

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.520/2009

This the 16th day of November, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Akhilesh Pratap Singh aged about 61 years, son of late K.P. Singh, resident of 166, Janki Vihar (Near Janki Puram Extension Road), Lucknow.

.....Applicant.

By Advocate: Sri R.K. Upadhyay.

Versus.

1. Union of India through the Secretary, Department of Information & Broadcasting, New Delhi.
2. Director General, Doordarshan, Copernicus Marg, Doordarshan Bhawan, New Delhi.
3. Director, Doordarshan Kendra, Lucknow.
4. Director, Doordarshan Kendra, Lal Phatak, Bareilly.

.....Respondents.

By Advocate: Sri K.K. Shukla.

ORDER (Reserved)

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

This O.A. is directed against the recovery made by the respondent to the tune of Rs.59,640/- towards the excess payment made to the applicant on account of wrong pay fixation and also an amount of Rs.22,000/- towards a TTA advance (including interest) given to the applicant.

2. The applicant was initially appointed as Clerk Grade-II in the year 1975. Subsequently, in a direct selection, he was appointed on the post of Reception Officer in 1980. Again after direct selection, he was appointed on the post of Production Assistant on

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12.02.19984. He was promoted on the post of Programme Executive-II on 31.10.2003. He retired on 31.08.2008.

3. According to the applicant, he was transferred from Doordarshan Kendra, Lucknow to Bareilly in April, 2003. He remained there up to March, 2006. An amount of Rs.14,000/- was taken by the applicant as TTA advance from Doordarshan Kendra, Lucknow, while moving to Doordarshan Kendra, Bareilly. On reaching to Doordarshan Kendra, Bareilly, the applicant submitted his TTA claim on 4.06.2003, alongwith a covering letter which was given to the Director, Doordarshan Kendra, Bareilly who after making his signature on the left side of the covering letter had marked it to the Accountant (Annexure-1). But the said claim remained unsettled and the applicant was never communicated anything in this regard till the year 2008, when he retired. All of sudden, he was informed that the respondents were going to recover an amount of Rs.14,000/- + interest a total sum of Rs.20,000/- towards TTA advance received by the applicant in 2003. He submitted his representation dated 18.03.2008 against the said recovery annexing therewith a copy of covering letter dated 4.6.2003 (Annexure-2). But he did not receive any reply. But some communications were made between the Doordarshan Kendra, Lucknow and Bareilly with regard to the aforesaid TTA claim. A letter was written from Lucknow to Bareilly on 13.08.2008 saying that the applicant was going to retire on 31.08.2008 and therefore, the matter of TTA claim may be finalized (Annexure-3). On the other side, Director, Doordarshan Kendra, Bareilly wrote dated 22.08.2008 making allegation that Doordarshan Kendra, Lucknow was not cooperating in the matter. Therefore, comments of the

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applicant were sought on the point. The applicant submitted his comments on 26.08.2008 (Annexure-5) saying that he has already submitted the relevant papers in respect of TTA claim on 4.6.2003. But he did not receive any reply. On the other hand the applicant received a letter dated 21.08.2008 from the Office of Pay & Accounts Officer, Health & Family Welfare, All India Radio, Lucknow granting him gratuity. In this letter there is also a handwritten note to the effect that an amount of Rs.59,640/- had been deducted on account of excess payment of salary (Annexure-7) hence, this OA.

4. The OA has been contested by filing a Counter Affidavit saying that the applicant has never submitted any TTA claim at Bareilly and despite respondents Memo's dated 3.12.2007/17.6.2009, he did not deposited the amount of advance along with interest. In respect of excess payment on account of wrong pay fixation, it has been said that the pay of the applicant was re-fixed w.e.f. 1.1.1986 and the next increment was due on 1.1.1987 and not in 1.2.1986 which was inadvertently done at that time. In the last, it has also been said that the applicant has not availed any remedy under Administrative Tribunal Act, 1985 by moving any representation.

5. I have heard Sri R.K. Upadyayay, learned counsel for applicant and Sri K.K. Shukla, learned counsel for respondents and perused the material on record.

6. In respect of TTA in para-4 (viii), it has been specifically averred that the applicant had submitted his TTA claim on 4.6.2003 along with covering letter, which was handed over to Director, Doordarshan Kendra, Bareilly, who had also made his

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signature on the left side of letter and marked it to the Accountant. The perusal of this annexure shows that this covering letter does contain an endorsement on the left side as pleaded. In response to this pleading in para-16 of their Counter Affidavit no where, it has been denied that either this letter enclosing therewith TTA claim was not given to the then Director, Doordarshan Kendra, Bareilly or that the alleged signature on the left side of the covering letter and marking have not been made by the then Director, Doordarshan Kendra, Bareilly. Merely, these pleadings have been denied in a general manner. In the absence of any specific denial of signature of Director, Doordarshan Kendra, Bareilly there is no option left for the Tribunal but to accept the specific pleading on this point contained in the OA, which have been sworn on Oath and stand uncontroverted and which is also supported by documentary evidence. The correspondence between Bareilly and Lucknow, Doordarshan Kendra shows that TTA Bill and the covering letter either got lost/misplaced somewhere in the office of the respondents or it was left unattended on account of carelessness or slackness on the part of the office of the respondents. Be that as it may. But the applicant cannot be held responsible for the slackness and inaction on the part of the respondents themselves. It appears that just few days before the retirement of the applicant on 31.08.2008, the respondents become active by seeking comments of the applicant on this point vide letter dated 22.08.2008. The applicant submitted his comments within 4 days i.e. on 26.08.2008 vide (Annexure-5 and 6) reiterating his stand that he has already submitted the final TTA claim alongwith covering letter dated 4.6.2003. In the last, the

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applicant also made a request to settle the amount before his superannuation after four days i.e. on 31.08.2008. But, it appears that the respondents have not dealt with the aforesaid matter till date because in their Counter Affidavit they have not said any thing in this regard. The matter of TTA advance is of the year 2003 whereas, this letter dated 22.08.2008 was written by the respondents after a long about 4 years. In fact it was merely an eyewash and nothing else. Moreover normally about 75% of the total estimated amount likely to be incurred in traveling is given as advance, if so demanded. The applicant was given an amount of Rs.14,000/-. Therefore the total claim would have been definitely much more than that. Therefore, in either case the respondents were not at loss. Question of any interest, therefore does not arise because the respondents were themselves responsible for the lapse.

