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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Original Application No.495/87.

Laxmanrao Ganpatrao Kalinkar ... Applicant

V/s

The Director General Posts,
New Delhi & 3 ors. ... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri P.S.Chaudhuri

Appearances:

Applicant in person and
Mr. P.M.Pradhan, Advocate
for the respondents.

JUDGEMENT:

Dated : 13-9-1991

[Per. P.S.Chaudhuri, Member (A)]

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 27.7.1987. In it the applicant who retired as Deputy Post Master, Akola is seeking a refund, together with interest thereon, of the Rs.8,496.85 which was credited by him and the refund of which has been rejected by the respondents vide letter dated 30.12.1985.

2. The applicant was working as Deputy Post Master, Akola (in HSG-I Grade) Head Post Office from 1.3.1981 to 30.9.1984 in the scale of Rs.700-900 and retired on superannuation on 30.9.1984 afternoon. His pay in this scale was Rs.760 w.e.f. 1.9.1980. His working hours during the aforesaid period were from 6 hrs. to 11 hrs. and 17 hrs. to 19 hrs. daily but being incharge of the Treasury branch, and joint custodian of cash and valuables stored in the treasury of Akola Head Post Office, he was required to remain on duty generally till 21 hrs. and occasionally till even 22 hrs.

... 2/-



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Respondents No.3 and 4 by exercising their powers made payment of overtime allowance to the applicant for the overtime duty performed by him during this period till the applicant's retirement on superannuation on 30.9.1984 afternoon. On 16.2.1985 respondent No.4 orally summoned the applicant to attend his office and orally told him that the Audit had raised objection to the O.T.A. paid to the applicant for the period from 1.9.1980 to 30.9.1984 on the ground that O.T.A. was not admissible to the applicant because he was drawing pay at Rs.760/- from 1.9.1980. Respondent No.4 further orally told the applicant to credit irregular O.T.A. paid to him from 1.9.1980 to 30.9.1984 amounting to Rs.8,496.85. In response to respondent No.4's oral request and with respondent No.4's assurance that he would take up the case with higher authority for refunding the amount to the applicant, the applicant credited the amount of Rs.8,496.85 on 16.2.1985 under protest and simultaneously preferred a representation on 16.2.1985. This representation was rejected by the letter dated 30.12.1985 (supra). Being aggrieved, the applicant filed the present application.

3. The respondents have opposed the application by filing their written statement. We have heard the applicant in person and Mr. P.M.Pradhan, learned counsel for the respondents.

4. The applicant's first submission was that although in terms of Rule 3(b) of the P&T Overtime Allowances Rules (for short, the Rules) Government servants holding non-gazetted posts whose pay exceeds Rs.750 are not governed by the said Rules, in terms of Rule 3(c) thereof

. . . .3/-



provision exists for making an exception in cases where:-

- (i) they are in direct and continuous contact with the staff they supervise;
- (ii) they work the same hours as the staff under them; and
- (iii) they are themselves subject to the kind of supervision which would enable them ordinarily to obtain prior approval for working overtime.

It was his submission that he fulfils all the conditions warranting making an exception. But this submission must be rejected straight away. A plain reading of the Rules makes it clear that there is no exception provided for Rule 3(b). Exceptions have been provided in Rule 3(c) but these exceptions do not govern Government servants holding non-gazetted posts whose pay exceeds Rs.750. These exceptions only govern other Government servants who hold supervisory posts or are holding independent charge of offices.

5. The applicant's next submission was that in terms of Rule 22 of the Rules, the Rules were applicable to HSG and LSG staff other than those incharge of offices. As he was not incharge of an office, being only Deputy Post Master, the Rules were applicable to him. But a plain reading of the Rules makes it clear that Rule 3(c) ~~overrides~~ the other provision and in terms of Rule 3(c) Government servants holding non-gazetted posts whose pay exceeds Rs.750 are not governed by the Rules. This exclusion also covers HSG staff, such as the applicant, whose pay exceeds Rs.750. Hence we must reject this submission of the applicant.



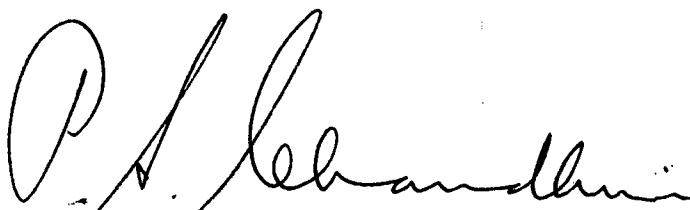
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6. The applicant's third submission was that denial of wages for work already performed violates Article 23 (1) of the Constitution. This submission must be rejected as there has been no denial of wages. What has been denied is payment of overtime and this has been denied because the Rules do not permit of paying overtime. We see nothing wrong with this denial.

7. The applicant's final submission was that he had not been issued with (a) show-cause notice before the recovery was made. There would have been force in this submission if it was the respondents who had deducted the amount from the applicant's dues. But that is not what happened in this case. It was the applicant himself who refunded the amount of his own volition and we must compliment him for doing so. But having done so, it is not open for him now to allege that he was not given an opportunity to show cause.

8. In this view of the matter, we see no merit in the application and are of the opinion that it deserved to be dismissed.

9. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.



(P.S. Chaudhuri)
Member (A)



(U.C. Srivastava)
Vice-Chairman

13.9.1991