CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 497 and 498 of 1999.

Dated this Wednesday the 23rd day of August, 2000.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

APPLICANTS IN O.A. No. 497/99.

1. Vithal Kedari Shinde,
Honarary Divisional Secretary,
National Federation of Postal
Employees Union,
Bombay Sorting Division,
Mumbai - 400 001.

2. Vaibhav Mohan Chavan.

3. Jaganath Annasaaeb Dal.

4. Tukaram Temaji Mathe.

5. Tanaji Baban Mathe.

6. Haribahu Sitaram Dhole.

7. Nathuram Dagdu Vinarkar.

8. Yograj Vasudev Bhangale.

9. Mukand Ratan Tayde.

10. Ashok Pandurang Dharma.

11. Ravindra Kumar Mohanti.

12. Habib Bichava Gavadi.

13. Hiraman Laximan Shirke.

14. I. P. Shaikh.

15. Ashok Bhimrao Surwade.

16. Arun Harichandra Shetye.

17. Sanjay Chandkant Valunju.

18. Gujari Arjun Sukuru.

19. Ananta Bhiku Kosale.

20. Ashok Pandurang.

21. Sunil Balkrishna Hindlekar.

22. Sopan Wamanpatil.

23. Gopal T. Pawar.

24. Laxman Vithalmore.

25. Prabhakar Ramchandra Baviskar.

26. Dhanji Danji Rathod.

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Honarary Divisional Secretary,
National Federation of Postal
Employees Union,
Bombay Sorting Division,
Mumbai - 400 001.

2. Sorra Appalaswamy.

3. Keshav Gedala.

4. Gangadhar Trinath Pedaly.

5. Dutikrishana Niranjan Shahu.

6. P. K. Shethy.

7. Narayan Jagnatha Chowdhare.

8. Sala Baisima Domburi.

9. Ashok Keshav.

10. Ravindra Mudu Salian.

11. Vivek Jayaji Loke.

12. Jagnat Sivram Gawada.

13. Joginder Ganpati Raut. ... Applicants.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
The Director General Posts,
New Delhi, Sanchar Bhavan,
New Delhi - 110 001.

2. The Chief Postmaster General,
Maharashtra Circle, G.P.O. Bldg.,
Mumbai - 400 001.

3. Sr. Superintendent of
Railway Mail Services,
Mumbai Sorting Division,
Development Bank Building,
Near Crawford Market,
Mumbai - 400 001. Respondents
..in both O.As.

(By Advocate Shri V. S. Masurkar).

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The issues involved in the two O.As. viz. O.A. No. 497/99 and 498/99 being identical, these O.As. were heard together and are being disposed of by this common order.

2. In O.A. No. 497/99, the case made before me by the Applicants is as follows :

Applicants aver that they are affected by the impugned wrongful action of respondents in making recovery from their salaries, of amounts paid to them earlier as Overtime Allowance (O.T.A). Applicants were casual labourers with effect from 29.01.1989 and given temporary status with effect from 29.11.1989 retrospectively. All have presently being regularised in Group 'D' in Respondents' office. It is further stated in the application that after grant of temporary status, the applicants, when deployed on overtime work, were paid O.T.A. at rates at par with temporary/regular employees. Applicants contend that as per instructions contained in communication from the Director General, P & T, they are entitled to existing O.T.A. rates. The Applicants further contend that they are operative staff and cannot be called as staff working in an administrative office, and that treating them as of the latter category for payment of O.T.A. is wrong.

3. The grievance of the Applicants is that the respondents have started recovering the alleged excess O.T.A. amounts paid to the applicants, after a lapse of 6 to 8 years. The Applicants'

represented in the matter (Exhibit A.3) and claim that they were personally assured by the then Chief P.M.G. that recovery will be stopped but to no avail. It is with this grievance, that the Applicants are before this Tribunal seeking the relief for directions that no such recovery can be made, as also for refund of amounts already deducted.

4. The Learned Counsel for the Applicants argued the case in detail taking me over, pointedly, to the various documents appended and to the instructions/rules, etc. which he cited in detail as being the basis for his case. The first contention was that as per letter dated 30.11.1992 (page 27) the rates of O.T.A. have to be same. He reiterated the contention that Applicants were operative staff and not staff working in Administrative Office. The Learned Counsel, Shri Kulkarni, referred to the circular dated 09.06.1994 issued by the Department of Posts (page 95 of the paper book) and stated that it was through what he called the misinterpretation of this O.M., that the entire problem has arisen. Shri Kulkarni argued in detail against the interpretation of these instructionsas by Government.

