

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

DA 199/93.

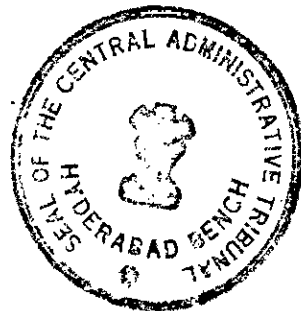
Dt. of Order:29-4-94.

P.Subba Reddy

....Applicant

Vs.

1. Union of India rep. by the
Director General,
Department of Posts,
New Delhi - 110 001.
2. Chief Post Master General,
Andhra Pradesh Circle, Dak Sadan,
Hyderabad-1.
3. Sr.Superintendent of Railway Mail
Service, Hyderabad Sorting Divisions,
Hyd-27.



....Respondents

Counsel for the Applicant : Shri B.S.A.Satyanarayana

Counsel for the Respondents : Shri V.Bhimanna, Addl.CGSC

CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

....2.

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"7. We have, however, taken into account the fact that the respondents took more than seven years in detecting their mistake regarding wrong fixation which resulted in over payment of more than Rs.13,000/- and even after waiver of 50% on compassionate ground, the applicant is required to pay back more than Rs.6,000/- from his salary. When the applicant was given the benefit of revised pay he was not aware that he would have to pay back the excess amount drawn and spent the amount according to the pay scale that enjoyed. Any deduction at this last stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years".

9. Further reference was made to K.S. Sridharan and others V. UOI , 1991 (2) SLJ 230. Relevant observations made in the said case are reproduced below.

" We are of the opinion that when a Govt. servant's pay is fixed and continues draw the same, such pay cannot be refixed to the disadvantages of the Govt. servant, without giving an opportunity to such Govt. servant to show cause why such refixation should not be done. The reason for such proposed refixation might be that it was considered that there some error in the original fixation of pay. But this does not obviate the necessity to set in accordance with the principles of audi alteram partem. Any unilateral action of refixation of pay, without giving such opportunity to the Govt. servant, is vitiated and renders the refixation illegal and without any effect."

After observing the aforesaid judgements this Tribunal in Chamel Singh case ^{ad}restrain the respondents from recovering excess amount paid to the applicant therein.

10. In the instant case the respondents made some serious allegations against the applicant's conduct, in that it is alleged that the applicant fraudulently got the second option certificate inserted in his service records. Such wild allegation in the absence of any definite evidence to establish the same cannot really come to the rescue of the respondents. Admittedly, the respondents acted upon the second option certificate rendered by the applicant and refixed his pay in 1986. Thereafter the applicant continued to receive

5. The respondents in their counter affidavit have stated that initially the Department proceeded on the option given by the applicant on 12-1-74. The second option said to have been given by the applicant was indeed surreptitiously brought on record by the applicant and the respondents ~~was~~ ^{were} made to act on it erroneously. Consequently his pay was refixed w.e.f. 1-4-76. This erroneous refixation was detected when the applicant became due for superannuation. Accordingly the department took necessary steps to recover the excess payment from the applicant.
6. We heard the counsel for both the parties. Mr. B.S.^{A.}R. Satyanarayana, learned counsel for the applicant said that the applicant had given the second option within the extended time given to all such employees. The respondents having accepted the option and having acted upon it as early as 1986 are not justified in ordering recovery of the so called excess amount in the year 1991, that too without even calling ^{for} ~~an~~ explanation from the applicant.
7. Sri V. Bhimanna, learned standing counsel for the respondents urged that ~~though~~ ^{if} the applicant ~~had~~ ^{had} submitted his second option in time, it would have been taken into consideration at the time of allowing the applicant to cross EB. The fact that he was considered for crossing the EB w.e.f. 1-6-85 and not w.e.f. 1-6-84 would show that the applicant did not furnish the second option prior to 1-6-85. In other words the applicant prepared the second option sometime after 1-6-85 and had it inserted in his service records by some unfair means.
8. The applicant's counsel has drawn my attention to Chamel Singh v. UOI SLJ 1992 (1) (CAT) 315. In that case a reference was made to Nilkantha Shah v. UOI 1978 SLJ 307 wherein it was observed as follows:-

pay and allowances as refixed till the time of his retirement in 1991.

11. There is also no dispute that the respondents neither carried out a proper enquiry into the circumstances of the case ^{was} ~~not~~ did they given a show cause notice to the applicant before the impugned recovery order was made. Keeping all this factors in view and also the delay in ordering the recoveries from the applicant, I am of the considered view that the impugned order of recovery cannot stand the scrutiny of law. The same is therefore hereby set aside. The amount recovered from the applicant shall be refunded to him within a period of four months from the date of communication of this order. No order as to costs.

CERTIFIED TO BE TRUE COPY

Date.....

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Copy to:-

1. Director General, Department of Posts, Union of India, New Delhi kmv
2. Chief Post Master General, Andhra Pradesh Circle, Dak Sadan, Hyderabad-1.
3. Sr. Superintendent of Railway Mail Service, Hyderabad Sorting Divisions, Hyd-27.
4. One copy to Sri. B.S.A.Satyanarayana, advocate, CAT, Hyd.
5. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

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