(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 770/95.

Date of Judgment: 11.8.1995.

Between:-

S. Basavaiah.

.. Applicant.

And

1. Chief Post Master General,
Union of India, Andhra Pradesh Circle,
Hyderabad.

2. Director of Postal Services, Union of India,
Office of Post Master General,
Vijayawada Division.

3. Senior Superintendent of Post Offices,
Vijayawada Division.

4. Senior Post Master, ~~Vijayawada~~ Buckinghampet H.O. Vijayawada.
Krishna District.

..... Respondents.

Counsel for the Applicant: Mr.K.S.R.Anjaneyulu

Counsel for the Respondents: Mr.K.Bhaskar Rao, Addl.CGSC.

CORAM:-

HON'BLE SHRI R.RANGARAJAN, MEMBER ADMINISTRATIVE.

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O.A.NO.770/95.

JUDGMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Shri KSR Anjaneyulu, learned counsel for the applicant and Shri K.Bhaskar Rao, learned standing counsel for the respondents.

2. The applicant in this OA is Extra Departmental Agent in Vijayawada Division since 14.6.91. A Committee was formed for revising the allowance to ED staff. The Committee submitted the report and on the basis of it, the cycle allowance was granted from 1.11.1986 onwards. However, the revision of the allowance which was decided earlier on foot beat, was protected if the revision is to a lower scale till 31.10.1987. However, the DGP&T issued the letter No.14-34/88/PAP, dated 21.12.1988 to revise the ED allowance calculating the basic allowance on the basis of cycle beat together with cycle allowance of Rs.20/-. If the allowance as determined above is lesser than the allowance calculated on the basis of foot beat, the difference has to be regulated from 21.12.1988 based on the circular dated 21.12.1988. But it is submitted for the applicant that this was never acted upon till the impugned order issued to the applicant on 21.4.94. The impugned order issued to the applicant is enclosed as Annexure-I of the OA. On the basis of the impugned order, it is stated for the applicant that the allowance was revised with

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retrospective effect from the date of his appointment. The representation dated 22.3.1995 was submitted against the recovery with retrospective effect from the date of his appointment and it is reported that no reply was given to him.

3. It is also submitted for the applicant that the allowance was paid at lower rates as per the impugned order from the date of issue of that order.

4. Aggrieved by the above impunged order revising his allowance downward and recovering the excess paid from the date of his appointment, the applicant herein filed this OA praying for quashing the order revising the allowance retrospectively as arbitrary, illegal, untenable in law and for further direction to the respondents not to make retrospective recovery and to refund the amount already recovered.

5. The applicant in this OA relied on the judgment of the Central Administrative Tribunal, Madras Bench reported in 1993(25) ATC 535 (National Union of Extra Departmental Agents and another vs. Union of Idia) and 1993(25) ATC 655 (T.Kanniappan vs. Union of India). It is the case of the applicant that the recovery cannot be affected unless proper notice is given to him before such recovery is made and on the basis of the explanation recieved from him only the recovery can be affected. This point was considered by the Madras Bench of the Tribunal in Kanniappan's case cited supra. The applicant in that OA (Kanniappan) was also an EDMC and he was paid xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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consolidated amount as allowance according to the rates applicable as per foot beat. By the order dated 9.4.1991 it is ordered that he is entitled for allowance only on the basis of the cycle beat and it was sought to recover the excess allowance paid from the date of his appointment. In that case, the CAT, Madras Bench held as follows:-

> "I also hold that before such recovery with retrsoepctive effect is ordered, it would be necessary to give him a opportunity to show cause against the proposed recovery. It has been held in H.L.Trehan v. Union of India that there could be no deprivation or curtailment of any existingl right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice bygiving the government servant an opportunity of being heard and that any arbitrary or whimsical exercise of power prejudically affecting the existing conditions of service of a Government servant will offend against the provisions of Article 14. It has further been held in several decisions of the High Courts that even where a mistake is sought to be rectified, it can only be done after following the principles of natural justice.
>
> For the above reasons, I hold that the impugned order of the respondent dated 9.4.1991 is bad in law and set-aside. However, it will be open to the respondent to give effect to the scheme of revised rate of allowance prospectively."

A similar order was also given in the case of National Union of ED Agents cited supra. In that case, it was directed to refund the amount which was recovered before issual of the order fixing the allowance down-ward.

7. In view of the fact that similar cases have been ordered to refix the revised allowances from the date of issue of the order after hearing them, there is no need to differ from those judgments in this case also. The learned counsel for the applicant submitted that the revised allowances may be paid to them from the date of issue of the impugned order but the recovery if done earlier to that date should be paid back to him. The learned standing counsel for the respondents has also gracefully accepted the above course as it is covered already by the judgments of the Madras Bench of the Tribunal.

In view of the above, the following direction is given:-

(i) the revised allowance for the applicant shall take effect from the date of issue of the impunged order by R3, the Senior Superintendent of the Post Offices, Vijayawada Division. The amount if any recovered pro retro spectively before the date of issue of the impugned order, the same shall be paid back to the applicant within three months from the date of receipt of a copy of this order.

9. The OA is ordered accordingly. No costs.

(R.RANGARAJAN)
Member (Admn.)

Dated: 11th August, 1995.
Open court dictation.

vsn

Deputy Registrar(J)CC

To

1. The Chief Post Master General,
   A.P.Circle, Hyderabad.
2. The Director of Postal Services,
   Rhim O/o Postmaster General,
   Vijayawada.
3. The Senior Superintendent of Post Offices,
   Vijayawada Division,
   Vijayawada.
4. One copy to Senior Postmaster,
   Buckinghampet - HO. Buckingham pet. Vijayawada.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.K.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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THPED BY CHECKED BY

COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR.R.RANGARAJAN:(M(ADMN)

DATED ----11/9/95--- 1995.

~~ORDER~~/JUDGMENT:

M.A./R.A./C.A.No.

in
OA.No. 770/95

TA.No. (W.P.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

No Spare Copy