

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 239/2007

This the 22nd day of November, 2013**Hon'ble Sri NavneetKumar , Member (J)**

Ved Prakash Pathak aged about 61 years son of Sri Anand Ram, at present residing at Azad Nagar, Colonely, District- Gonda.

Applicant

By Advocate: Sri Surendran P

Versus

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P.
3. The Director of Postal Accounts, Aliganj, Lucknow.
4. The Superintendent of Post Offices, Gonda Division, Gonda
5. The Post Master, Head Post Office, Gonda
6. The Senior Accounts Officer, CIS-I, Office of Director of Postal Accounts, Aliganj, Lucknow.

Respondents

By Advocate: Sri A.P. Usmani

(Reserved on 28.10.2013)**ORDER****BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Applicant is filed under Section 19 of the AT Act with the following reliefs:-

- i) quash the orders contained in Annexure No. 1 and 2 with a direction to return back the same with interest.
 - ii) issue a direction to restore his original basic pay with effect from November 1983 upto the date of retirement of the applicant and revise the pension , gratuity commutation and other retiral benefits and pay the same with interest to the applicant.
 - iii) Any other order which this Hon'ble Tribunal deems just and proper be also passed.
2. The brief facts of the case are that the applicant after being appointment in the respondents organization continued to work for a longer period and in 1983, he was granted benefit of TBOP and accordingly his pay was fixed. The learned counsel for the applicant has

pointed out that by means of order dated 17.5.2005, it was informed to the applicant that monthly deduction of Rs. 1000/- is to be made from the salary of the applicant on the basis of audit objection and over-payment of Rs. 64,719/- was required to be recovered from the salary of the applicant. The learned counsel for applicant has also pointed out that the said order was issued without affording any opportunity of hearing, as such, the respondents have violated the Principle of Natural Justice, therefore, it requires interference by the Tribunal.

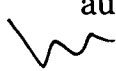
3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed out by the respondents that the impugned order dated 17.5.2005 and 12.6.2006 are challenged after the expiry of one year and there is no explanation of delay in the O.A. as such, the O.A. is liable to be rejected on the ground of limitation. It is also pointed out by the respondents that in pursuance of clarification, the post of Accountants / Assistant Accountants are in the cadre of time scale Clerks and not in a separate cadre and cannot be held substantively by the incumbent. The Special pay in this case will be treated as part of the basic pay for the purpose of fixation of pay on promotion to higher posts only if the same has been drawn for at least 3 years subject to fulfillment of other conditions. It is also submitted by the respondents that the pay of the applicant was upgraded under TBOP scheme since 30.11.1983 and in terms of an audit objection, the amount of Rs. 64,719/- was assessed as over-payment which was accordingly ordered for recovery from the salary of the applicant and it is also pointed out that recovery of Govt. dues from gratuity is also permissible under Rules and the said recovery was made only in compliance of internal audit report.

4. Learned counsel appearing on behalf of the applicant filed Rejoinder Reply and through Rejoinder reply, it is pointed out by the applicant that the present O.A. is not time barred as the Post Master, Gonda issued a letter on 17.5.2005 and the application of the applicant

was rejected on 12.6.2006 and the revision filed by the applicant before CPMG is still pending. Apart from this, it is also pointed out by the learned counsel for the applicant that applicant is qualified accountant and Senior most among all the Accountants and he was permanent Postal Assistant and was holding a lien of the post of Postal Assistant in the Division. He was promoted on 30.11.1983 and has continued as Accountant. Once again the learned counsel for the applicant has categorically and vehemently argued that before issuance of the impugned order of recovery, no opportunity of hearing was given, as such it is once again vehemently submitted that in terms of the decision rendered by the Hon'ble Apex Court in the case of ***Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88, "the opportunity of hearing is required to be given to the delinquent before passing an order."*** The learned counsel for applicant has also relied upon a decision by this Tribunal in **O.A. No. 331/2009 decided on 4th October, 2010.**

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

6. The applicant was initially appointed in the respondents organization and was posted as Accountant and in the year 1982, he was transferred as Accountant, Gonda and remained there upto 30.11.1983. In 1983, the applicant was given the benefit of TBOP and accordingly his pay was fixed. Since then, the applicant continued to get the said pay and finally the applicant superannuated on 31.8.2006. Prior to his retirement, the applicant was served with an order dated 17.5.2005, whereby it is pointed out that in terms of an audit objection, the excess amount of pay which was paid to the applicant for 30.11.1983 to 31.3.2005, amounting to Rs. 64719/- is required to be recovered. The applicant submitted a representation to the higher authorities and the said representation was also disposed of vide order



dated 12.6.2006 and by virtue of the said order, it is stated that the representation of the applicant was examined in the light of the report and comments and also considering item No. 19 of the internal Audit report and it is found that an overpayment of Rs. 64719/- was made to the applicant which was accordingly ordered to be recovered and the recovery proceedings were initiated by the respondents. In regard to the fact that the grant of opportunity to the applicant, in the entire reply, the respondents failed to indicate that before any such order could have been passed, the respondents have given any opportunity of hearing to the applicant. It is also pointed out that since the pay of the applicant was wrongly fixed on 30.11.1983, therefore, the same was rectified and recovery of overpayment was made under the provisions of Rule 86 of P&T Financial Hand Book Volume I. The bare reading of aforesaid Rule clearly provides as under:-

“When an Audit Officer/Accounts officer disallows a payment as unauthorized, the Disbursing Officer is bound not only to recover the amount disallowed without listening to any objection or protest but to refuse to pay it in future, till the audit officer/Accounts Officer authorizes the payment to be resumed; that no warning slip has been received by the Government servant against whom the retrenchment has been ordered, or that, being received, it has been answered, are facts with which the Disbursing Officer shall have no concern.”

7. The contention of the learned counsel for applicant is that the applicant is entitled for special pay granted in lieu of separate higher scale of pay and the applicant is entitled for the said pay and even if there were discrepancy of overpayment, applicant could 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. 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. Undoubtedly, the amount can be recovered if it is a wrong calculation on the part of the respondents and any amount excess is paid to the applicant but the applicant is entitled to have an opportunity of hearing.

9. 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.”***

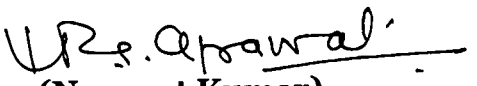
10. In the case of ***Davinder Singh and others Vs. State of Punjab and others*** reported in ***(2010) 13 Supreme Court Cases, 88***, the Hon'ble Apex Court has also been pleased to observe that ***“opportunity of hearing is to be given to the delinquent before passing an order.”***

11. In the instant case, it is specifically clear that before passing of impugned order, no opportunity of hearing is given to the delinquent



who has already superannuated a year before, the date of impugned order.

12. 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 Pani Dei and Davinder Singh and others Vs. State of Punjab (supra)***, the O.A. deserves to be allowed. Accordingly, the O.A. is allowed. The impugned order dated 17.5.2005 and 12.6.2006 are quashed. However, the respondents are at liberty to pass a fresh order after due opportunity of hearing is given to the applicant before passing any order. No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-