5. He referred more than once to the communication dated 12.04.1991 to state that the Applicant's case was in fact governed by this communication. The 1993 Scheme was not applicable to the Railway/Department of Posts. The order dated 10.06.1994 was not applicable to casual labourers granted

temporary status in accordance with communication dated 12.4.1991 as was the case of the applicants. It was only applicable to those casual labourers granted temporary status under Department's O.M. dated 10.9.1993.

6. The Learned Counsel further stressed the point that, in any case, even assuming that the interpretation of instructions made by Respondents is correct, no recovery can be ordered. No notice has been given prior to the recovery being started. Learned Counsel cited the cases of Nathilal decided by Jaipur Bench of this Tribunal (1997 (35) ATC 57) as also the case of Mahavir Singh decided by Jodhpur Bench (1996)33 ATC 683. Similarly he sought to rely on the case of Bhagwan Shukla decided by the Supreme Court ((1994) 28 ATC 258) as also the case of Shyam Babu Varma ((1994) SCC L&S 683). Thus, he claimed that no recovery can be made in any case and that there is delay and laches on the part of the Respondents.

7. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri V.S. Masurkar first took the point that there was no specific prayer in that no particular order is being challenged, but only the recovery ordered through pay slips. Learned Counsel for Respondents then made the point that no notice was necessary, and if the action of Respondents is held to correct, then that was enough. He argued that a very large number of people were involved, and that this was a case of judicious use of Govt. funds being safeguarded. Hence, it should only be ascertained whether the Govt. instructions are correctly followed or not. He sought to depend on the case of M.C. Mehta vs. Union of India (J.T. 1999) (5) SC 114.

8. Learned Counsel also argued to say that all benefits accorded to the regular employee cannot be made available to casual workers, or others who were not regulars, unless a particular benefit was specifically provided in the rules eg. 50% of service to be counted for pensionary benefit. He contended that recovery of public funds, specially when made in the cases of large number of employees, should not be stalled by Tribunals since public funds are to be accounted for. It was also argued that no interest is being charged and in view of inflation a lesser value is, in fact, being recovered.

9. In regard to the other O.A. No.498/99, the only additional point made by applicants therein relates to the Orders stipulating that one hour be omitted from the number of hours of work put in through over time, while calculating OTA. It was argued by learned Counsel for Applicant that this Rule is not applied to regular staff but only to casual staff, and that the latter, therefore, stood discriminated. This was justified by the Counsel for Respondents in view of Govt. orders, who stated that no special benefits would be claimed by workers who were non-regulars.

10. I have considered the arguments made by learned counsels on both sides, and have also seen the papers in the case, and the case law cited by both sides.

11. Let us first turn to the point as to whether the rules/instructions regarding the rates of payment of O.T.A. have

been correctly interpreted. The Learned Counsel for the applicant relied on the letter of 30.11.1992 (page 27) on the subject of regularisation of Casual Labourers. A number of benefits to which workers like applicants are entitled are enumerated in the said letter in general terms, and I find that this letter will not be enough to decide the matter either way, since the point regarding O.T.A. is not covered. We will have to go into further instructions/orders. Great dependence was placed by Applicants' Counsel on the letter dated 12.04.1991 from the Ministry (page 97) which relates to the Scheme for grant of temporary status and Regularisation of casual labourers. Various types of conditions are listed herein, and it is stated, inter alia, that certain benefits akin to those enjoyed by temporary/Group 'D' employees would be made available to temporary staff with three years service. It is to be noted that again there is no specific decision in regard to Overtime Allowance in specific terms with relevance to the issue before us. There is another letter relied upon by the Counsel for applicant (circulated by the Sr. Superintendent, R.M.S., Mumbai) of the Ministry dated 31.12.1992 again on the subject of grant of temporary status to casual labourers where, indeed it is stated that casual labourers conferred with temporary status are to be paid O.T.A. as per existing rates for casual labourers. This is only an extracted copy of a letter in isolation and it is not clear how it can be relied upon in the background of the other orders discussed above.

