

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 682 of 2005

Date of order : 8.4.2011.

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [Judicial]
Hon'ble Mr. A.K. Jain, Member [Administrative]

Pawan Kumar, S/o Duni Chand, at present posted at SGA [Carpenter] Training Centre, SSB, 2 -C, 313 HFC Barauni [Begusarai], and permanent resident of village bagmala P.O. & P.S. Tosham, District – Bhimani [Haryana]

.... Applicant

By Advocate : Shri G. Bose.

Vs.

1. The Union of India, through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Director , Ministry of Home Affairs, Govt. of India, Director, SSB, East Block-V RK Puram, New Delhi.
3. The Assistant Director, [EA -1], O/o Director, SSB, East Block-V RK Puram, New Delhi.
4. The Deputy Director, [EA -1], SSB, East Block-V RK Puram, New Delhi.
5. The Joint Deputy Director, [EA], SSB, East Block-V RK Puram, New Delhi.
6. The Inspector General, SSB, Frontier Headquarter, Patna.
7. The Deputy Inspector General, SSB, Township, Barauni.

.... Respondents.

By Advocate : Shri R.K. Choubey

O R D E R

Justice Rekha Kumari, Member [J] :- The applicant in this OA has prayed for quashing the order issued through memo dated 22.08.2005 [Annexure A/1] whereunder the representation of the applicant has been disposed of holding that he was not entitled to the scale of Rs. 975-1660/- and recovery of over-payment was justified.

2. The case of the applicant is that he was initially appointed as Field Assistant [Carpenter] on 31.10.1989 in the scale of Rs. 825-1200/-. He was promoted to the Senior Field Assistant in the scale of Rs. 975-1660/- vide order dated 11.06.1997 [Annexure A/2]. His pay, hence, was fixed accordingly. He also earned increments from year to year. Suddenly, on 24.09.1982²⁰⁰², a corrigendum [Annexure A/3] was issued that the pay scale of Rs. 975-1660/-

given to the FAs [Carpenter] during their promotion to the rank of SFA [Carpenter] vide order dated 11.06.1997 may be read as Rs. 950-1400/-. As no notice of reduction of pay was given, he filed representation. Ultimately, by memo dated 11.11.2002 [Annexure A/5], his request against the revision of scale was rejected, and over payment , if any made, was ordered to be recovered.

3. The further case of the applicant is that the above revision in the pay scale was virtually reduction in pay scale, which could be done under the D&A Rules as the same amounted to punishment. He, hence, moved the Hon'ble High Court for redressal of his grievance which was disposed of on 20.04.2005 by giving direction to the respondents to dispose of the representation given by him to the respondents. The concerned respondents in compliance with the above order of the High Court passed the impugned order, which is illegal.

The case of the respondents, in their written statement, is that as pay scale of Rs. 950-1400/- [pre-revised] was attached to the post of SFA [Carpenter], the applicant was allowed that scale. He was not entitled to the pay scale of Rs. 975- 1660/- [pre revised], and the order of recovery of over payment has accordingly been made.

4. Their further case is that as wrongly, the scale of Rs. 975-1660/- was given while issuing the promotion order to SFA [Carpenter], a corrigendum was issued and as inadvertently, the pay scale of Rs. 975-1660/- was given, no show cause was necessary while rectifying the mistake. There was also no question of initiating the departmental proceeding for that as recovery was not in the nature of punishment.

5. The learned counsel for both the sides were heard.

6. The learned counsel for the applicant submitted that the respondents could not reduce the scale of pay without hearing the applicant.

7. His main submission , however, is against the recovery made of the alleged over-payment on account of wrong scale of pay. In this connection, he submitted that there is nothing to show that on account of any misrepresentation

or fraud on the part of the applicant, over-payment was made. The recovery was also ordered after a long time after payment. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Syed Abdul Qadir and others vs. U.O.I [2009] 3 SCC 475 , over-payment could not be recovered from his salary.

8. The learned counsel for the respondents, on the other hand, contended that this is not a case of reduction of pay. As the applicant on promotion, by mistake, was allowed higher scale, on detection, the mistake was rectified. Therefore, there was no question of issuing any show cause. The recovery of over-payment is also not by way of punishment.

9. He further contended that as over-payment was made, the respondents were justified in making recovery.

10. As regards the first submission of the learned counsel for the applicant, the case of the respondents is clear that the pre-revised scale of SFA [Carpenter] was Rs. 950-1400/-. The applicant has not been able to show that actually, the pre-revised pay scale of SFA [Carpenter] was Rs. 975-1660/-. It is, therefore, evident that when the applicant was promoted to SFA [Carpenter], he was entitled to the scale of Rs. 950-1400/-, but inadvertently, the scale of Rs. 975-1600/- was given to them. So, the mistake could be rectified, and no question of violation of natural justice was involved. . Hence, if no show cause was issued before the issuance of corrigendum, there is no illegality in it. Then, as recovery was ordered on account of over-payment due to higher scale given, the order of recovery cannot be said to be punitive, requiring D&A proceedings.

11. The above submission of the learned counsel for the applicant is, hence, not tenable.

12. As regards the recovery of over-payment made, in the case of Sahib Ram Vs. State of Haryana , 1995 SSC [L&S] , the Hon'ble Supreme Court observed:-

" However, it is not on account of any misrepresentation made by the applicant that the benefit of higher pay scale was given to him, but by wrong construction made by the Principal for which the applicant cannot be held at fault. Under the circumstances, the

amount till date may not be recovered from the applicant .”

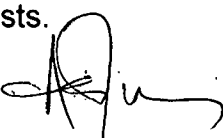
13. In the case of Syed Abdul Qadir [supra], the Hon'ble Supreme Court observed as follows:-

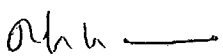
“ This Court , in a catena of decision, has granted relief against recovery of excess payment of emoluments / allowances if [a] the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and [b] if such excess payment was made by the employer by applying a wrong principle for calculating the pay / allowance or on the basis of a particular interpretation of rule / order, which is subsequently found to be erroneous.

The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of which was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, Shyam Babu Verma v. U.O.I, U.O.I vs. M. Bhaskar, V. Gangaram vs. Director, Col. B.J. Akkara [Retd.] vs. Govt. of India, Purshottam Lal Das vs. State of Bihar, Punjab National Bank vs. Manjeet Singh and Bihar SEB vs. Bijay Bhadur.”

14. In the instant case also, there is no allegation that the application was given higher scale of pay on account of any misrepresentation or fraud on his part or that he had knowledge that he was being paid any excess, the wrong was also not detected within a short time. Therefore, in view of the above decisions of the Hon'ble Supreme Court, the respondents were not justified in making recovery of over-payment made due to higher scale of pay given wrongly.

15. Accordingly, the respondents are directed to refund the amount recovered from the applicant, within a period of two months, with interest at the rate of 5 per cent per annum. The impugned order is set aside to that extent. The OA is allowed in part in the manner as indicated above. No order as to the costs.


[A.K. Jain] M [A]


[Rekha Kumari] M [J]

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