingly, the pay of the applicant was fixed after including 10 advance increments and special pay of Rs. Rs. 15/- at Rs. 360/- w.e.f. 26.07.1983 i.e. the date of his joining. Thereafter, he was continuing to receive the same and after 16 years of service, the applicant also received time bound promotion in the year 1999 and his pay was



fixed in the grade of Rs. 4500-7000 as Postal Assistant in the lower selection grade and thereafter, he retired on 30.06.2004, after attaining the age of superannuation.

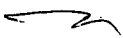
7. Few days before his retirement, the applicant had received a letter Dt. 17.05.2004 (Annexure-2) issued by Respondent No.3 stating that 10 annual increments had wrongly been granted to him at the time of his entry into service and they proposed to withdraw the same and fix his pay accordingly. Against the same, the applicant made representation (Annexure-A-3) Dt. 15.06.2004. Immediately, after retirement on 30.06.2004, no retiral benefits had been paid to the applicant and provisional pension of Rs.2625/- per month plus DA was sanctioned. Thereafter, the respondent authorities have passed order Annexure-A-4 Dt. 20.08.2004 and Annexure-A-5 Dt. 24.09.2004, under which they proposed to deduct Rs. 1,50,672/- from his retiral benefits on the ground of excess payment made to the applicant for the period from 26.07.1983 to 30.06.2004 towards 10 advance increments granted at the time of his joining in service and thereafter, they also recovered an amount of Rs. 96,156/- from retiral gratuity and an amount of Rs. 54,530/- from leave encashment and Annexure-A-6 Dt. 28.09.2004 reveals the same. Aggrieved by the said recoveries covered under Annexure-A-6 Dt. 28.09.2004, when the applicant made representation, Respondent No.4 passed the impugned order Annexure-A-1 Dt. 14.06.2004 justifying their earlier order for deduction of Rs. 1,50,672/- from the retiral benefits of the applicant on the ground of excess payment made to him by granting 10 advance increments at the time of joining the service.



8. The short and limited question involved in this OA is whether the respondents are justified in deducting the amount for Rs.1,50,672/- from the retiral benefits of the applicant on the ground of excess payment made to him by wrongly granting advance increments, or whether the order is liable to be quashed.

9. It is the case of the applicant that the respondents, who had fixed the pay of the applicant by granting 10 advance increments at the time of joining on their own are not justified to deduct the amounts from his retiral benefits on the ground of excess payment made to him, without any fault on his part. Admittedly, neither there was any fraud nor misrepresentation of the applicant, while the respondents granted 10 advance increments for fixing his pay at the time of joining service in the year 1983. The respondents did not find fault with such fixation of the pay of the applicant during his more than 20 years of service but a few days before his retirement they issued a letter to the applicant Dt. 17.05.2004 (Annexure-A-2) stating that 10 advance increments had wrongly been granted at the time of entry into service and thus proposed to withdraw the same and subsequently deducted the amount of Rs. 1,50,672/- from retiral benefits of the applicant.

10. The learned counsel for the applicant argued that the respondents, who committed alleged error while fixing the pay of the applicant while he joined in service about 20 years back, have no right to deduct from his pensionary benefits on the ground of excess pay drawn without his fault and in support of his arguments, he relied on the following decisions:-



i). 2002 (2) ATJ-208 between P.H. Reddy & Others Vs. National Institute of Rural Development & Others.

Pay Fixation—Fixation of pay of an employee on retirement from defence services and re-employed in a civil post—Held the case DG, ESI Corpn. V. M.P. Joha represent the correct view that an ex-serviceman who is re-employed will get the minimum of pay scale in addition to his full pension as an ex-serviceman—No infirmity or inconsistency in the circulars dated 25-11-58 and 8-2-1983—On facts authorities entitled to re-fix the pay if the same is erroneously fixed earlier but no recovery can be made from the employee concerned.

ii). (1994) 27 ATC-121 (SC) Shyam Babu Verma & Others Vs. Union of India & Others.

Relief—Higher pay scale erroneously given to petitioner since 1973—Pay scale of petitioners deducted in 1984—Held, since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

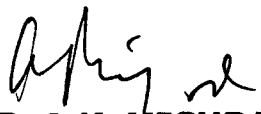
11. In the case of P.H. Reddy and others, the Hon'ble Apex Court held that the employee, who had been in receipt of higher amount on account of erroneous fixation by the authorities should not be asked to repay the excess pay drawn and therefore that part of direction of the appropriate authority returning reimbursement of excess amount drawn is annulled. Coming to the case of Shyam Babu Verma & Others the Hon'ble Apex Court held that since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.


12 In the instant case also without any fault or misrepresentation or fraud on the part of the applicant, the respondents have granted advance increments to the applicant at the time of his joining in the service and continued the same without notice of any mistake but before few days of his retirement, noticing that the advance increments had wrongly been granted to the applicant at the time of his joining in the service, decided to deduct an amount of Rs.

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1,50,672/- from his retiral benefits, which naturally causes prejudice to the applicant. Further, the decision of the Hon'ble Apex Court also supports the case of the applicant in questioning the validity of the action of respondents for deduction of an amount of Rs. 1,50,672/- from his retiral benefits on the ground that they had wrongly granted advance increments to the applicant at the time of joining into service; as such, the applicant is justified in questioning the validity of deductions made from his retiral benefits and claiming for refund of it and thus, OA deserve to be allowed.

In the result, OA is allowed by quashing the impugned order Dt. 14.06.2005 (Ann.-A-1) and order Dt. 28.09.2004 (Ann.-A-6) passed by the Respondent No. 4 and 5 respectively and for refund of the deducted amount of Rs. 1,50,672/- to the applicant with admissible rate of interest as per rules from the date of deduction till the date of payment. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIYAH)
MEMBER (J)
24.09.08

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