

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 539 OF 2010

Order Reserved on 1.5.2014

Order Pronounced on 23/05/14

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Anjani Kumar Dwivedi aged about 61 years, son of Sri S. P. Dwivedi, resident of B-19/50, Anand Nagar, Jail Road, Raebareli.

Applicant

By Advocate Sri R. K. Upadhyaya.

1. Union of India through the Secretary, Department of Information and Broadcasting, Central Secretariat, New Delhi.
2. Director General, Doordarshan, Copernicus Marg, Doordarshan, Copernicus Marg, Doordarshan Bhawan, New Delhi.
3. Director, Doordarshan Kendra, Lucknow.

Versus

Respondents

By Advocate Sri K. K. Shukla.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:

- (i) To issue a suitable order or direction to the opposite parties thereby quashing the order of recovery amounting Rs. 1,14,642/- imposed upon the applicant on the ground of excess payment made to him due to wrong pay fixation done in the past after summoning the order of recovery in original, if any, from the respondents.
- (ii) To issue a suitable order or direction to the opposite parries thereby commanding the respondents to refund the amount of Rs.1,14,642/-recovered from the applicant with interest at the market rate thereon with effect from the date of recovery made from the applicant till the date of actual payment.
- (iii) To issue any other order or direction, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case;
- (iv) To allow the instant O.A. with costs."

2. The brief facts of the case are that the applicant who was working with the respondents organization superannuated on

cause notice dated 13th October, 2009 requiring him to show cause as to why an amount of Rs. 1,14.642/- may not be recovered from the salary of the applicant for the months of October, November and December, 2009 in three installments of Rs. 33,214/-. The applicant submitted the reply to the said show cause notices vide letter dated 16.11.2009. Thereafter, the said amount was recovered from the salary of the applicant. The learned counsel for the applicant has relied upon two decisions of this Tribunal assed in O.A. No. 141 of 2008 as well as O.A. No. 520 of 2009 and has submitted that the amount so recovered from the applicant be directed to be refunded in the light of the directions of the Tribunal in the O.As as mentioned above.

3. The learned counsel appearing on behalf of the respondents filed their preliminary objections as well as counter reply and through counter reply, the respondents has pointed out that the applicant has himself given consent in the office of respondent No. 3, i.e. Director Doordarshan Kendra Lucknow that deduction of excess amounting Rs. 1,14,642/- may be recovered from monthly salary of October, November, and December 2009 in three installments before recovery of excess amount towards the payment of 60% arrear of salary in compliance of VI Pay Commission and as such, respondent No. 3 has issued the memorandum dated 13.10.2009 ordering for recovery from the salary of the applicant. The respondents have also filed the copy of the consent given by the applicant along with their counter reply as such, it is submitted by the respondents that there is no illegality in recovering the amount from the applicant. Apart from this, the respondents have also categorically pointed out that the applicant was given the show cause notice and opportunity was

he was not given any opportunity of hearing. Not only this, the respondents have also indicated this fact that the applicant has already intimated by revised order dated 3.9.2008 that any pay fixation will be under audit observation in such case of any audit objection recovery will be made without proper information. As such, the action taken by the respondents does not suffer from illegality and does not violate the principles of natural justice. Not only this, the respondents have also indicated this fact in their counter reply that applicant belong to Class-I Officer could not plead ignorance and it was the pious duty of government servant to act fairly with employer and should not remain silent/mute spectator which may result into undue financial benefits to him.

4. The learned counsel for the applicant has filed their reply to the preliminary objections as well as the rejoinder reply and through rejoinder, the averments made in the O.A. are reiterated.

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

6. Admittedly, the applicant was working with the respondents organization and superannuated on 31.12.2009 and prior to the retirement, the applicant was given show cause notice dated 13.10.2009 indicating there in that the salary of applicant was revised by means of an order dated 28.8.2008 and calculating the said salary , a sum of Rs. 1,14.642/- was paid excess to him. As such, the amount was paid excess is liable to be recovered. The applicant was given the show cause notice dated 13.10.2009 as to why the aforesaid amount be not recovered from him from the monthly salary of the applicant for the months of October, November, and December, 2009 in three installments of Rs. 33,214/-. The applicant submitted the reply

for cancelling the said recovery order. But since the applicant superannuated on 31.12.2010 and the amount has already recovered from him and the Tribunal has also not granted any interim stay to the applicant.

7. The learned counsel for the applicant has relied upon two decision of this Tribunal passed in O.A. No. 141/2008 and In O.A. No. 520/2009. The said order was subsequently affirmed by the Hon'ble High Court in W. P. No. 1694(SB) Of 2009 . The first order of the Tribunal passed in O.A. No. 141/2008 pertains to the wrong fixation of the pay of the applicant from the year 1.7.1978 to 30.6.2007 and the said amount was recovered from the payment of leave encashment of the applicant. The another decision of the Tribunal is in regard to the excess payment made to the applicant on account of wrong fixation of his pay and also an amount of Rs. 22,000/- towards a TTA advance. The Tribunal while deciding the O.A. has directed for refunding the aforesaid amount.

8. Be that as it may, the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others reported in (2012) 8 SCC 417**, the Hon'ble Apex Court has been pleased to observe as under:-

"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.

We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were

The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the judgment of the High Court. However, we order that the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October, 2012."

While deciding the above case, the Hon'ble Apex Court allowed the recovery to be made from the appellant salary in 12 equal installments.

9. Not only this, the applicant himself has given an undertaking that the amount may be recovered from the salary for the months of October, November, and December, 2009. The said undertaking is annexed as along with counter reply as Annexure-1. The revised order in regard to anomaly in pay fixation under up gradation of scale of certain categories of employees working in Prasar Bharti was issued on 3.9.2008 in respect of the applicant and it was revised. In the said order itself, it is categorically pointed out that "**this pay fixation will be under audit observation. In case of any audit objection recovery will be made without prior intimation.**" The said letter was also addressed to the applicant and the applicant accepted the same.

10. Considering the observations made by the Hon'ble Apex Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others(Supra) that any amount paid /received without authority of law, can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust

taking given by the applicant and the revised pay fixation order. It is explicitly clear that amount paid in excess to the applicant can be recovered after due opportunity of hearing to the applicant and the same was recovered from the salary of the applicant for the month of October to December, 2009. I do not find any reason to interfere in the present O.A.

11. The O.A. is dismissed without order as to costs.

U.P. Aroawal
(Navneet Kumar)
Member(J)

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