

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 275 of 1990 (L)

Versus

Union of India through its Secretary in Ministry of Railway, Rail Bhawan, New Delhi and others.

..... Respondent

Hon'ble Mr. S.N. Prasad, Member (Judicial)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for staying the operation of the impugned order dated 27.6.1990 (Annexure-1) passed by respondent no. 3 whereby a recovery of Rs. 34,108.58 has been ordered from the applicant which is stated to be in excess of the payment of overtime allowance for the period from August 1986 to June 1989.

2. Briefly, stated the facts of this case, inter-
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alia, that the applicant was posted as Electrical
Chargeman after completion of his training of Chargeman
and he joined in the office of Senior Divisional
Electrical Engineer, Northern Railway Lucknow in the
grade of Rs. 425 - 700/-, and later on after passing
through various stages, the applicant was posted at
Alambagh, Lucknow in the grade of Rs. 550 - 750/- from
August, 1986 to June 1989 and as such the applicant
has worked beyond the statutory limit of work in the
interest of Railway Administration to avoid delay in
the normal functioning of the department and that's why
the applicant was paid overtime allowance after due
sanction; but to the utter surprise of the applicant
he received recovery order dated 27.6.90 passed by

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the respondent no. 3 for recovery of a sum of Rs. 34,108.58 though no notice or any show cause letter has ever been issued to the applicant; and after ~~foreseen~~ receiving the ^{^ said ^} recovery order, the applicant made his representation dated 5.7.1990 against the aforesaid recovery order, but no action has been taken so far, (vide Annexure-8); Hence, the applicant has approached this tribunal.

3. The respondents have resisted the claim of the applicant with the contentions, inter alia, that the post of SEFO was down graded as JFO Grade Rs. 550-750 (RS) and the applicant was promoted to officiate as Sr. Electric Chargeman in Grade Rs. 550-750 (RS), and made as supervisor/incharge of a depot as he was the senior most and he worked in that capacity during the period August 1986 to April 1989 and continued to hold the position of Supervisor/incharge of a depot ~~as~~ after being promoted to officiate as Senior Electric Foreman Train Lighting, Charbagh Lucknow till July, 1989. It has further been stated that after the retirement of ART Incharge, Sri Ram Deo, the applicant was also given the duty ^{^ of ^} and made ART Incharge also by Sr. D.S.E. though Sr. D.S.E. was not competent to do so, and particularly for a such a long period from August 1986 to June 1989; and it has further been stated that the bills submitted by the applicant from time to time for the alleged overtime ~~was~~ ^{^ though ^} passed for payment, but according to rules even if he had worked as ART Incharge, was not entitled to overtime allowance. Thus, in view of the above circumstances,

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the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

5. This is worth while making mention of this fact that in para 4.7 of the application, it has been mentioned clearly that the work and conduct of the applicant has always been good and he left no stone unturned to give a good performance; and he has an unblemished service record and in 1990 the services of the applicant were appreciated for showing sincerity and dedication and he has been awarded a sum of Rs.500/- cash group award and a shield. In this context, it is noteworthy that the assertions made by the applicant in para 4.7 of the application have not been denied by the respondents in para 4(7) of the counter-reply filed by the respondents.

6. This is important to point out that a perusal of para 4.12 of the application reveals that after receiving the impugned order dated 27.6.90, the applicant made representation on 5.7.90 against the aforesaid recovery order; but no action has been taken thereon by the respondents so far, Annexure-8 is copy of the aforesaid representation dated 5.7.90. In this connection it is significant to point out that in para 4.12 of counter-reply of the respondents, it has been mentioned that ~~in regard to~~ the averment made by the applicant in para 4.12 of the application ~~that it needs~~ ^{is not denied} ~~no reply~~. Thus, it is apparent that the above representation of the applicant dated 5.7.90 (Annexure-8) is still lying with the respondents undecided.

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7. It is also significant to point out that a perusal of para 4(8) of the counter reply filed by the respondents, *inter alia*, shows that the bills submitted by the applicant regarding over times allowance in question were passed by the competent authority and payments were made to the applicant accordingly. However, it is contended by the respondents that the payment regarding the bills for over time allowance in question were not according to the rules. Thus, this being so, it is apparent that formerly the bills were passed by the authorities concerned and payment were made to the applicant, but later on it appears from the scrutiny of the entire material on records that the respondent no. 3 has passed the impugned order dated 27.6.90 ordered for recovery of the amount of Rs. 34,108.58 on account of excess payment for the period from August, 1986 to June 1989 from the applicant; without issuing any show cause notice and without affording any opportunity to the applicant and as such it is found that the impugned order is in violation of the principle of natural justice as *even* *against the applicant* the aforesaid impugned order has been passed without affording him any opportunity to explain his view points, *as* it has been enunciated in the case of Vinod Kumar Mittal (Petitioner) Vs. Union of India (Respondent), 1990(8) L.C.D. page 329-330

" Principles of Natural Justice-Held settled that even Administrative actions affecting rights of citizen require compliance of the principles of natural justice-Held, principle requires providing opportunity of hearing before taking adverse action."

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