

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 255 of 2011

This, the 10th day of October, 2013.

HON'BLE SHRI NAVNEET KUMAR MEMBER (J)

O.P. Verma aged about 52 years S/o Shri Govind Prasad Verma, R/o 113-C, Samar Vihar Colony, Alambagh, Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India through the General Manager, Electrification (CORE), Head Quarter Office, Allahabad.
2. The Chief Project Manager, Railway Electrification, Charbagh, Lucknow.
3. The Assistant Personnel Officer, Railway Electrification, Charbadh, Lucknow.
4. The General Manager, North Central Railway, Allahabad.

Respondents

By Advocate Sri S. Verma.

ORDER(ORAL)

By Hon'ble Sri 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:-

- "(1) To quash the impugned order dated 09.06.2011, contained as Annexure No. A-1 with all consequential benefits.
- (2) To restrain the respondents from imposing recovery in terms of order dated 09.06.2011
- (c) To restrain the respondents from reducing the pay of the applicant in terms of order dated 09.06.2011.
- (d) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- (e) Cost of the present case may also be awarded as the applicant ha unnecessarily been dragged into litigation.

2. The brief facts of the case are that the applicant was initially appointed as Electric Chargeman Group B in the North Central Railway Subsequently, the applicant was promoted on the post of Senior Technical Assistant and thereafter promoted on the post of JE-I in the grade of Rs. 1600-2660/-. Subsequently, the applicant was given promotion in 2010, an order was passed by which the applicant was granted the benefit of MACP and his salary was fixed w.e.f.



01.07.2010. All of sudden, by means of an order dated 18.4.2011, the respondents have issued an order whereby, it is shown that the excess payment of Rs. one lac fifty thousand has been paid to the applicant which was ordered to be recovered from the month of June 2011 on the basis of monthly installments of Rs. 10,000/- The learned counsel for the applicant has also pointed out that before issuing such order, no opportunity of hearing was given to the applicant. As such, the impugned order is bad in the eyes of law and is liable to be quashed.

3. Learned counsel appearing on behalf of the respondents filed their reply, and through reply, it has pointed out by the respondents that due to wrong and erroneous fixation of pay, the applicant has drawn excess payment of nearly Rs. 1,50,000/- which was proposed to be recovered from him in monthly installment of Rs. 10,000/- each keeping in view that he is getting monthly salary of more than Rs. 45000/- Apart from this, it is also pointed out by the respondents that the applicant has approached this Tribunal without exhausting the alternative remedy and has also not submitted representation to the respondent authorities for kind consideration.

4. Learned counsel for the applicant has filed the rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. Apart from this, it is once again pointed out by the learned counsel for the applicant that without assigning any reasons or without any show cause notice, the impugned order of recovery was passed, as such, the same is violative of principles of natural justice.

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

6. Admittedly, the applicant was working in the respondents organization was promoted up to the post of Section Engineer which was subsequently, regularized by the respondents. The applicant was also given the MACP benefit and his salary was fixed w.e.f 1.7.2010. The recovery is made on the excess amount of non fixation of pay. Apart

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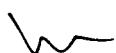
from this, the over payment has not been made on the basis of fraud representation on the part of the applicant. Apparently, it is because of the error on the part of the respondents. Apart from this, the learned counsel also relied upon the decisions of the Apex Court and has pointed out that the respondents have illegally, arbitrary, and against the principles of natural justice has initiated the proceedings of recovery

7. At the outset, it is worthwhile to mention that the law is settled on the point that firstly no recovery can be made unless any fraud or misrepresentation is alleged on the part of the person from whom recovery is sought to be made. Secondly, if at all, there is any justification for making any recovery, then also adhering to the principle of natural justice, a show cause notice is a condition precedent for making any such recovery. There is no whisper in the entire counter reply as to why without issuance of any show cause notice, the recovery in question was made.

8. As observed by the Hon'ble Apex Court in the case of **State of Orissa Vs. Dr. Ms. Binapani Dei reported in 1967 Supreme Court Cases 1269** where the Hon'ble Apex Court has been pleased to observe that "***Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice.***

10. In the case of **Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88**, the Hon'ble Apex Court has also been pleased to observe that "***opportunity of hearing is to be given to the delinquent before passing an order.***"

9. In the present case, it is explicitly clear that no opportunity of hearing was given to the applicant before passing the order of recovery, as such the applicant has made a case for interference by the Tribunal and the O.A. is deserves to be allowed.



10. Considering the averments made by the learned counsel for the parties and also on the basis of the observations made by the Hon'ble Apex Court, this Tribunal has no option except to quash the impugned order of recovery and direct the respondent No. 2 to refund the amount in question. However, the respondents are at liberty to recover the amount if any after following due process of principle of natural justice.

11. With the above observation, O.A. is allowed. No order as to costs.

U.P. Chawla
(**Navneet Kumar**)
Member (J)

Vidya