

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 748 OF 2005[Patna, this Thursday, the 17th Day of August, 2006]
.....C O R A MHON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.
.....

Jagat Prasad,
S/o Shri Bodhu Singh
& 22 Ors.

Vs.

The Union of India & Ors.

Counsel for the applicants:- Shri M.P.Dixit.
Shri S.K.Dixit.

Counsel for the respondents:- Shri Amitabh Pandey, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard both the sides. A question has arisen as to whether the applicants who are with temporary status having so worked for more than three years, when awarded productivity linked bonus for the accounting year 2004-05 at par with Group 'D' employees by circular of the Postal Department dated 30.11.1992 [Annexure-A/2], but subsequently the amount ordered to be recovered on the ground that such temporary status casual labourers had to be granted bonus at par with full time casual labourers and not at par with Group 'D' employees, that order should be struck off being violative of the order at Annexure-A/2. The order at Annexure-A/2, issued by the Postal Department dated 29.11.1989, provides that if a casual labourer with temporary status has worked for three continuous years, he be treated at



par with group 'D' employees in the matters enumerated therein, including bonus [at sl.no.9]. However, granting productivity linked bonus for the year 2004-05 by the order dated 19.09.2005 [Annexure-R/2], clause 4.1 runs as follows :-

"Full Time Casual Labourers [including Temporary Status Casual Labourers] who have worked for 8 hours a day, for at least 240 days in a year for three consecutive years or more [206 days in each year for three years or more in case of offices observing 5 days a week] as on 31.03.2005, will be paid ad-hoc bonus on notional monthly wages of Rs.1200/- [Rupees Twelve Hundred only].

2. To cut short the matter, the learned counsel for the applicants in the beginning argued that this was against the order at Annexure-A/2 to the OA, hence the applicants were rightly granted bonus at par with Group 'D' employees, and the order at Annexure-R/2 in para 4.1 did not apply to them, though it would apply to those casual labourers with temporary status who had worked for less than three years.

3. However, in view of the decision of the Full Bench of the Karnataka Bench of the Tribunal, which was approved by order of the Karnataka High Court in writ petitions no. 35419 & 42378 - 443 of 2002 as well in view of the decision of this Tribunal in OA 782 of 2000 [All India Postal Employees Union Postman and Group 'D', Bihar Circle, Patna Vs. Union of India & Ors.] which was disposed of on 06.12.2004, holding that the productivity linked bonus to a casual labourer, with temporary status for three years or more, would be paid at par with casual labourers as per order of the department which granted them the bonus, this relief was not pressed.



However, the learned counsel for the applicants submitted that the order of this Tribunal in OA 782 of 2000 [supra], in a Division Bench, though had ordered so, but had also held that recovery should not have been made and had directed that the amounts if recovered should also be returned back to the applicants. On the other hand, the learned counsel for the respondents pointed out rules at page 23 of the written statement as per which if the Audit Officer disallowed a particular payment, the Disbursing Officer had to recover that without issuing a notice to the concerned official as the grounds for not recovering the amount was a matter with which the Disbursing Officer was not concerned.

4. On the other hand, the argument was that since the amount was paid by interpreting para 4.1 of the order at Annexure-R/2 that the applicants would be paid bonus at par with Group 'D' employees, and it was not on account of any misrepresentation made or fraud practiced by the applicants, the amount should not be recovered. It is submitted that since November, 2005 the amount was being recovered @ Rs.500/- p.m. from pay, on month to month basis.

5. In the case of **P.H.Reddy Vs. NTRD; 2002[4] ESC 22**, the Apex Court had held against such recovery of the amount which was overpaid on account of wrong fixation of salary to an ex-serviceman. It was held that since it was due to erroneous fixation by the authorities, that should not be recovered. In the case of **Sahib Ram Vs. State of Haryana; 1995 SCC [L&S] 248** when upgraded pay scale was given due to wrong construction of the order by the authority concerned without any misrepresentation by the



employee, their Lordships of the Apex Court held that appellant should not be held at fault and the amount paid should not be recovered from him. In yet another case of **Shyam Babu Verma Vs. UOI; 1994 SCC [L&S] 638** when higher pay scale was erroneously given to the petitioners since 1973 which was reduced in the year 1984, their Lordships directed that since the petitioners had received the higher pay scale due to no fault of theirs, it would be just and proper not to recover the excess amount already paid to them.

6. Obviously, some more amount by way of bonus was paid to the applicants on wrong interpretation of departmental orders at Annexure-R/2, perhaps in view of order at Annexure-A/2, and when there is nothing on the record to hold that it was on account of any misrepresentation made or fraud practiced by the applicants, as also in view of a Division Bench decision of this Tribunal in OA 782 of 200 [Supra], I direct that the recovery of the excess amount so paid should not be made and the amount which has been recovered, should be refunded to the applicants within three months of receipt of a copy of this order. Only to this extent this application is allowed.



[P. K. Sinha]/VC

skj.