

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Original Application No. 396/2011**

**This, the 4<sup>th</sup> day of October, 2013.**

**HON'BLE SHRI NAVNEET KUMAR MEMBER (J)**

R. N. Shukla, aged about 59 years, son of Late Ram Sumiran Shukla, resident of 538-Kha /128, Rooppur, Khadra, Sitapur Road Lucknow.

**Applicant**

**By Advocate Sri Dharmendra Awasthi.**

**Versus**

1. Union of India through the Chief Post Master General (C.P.M.G.) U.P. Circle, Lucknow.
2. Senior Superintendent of Post Offices, Lucknow Division, Lucknow.
3. Senior Post Master, Chowk ,Lucknow.

**Respondents**

**By Advocate Sri Pankaj Awasthi for Sri R. Mishra.**

**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:-

“(a) to quash the entire recovery proceedings initiated against the applicant for recovery of Rs. 71,297/-.

(b) to direct the respondents to re-fix the salary of the applicant at Rs. 16880/-

(c) To pass any other suitable order or direction which this Hon'ble Tribunal may deem, fit, just and proper under the circumstances of the case in favour of the applicant.

(d) to Allow the present original application of the applicant with costs.”

2. Learned counsel for the applicant fairly submitted at bar that he did not want to press the prayer 8(b) and he press only 8-(a),(c) and (d).



3. The brief facts of the case are that the applicant was working on the post of Postal Assistant and his pay scale of Rs. 9300-34800 and subsequently, his basic pay was reduced from Rs. 16800 to Rs. 15,330 in the month of July, 2011 without giving any show cause notice. The learned counsel for the applicant has also pointed out that against the said reduction, the applicant has made a representation. But since the applicant is not praying for re-fixation of the pay, as such this issue is not taken up. The learned counsel for the applicant has also pointed out that in pursuance of the said rejection a sum of Rs. 71297/- was ordered to be made without assigning any reasons whatsoever. As such, he prayed that the order of recovery may kindly be quashed.

4. Learned counsel appearing on behalf of the respondents, filed their reply and through reply, it was pointed out by the respondents that since the applicant's pay was wrongly fixed, as such, the said recovery was ordered from the salary of the applicant. Upon query, the learned counsel for the respondents also fail to indicate that whether any notice prior to issuance of the said recovery was ever served upon him or not. It is pointed out by the learned counsel for the respondents that no such point is mentioned in the reply filed by the respondents. It is also pointed out by the respondents that there is no illegality in the said recovery order. Since the applicant was given over payment due to wrong fixation as such, a recovery was ordered to be made.

5. Learned counsel appearing on behalf of the applicant has also filed rejoinder and through rejoinder, the averments made in the O.A. are reiterated. Apart from this, the learned counsel for the applicant has relied upon two decisions of the Hon'ble Supreme Court. Apart from this, it is pointed out by the learned counsel for the applicant that the respondents have illegally,



arbitrary and against the principle of natural justice have been initiated the proceedings of recovery that too keeping aside the precedent/rulings laid down by the Apex Court.

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

7. Admittedly, the applicant was working with the respondents' organization. The bare perusal of the pleadings on the record shows that the applicant's pay and allowances has been reduced from Rs. 16,800 to Rs. 15,330/- in the pay slip of July,2011 and thereafter, the respondents have started recovery of the excess payment. This recovery is made in respect of excess payment on account of wrong fixation of pay on the wrong date for granting benefits of financial upgradation under Modified Assured Career Progression Scheme in the Pay Band of Rs. 9300-34800/- Apart from this, the over payment has not been made as a result of fraud representation on the part of the applicant. Apparently, it is because of the error on the part of the respondents.

8. At the out set, 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 show cause notice, the recovery in question was made.

9. As observed by the Hon'ble Apex Court in the case of **State of Orrisa 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***

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***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."***

11. In the instant 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.

12. 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.

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

Dr. Ajaawal  
(Navneet Kumar)  
Member (J)

Vidya