

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.491/2010
This the 3rd day of December 2010**

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

Dukhanti Prasad, aged about 70 years, son of Sri Buddhi Prasad,
R/o Nanpara Dehat Shivala Bag District-Bahariach.

...Applicant.

By Advocate: Sri Pradeep Kumar Srivastava.

Versus.

1. Union of India through its Secretary Ministry of Communication, New Delhi.
2. Telecom Divisional Engineer, Bahariach.
3. Account Officer, Office of Telecom Divisional Engineer, Bahariach.
4. Telecom District Manager, Bahariach.

... Respondents.

By Advocate: Sri G.S. Sikarwar.

ORDER (dictated in Open Court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Heard the learned counsel for the parties and perused this Original application thoroughly.

2. It comes out from record that earlier being aggrieved by the action of the respondents in making recovery of Rs.2,68,736/- from the salary of the applicant @ 5000/- per month an O.A.No.292/2004 had been filed saying that the applicant was working as Sub Divisional Engineer at Gonda Division. During the year 2000, he was entrusted with the work of opening of 10 Telephone Exchanges by the then Divisional Engineer, Bahariach. For this work, he was allowed to get the casual nature of work completed by engaging labours. He therefore requested for temporary advance giving the name of

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each telephone exchange and also the name of the labours working in the exchange. This advance was sanctioned. Suddenly, Account Officer (Cash), Bahariach objected to the entire payment made during the period in question and several orders were issued for recovery of the amount in question. From the other side, it is said that neither any amount was sanctioned for payment of casual labour nor the applicant had demanded the advance under the head of payment to casual labours and daily wager. There were some labourers engaged by the applicant without taking any approval and the vouchers submitted by the applicant were not in accordance with the head for which the advance was sanctioned. Lastly, it is also said that there was complete ban on engagement of casual labours w.e.f. 22.06.1989.

3. After hearing the parties at length this Tribunal found that the respondents had not adopted the procedure laid down in the CCS (CCA) Rules and they have also not passed any specific order for recovery. It was matter of detailed enquiry and recovery could have been made only after an order was passed for the same consequent to the enquiry. In view of these fact and circumstances, the OA was allowed saying that recovery could not be made without following the procedure laid down in the CCS (CCA) Rules. It was further observed that respondents can institute an enquiry as permissible under the law.

4. From the perusal of the copy of the O.A.No.292/2004, it transpires that out of five interim relief's sought in the OA, Relief No.2 was for issuance of a direction to the respondents to refund

the amount illegally deducted from the salary of the appellant. But in the final order passed by this Tribunal on 01.12.2009 no mention has been made about it.

5. It is said on behalf of the applicant that nevertheless, the necessary corollary of the aforesaid final order of the Tribunal was to refund the amount in question which had already been recovered from the applicant, who has already retired in the year 2005. It is said that copy of the judgment was served upon the respondents on 15.02.2010 alongwith an application for refund of recovered amount of Rs.2,68,736/-. Again on 05.05.2010 (Annexure-1), another representation was made but the respondents did not take any action on either of the representations.

6. The main relief therefore which has been sought in this OA is for issuance of a direction to the respondents to refund the recovered amount in question. Learned counsel for respondents rightly says that this being one of the reliefs which where sought in the earlier OA and was not specifically granted, cannot be technically entertained by fresh OA like this.

7. As an alternative relief an order or direction has also been sought to decide the representation made in this regard by passing a reasoned and speaking order within the stipulated period. As far as this relief is concerned, the learned counsel for respondents has nothing to say substantial because, on the face of it appears to be an innocuous prayer. Otherwise also the only inescapable inference which can be drawn from the judgment of this Tribunal, is that it was left open for the respondents to

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initiate the procedure as laid down in CCS (CCA) Rules for the recovery in question by starting enquiry as permissible under the law as mentioned in the operative portion of the order dated 01.12.2009. That OA was filed in the year 2004 and the applicant superannuated during the pendency of that OA in the year 2005. The final order was rendered in December, 2009 after about 4 years of his superannuation. It is not ascertainable from the record as to whether or not any enquiry was instituted in accordance with the relevant rules after passing the order dated 01.12.2009. The learned counsel for respondents is also aware about it. Be that as it may. But necessary corollary of the above final order of this Tribunal is that if the respondents did not initiate any enquiry as permissible under the relevant law/rules in respect of the amount in question, then this amount has to be refunded to the applicant. After all the respondents are not authorized to keep this amount with them for an indefinite period causing unnecessary loss of interest etc. to the applicant.

8. In view of the aforesaid facts and circumstances, this OA is finally disposed of with a direction to the respondents to decide the representation of the applicant dated 05.05.2010 (Annexure-1) by means of a reasoned and speaking order within three months from the date a certified copy of this order is served upon the respondents. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J)