7. As far as the deduction of an amount of Rs.59460/- towards the excess payment made to the applicant on account of wrong fixation of pay from the gratuity amount is concerned, at the outset, it may be mentioned that the fixation of the pay of the applicant was made in the year 1986. The applicant retired on 31.08.2008 i.e. after about 22 years. During this long period of 22 years the respondents did not care to make any rectification of their own fault. It was only after his retirement that the order of payment of gratuity dated 21.08.2008 was communicated to the applicant on 15.12.2008 (after about four months) as averred in para-5 (G) of the original application. Then only for the first time the applicant came to know about the deduction of an amount of Rs.59,640/- from his gratuity without giving any prior information

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or opportunity to the applicant to put forward his objection, if any. In other words, it was an ex-parte exercise. Concededly on account of fault of the respondents themselves the pay was wrongly fixed. Due to which gratuity was also wrongly calculated. This amount in question is not much. It is a meager amount of Rs.59,640/- only. Moreover, there was no misrepresentation or fraud on the part of the applicant. Rather, it was the fault of the respondents themselves. Moreover the respondents slept over the matter for about 22 long years. The applicant has now retired. Therefore, the respondents are not entitled to deduct the aforesaid amount.

8. The learned counsel for the applicant has placed reliance on the following citations in support of his submissions;

(1). **2009 AIR SCW 1871 (B.N. AGRAWAL, HARJIT SINGH BEDI AND G.S. SINGHVI, JJ) in the case of Syed Abdul Qadir & Other Vs. State of Bihar & Others**-In this latest case, a Finance Department of the Government concerned, in its counter affidavit, admitted that it was a bonafide mistake on their part. Most of the beneficiaries were retired or were on the verge of retirement. The Hon'ble Apex Court held that amount paid in excess had not to be recovered.

(2). **[2002 (1) LBESR 834 (SC)] (G.B. PATTANAIK, S.N. PHUKAN AND BRIJESH KUMAR, JJ) P.H. Reddy Vs. N.T.R.D. & Others**-Service laws-Pay scale-Re-fixation of pay-Erroneous fixation of pay held can be corrected-Repayment of excess pay drawn however not allowed.

(3). **1997 (2) LBESR 38 (Allahabad High Court) in Dr. Vijay Narain Singh Versus State of U.P. through Secretary to U.P.-**

Service laws-re-employment after age of superannuation - if a

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person has been paid an amount of which he was not entitled under the law, and there was no misrepresentation or fraud on his part, said amount not to be recovered from him as he could not be held responsible for extra-payments made to him.

(4). **(1994) 2 Supreme Court Cases 521 Shyam Babu Verma and others Vs. Union of India and Others (J.S. VERMA, N.P. SINGH AND N. VENKATACHALA, JJ.)** –Service Law-Relief-Higher pay scale erroneously given to petitioners since 1973-Pay scale of petitioners reduced 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.

9. From the other side, the learned counsel for the respondents has placed reliance on the case law of **Union of India And Others Vs. Sujatha Vedachalam (Smt) And Others-reported in (2000) 9 Supreme Court Cases 187** - Service Law-Pay-Fixation of-Recovery of excess payment on account of wrong fixation of pay-Relief-Directed to be recovered in easy installments.

The facts and of the aforesaid case of Union of Indian & Others Vs. Sujatha Vedachalam (Smt) And Others (Supra) being different, I am afraid that the respondents cannot derive any benefit from the aforesaid citation. Moreover, this judgment was rendered by two Hon'ble Judges of Hon'ble Supreme Court whereas the aforesaid case laws relied upon by the applicant are of a Bench consisting of three judges of Hon'ble Supreme Court. Therefore, this Tribunal is bound to follow the law propounded in the citations relied upon by the applicant's side.

10. As far as availing of alternative remedy is concerned the applicant happens to be a retired employee. No statutory remedy

was brought to the notice which may be available to a retired employee against unjustified deductions, made by the department concerned while releasing amount of gratuity. It is also noticeable that the relevant order of gratuity is dated 21.08.2009 but it was sent to the applicant with an unexplained delay of about 4 months i.e. on 15.12.2008. In respect of other disputed amount pertaining to TTA, the applicant has already written to the respondents on 26.08.2008 (Annexure-5). But when he did not receive any reply even after a lapse of about an year, then he filed this OA.

11. Having regard to the discussions made hereinabove, the OA deserves to be and is accordingly allowed. The respondents are directed to refund to the applicant the amount of Rs.59,640/- which has been deducted from the final amount of gratuity on account of wrong fixation of pay. The respondents are further directed to treat the matter of TTA as nonest and refund an amount of Rs.22,000/-, to the applicant if the same has been deducted from the arrears of salary of the applicant prepared after implementation of Sixth Pay Commission. The aforesaid compliances be made within three months from the date a certified copy of this order is made available to the respondents. No order as to costs.


(Justice Alok Kumar Singh)
Member (J)

Amit/-