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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 651/89
~~XXXXXX~~

198

DATE OF DECISION 27 3.92

Shri V.S.Thite Petitioner

Shri S.P.Kulkarni Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr.V.M.Bendre for Mr.P.M.Pradhan Advocate for the Respondent (s)

CORAM

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

P. Savant
27.3.92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

14

OA.NO. 651/89

Shri V.S.Thite
V/S.

... Applicant

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms. Usha Savara

Appearance

Mr. S.P. Kulkarni
Advocate
for the Applicant

Mr. V.M. Bendre
for Mr. P.M. Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 27/3/92

(PER: Usha Savara, Member (A))

The applicant (O.C.) Postal Assistant, Bombay GPO was the officiating Senior Caretaker when his name was approved by the D.P.C. and he was appointed as Temporary Senior Caretaker, Bombay GPO w.e.f. 4.5.1982 in the scale of Rs.350/560 by letter dated 5.5.1982. He had been working as Senior Caretaker from 1.12.1981 to 10.5.1982 when this order was passed. He was further promoted to LSG Cadre and his pay was fixed under FR 22(C) at Rs.530/- p.m. w.e.f. 11.5.1982. He was given an increment after completing one year in the LSG and his salary was further raised to Rs.560/- from 1.5.1983. The next increment raised his pay to Rs.560/- p.m. from 1.5.1984. It is the applicant's case that his pay was reduced from Rs.560/- to Rs.530/- w.e.f. 1.4.1985 without giving any reasons. On enquiries being made he was informed that his pay could not be fixed under FR 22(C) as his post of Senior Caretaker was an ex-cadre post.

The respondents have recovered the excess payment made according to their calculations. It was contended by Shri S.P.Kulkarni, learned counsel for the applicant that the pay was rightly fixed and the applicant was given the pay-scale by the Administration itself and therefore no recovery should have been made.

2. Mr. V.M.Bendre appearing for Mr.P.M.Pradhan submitted that the post of Senior Caretaker was an ex-cadre post and the applicant should have been paid a deputation allowance, i.e. 10% of his basic pay. He has drawn my attention to Annexure - R-1 by which Special Pay to Caretakers of Government Buildings hired or owned by Government is governed. He also drew my attention to Annexure - R-2 which clarifies the payment of deputation allowance on transfer of Central Govt. Employees to other Govt. Departments, Companies, Corporation etc. He submitted that according to these rules and instructions, the applicant should have only been paid deputation allowance when he was appointed in the post of Senior Caretaker. However, his pay was erroneously fixed under Fundamental Rule 22(C). This mistake was noticed by the audit and was sought to be rectified. Shri Kulkarni, fairly, conceded that the department had committed an error in fixation of the applicant's pay but submitted that recovery of the excess payment after a long lapse of time would hit the applicant very badly. He relied upon various judgements in support of his case that the respondents were estopped after several years from correcting what they claimed to be a mistake committed by the respondents themselves and withdrawing the benefits given in the past to the applicant retrospectively.

3. The Bombay Bench of the Tribunal in the case of Chamel Singh vs. Union of India & Ors. 1992(1) CAT, reported in All India Services Law Journal, has discussed the various decisions of the different benches of the Tribunal. It has been held that recovery of over-payment after lapse of years would not be justified as it would cause hardship to the applicant. Following the consensus of the decisions on this issue, I hold that the recovery made by the respondents is not justified. In view of this, the respondents are ordered to refund the amount recovered from the applicant without interest within a period of two months from the date of receipt of a copy of this order. No other reliefs have been pressed for by the applicant. The application is disposed of in these terms with no order as to costs.

U. Savara
27.3.92.
(MS. USHA SAVARA)
MEMBER (A)