

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 343/2009**

This the 19/11 day of May, 2010

**Hon'ble Dr. A.K. Mishra, Member(A)**

Vijai Shanker Srivastava, Aged about 61 years, S/o late Jhagroo Lal, R/o Village & Post Office Imila Gurdyal, District Gonda (Lastly working as Officiating Post Master, Head Post Office, Balrampur)

.....Applicant

By Advocate: Sri Prashant Singh for Sri R.C. Singh

**Versus**

1. Union of India through Secretary, Ministry of Communication (Department of Posts), New Delhi.
2. The Post Master General, Gorakhpur Circle, Gorakhpur.
3. Superintendent of Post Office, Gonda Division, Gonda.

.....Respondents

By Advocate: Sri S.P. Singh

**ORDER**

This is an application against the action of respondent authorities in making recovery of a sum of Rs. 24,948/- from the salary of the applicant on the basis of audit objection made in the audit report for the year 2004. The applicant has also impugned the letter dated 4.8.2009 conveying the order of respondent no.2 rejecting the representation of the applicant for refund of the recovered amount.

2. Paragraph 20 of audit report for the year 2004 contains the objections in respect of excess payment made to the applicant. Annexure-2 of the application is an extract of audit objection. It says that a minor penalty of withholding the increment of the applicant w.e.f. 1.4.1994 in the pay-scale of Rs. 1400-40-1800-EB-2300 was imposed on 13.6.1994 for three months. The next increment which was due to him on 1.4.1995 got shifted to 1.7.1995; his salary had been raised to Rs. 1850/- after the applicant was specifically allowed to cross the Efficiency Bar (EB), but without any office order to that effect; his pay was fixed at Rs. 1850/- erroneously. On the same day

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(1.7.1995) he was promoted to the higher scale of Rs. 1600-2600/- and his pay in the new pay scale was fixed at Rs. 1950/- under FR 22. According to the audit, his pay at Rs. 1850/- could not have been fixed on 1.7.1995 without specific office order permitting him to cross the EB. Accordingly, the audit calculated that an amount of Rs. 24948/- had been paid to him in excess over his legitimate dues.

3. At the time of hearing, the learned counsel for the applicant submits that the applicant was allowed to cross EB by the respondent authorities concerned, no matter whether there was any order to that effect or not, his pay was fixed at Rs. 1850/- as on 1.7.1995 after the currency of penalty was over; on the same very day, he was promoted and his pay was fixed as per FR-22 at Rs. 1950/-; there was no misrepresentation or fraud on the part of the applicant. Relying on the ratio of judgment of Supreme Court in the case of Shyam Babu Verma reported at 1994 SCC (L&S) 683, he argues that the same benefit should be given to the applicant. He also relied on the judgment of Supreme Court in the case of Syed Abdul Qadir & Ors. Vs. State of Bihar reported at 2009 AIR SCW 1871 in which the three Member Bench reviewed the principle governing the recovery of excess amount and observed in paragraph 27 of the judgment, as noted below:

*"27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in the equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. xxxxxxxxxxxxxxxx"*

In that case the Supreme Court not only directed that no recovery of the excess amount should be made, but also that the amount which had been recovered from some of the teachers should be refunded on equity ground.

4. The learned counsel for the respondents placed before me the judgment of Supreme Court in the case of Paras Nath Singh Vs. State of Bihar & Others reported at 2009 6 SCC 314 in which it was held that further recovery should not be made, but the amount, which had already been recovered should not be paid back to the appellant. He

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also placed reliance on the judgment of Allahabad High Court in the case of Union of India & Others Vs. Rakesh Chandra Sharma & Others reported at 2004 (1) ESC (Alld) 455 in which a survey of judgments made by the Supreme Court on the issue of recovery of excess amount paid to an employee than what was legitimate had been made; in some of the cases such as (i) Sahib Ram Vs. State of Haryana & Others reported at 1995 (Suppl.) 1 SCC 18 it was held that if excess payment had been made to an employee by erroneous interpretation of the rules by the authorities and the employee was not at fault, then excess payment should not be recovered; (ii) In Shyam Babu Verma Vs. Union of India (1994) 2 SCC 521 the above view has been reiterated; (iii) In Union of India & Others Vs. Ram Gopal Agarwal reported at (1998) 2 SCC 589 also the aforesaid view has been reiterated.