12. We now turn to the extracts from Swamy's Handbook 1998 at pages 28 and 29 of the Paper Book. (Learned Counsel on both

sides have used this for arguments). These are general instructions relating to O.T.A. for four specific categories viz. (a) Office Staff (b) Operative Staff (c) Staff Car Drivers and (d) Casual employees. It is the portion under the Heading "O.T.A. to Casual Employees" that we shall further turn to. This states that the O.T.A. rates for the category "Casual Workers having temporary status" will be as admissible for Office Staff as in para 2 above. Now this point was argued on by both sides, and Learned Counsel for Applicants stated that he is governed by the rates for operative staff separately mentioned since they are not Office Staff. Considering the totality of the instructions, we cannot hold that the interpretations of the Respondents is wrong. The Government has taken a conscious decision that such staff like Applicants are to be paid at the rates at which office staff is paid. Their point regarding their being Operative will not override the specific instructions for casual workers. We find no reason why we should sit in judgement over this policy decision. There is no case here for a judicial review, specially in a matter which does not concern matters like pay and allowance, promotion, or any such right but is a matter related to Over Time Allowance. Therefore it cannot be held that the interpretation regarding Rules made by Respondents was defective/wrong.

13. While on this aspect we note that no case of discrimination can be said to be made in the second O.A. (489/99) either, where the point regarding discounting of one hour for calculation of O.T.A. has been made. This is also a policy decision. Thus,

here also we do not find that the Applicants have made out a case for intervention by us on the issue regarding interpretation of instructions/orders.

14. We now turn to the second aspect agitated by the Applicants, viz. the stand that recovery at this stage is wrong. Firstly, we cannot agree with the argument made by the Counsel for Respondents that the mere finding of correctness of interpretation of orders should be the be-all and end-all of the matter. It is stated, in the reply of Respondents, that Casual Labourers with temporary status were paid at the O.T.A. rate applicable to regular group 'D' Operative Staff from April 1994 to May 1997, and later, in the same reply statement, it is stated that the recovery was ordered in July, 1998. Learned Counsel for Applicants mainly depended on the case law cited by him to make the point that recovery should not be made.

15. In the cases cited by Counsel for Applicants listed at para above, we find that the two cases decided by the Supreme Court (Shyam Babu Varma and Bhagwan Shukla), both decided in 1994, are relevant to the present case. We turn to them for deciding the matter relating to recovery being proper or not. The case of Shyam Babu Varma relates to a higher pay scale being erroneously given, and the ratio settled while granting relief is that the higher scale was not given due to any fault of the Applicants and hence it shall only be just and proper not to recover any amount already paid. Similarly, in the case of Bhagwan Shukla, the main

point decided is that no notice was given to the Applicant before his pay was reduced by the Department. This was held to be a flagrant violation of the principles of natural justice and it was held that the impugned order regarding fixation of pay was not sustainable. Now in the present case it is an admitted fact that the payment of O.T.A. at rates higher than those admissible had been made to the applicants though no fault of the Applicant. It was the fault of Administration. It is also an admitted fact that no notice has been given to the Applicant in regard to recovery. Thus, the ratio of the cases of both Bhagwan Shukla and Shyam Babu Varma will apply to the cases before us. A point was made by the Learned Counsel for the applicants to the effect that Government servants were involved in very high magnitude. No details as to how many people would be involved were given. Be that as it may, this cannot be an argument which can be held to decide the issue in favour of the Respondents, in the face of the two judgements of the Hon'ble Supreme Court cited above. The cases of this Tribunal cited also support applicants. It must, therefore, be held that the recovery made from the applicants in both cases in respect of money already paid cannot be made from them. The stoppage of payments at higher rates prospectively from the time it was detected was right but not the recovery of amounts already paid. The case of M.C.Mehta cited by the Learned Counsel for applicants has been seen. It does not apply to this case and cannot help the applicant.

16. Hence, both the O.As. (No. 497/99 & 498/99) are allowed to the extent and in terms of the following orders :

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(i) Although the interpretation made by Respondents of Govt. orders/instructions regarding rates of entitlement of applicants for Overtime Allowance cannot be faulted, the action of Respondents in recovering excess amounts of Overtime Allowance paid to the Applicants is held to be wrongful. It is, therefore, ordered that no further recovery shall be made, and the amounts already recovered shall be refunded to the Applicants in both these O.As. This refund shall be made within a period of 4 months from the date of this order. No interest shall be payable.

(ii) There will be no orders as to costs.