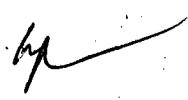
5. However, the contrarian view has been held by the Supreme Court in the following cases:

(i) In the State of Haryana & Others Vs. Kamal Singh Saharwat & Others reported at 1999 8 SCC 44, it was held that the authorities were entitled to recover from the employees whatever had been paid in excess to them even if the employer decided to recover the excess amount after a long lapse of time; (ii) similar view has been expressed in the case of Union of India & Others Vs. Smt. Sujatha Vedachalam & Another reported at AIR 2000 SC 2709 in which it was held that if pay fixation had been wrongly made and the excess amount was paid to the employee by mistake, the said mistake could be rectified and the amount already paid could be recovered in easy installments; (iii) the Supreme Court made similar observations in the case of Ganga Ram Vs. Regional Joint Director and Others reported at AIR 1997 SC 2776 that if an amount had been paid by mistake, the recovery could be made of the excess amount; (iv) In Alam Ali Vs. State of Rajasthan reported at 2000 Lab. IC 862 the Rajasthan High Court held that the recovery of excess amount paid to an employee could be made by making rectification of the order, which was erroneously passed; in the State of Karnataka Vs. Mangalore University Non-Teaching Employees' Association reported at AIR 2002 SC 1223 the Supreme Court observed that the recovery of extra amount paid was permissible after giving an opportunity of hearing, but in that specific case recovery was not permitted on the ground of

prejudice the order was likely to cause to the employees; in Union Territory, Chandigarh Admn & Others Vs. Managing Society Goswami GDSDC reported at 1996 7 SCC 665 the Supreme Court held that the statutory authority should pass the order only in accordance with law and if it came to its knowledge that an order required rectification, the authorities should rectify and recover the dues as per revised order in compliance of mandatory provisions of law, in such a situation the recovery could not be quashed by the Court; in the case of K.S. Satyanarayan Vs. V.R. Narayana Rao (1999) 6 SCC 104 the Supreme Court held that juristic basis for an order of recovery was the principle of restitution.

6. After survey of case laws on the subject, Allahabad High Court came to the conclusion that there was no law of universal application restraining the employer to recover the extra amount paid to an employee beyond his entitlement. Rectification of a mistake is not only permissible, but desirable; otherwise the system/requirement of auditing of accounts would be rendered nugatory. It would result in windfall gains to the employees and would amount to unjust enrichment. The situation may become conducive for committing fraud by an employee in collusion with the high ups and it might not be possible to prove it against the employee by the employer. However, whenever the court has directed to restraint against the recovery of extra amount, it was made in the interest of doing substantial justice; therefore, each case required to be decided on its own facts.

7. In the present case, admittedly, the employee was granted next increment in the lower pay scale allowing him to cross EB and on the same day he was also promoted to the next higher pay scale. It would be travesty of justice to hold an employee unfit for crossing EB if on the same day he was considered fit for next higher rank. He would have earned the increment in the lower scale on 1.4.1995, but for the minor penalty imposed on 13.6.1994. Since he was considered fit for the higher scale on 1.7.1995, he was also allowed to cross the EB on that analogy. Therefore, even if there was no specific order permitting him to cross EB, he was allowed the increment treating him as eligible to cross EB.



8. In the circumstances, I do not find that the applicant has unjustly got any windfall gain by earning an extra increment. Not only that there was no misrepresentation on his part or any fraud perpetuated by him, the respondent authorities were also not unjustified in permitting him to cross EB and fix his salary in the lower pay scale at appropriate level. There is no case of palpably wrong interpretation of Rules.

9. Although from the recital of case laws on the subject, as has been summarized by High Court of Allahabad, there is no universal principle which could be applied in all cases of this nature, but from the facts and circumstances of the present case, I find that the respondent-authorities were not unjustified in giving him increment after EB bar, although there was no specific order to that effect. In the result, the audit objection appears to be technical in nature and without justification on overall merits.

10. In the circumstances, it is difficult to sustain the order for recovery. The respondent-authorities are directed to refund the recovery made from the salary of the applicant pursuant to the observation of the audit. No costs.

  
(Dr. A.K. Mishra)  
Member-A

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