

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

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Date of decision: 13.8.97

O.A.No. 112/96.

Between:

and

union of India represented by:

1. The Chief Post Master General,
Andhra Pradesh Circle, Hyderabad.
2. Senior Superintendent of Post Offices,
Vijayawada Division, Vijayawada.
3. Director of Postal Accounts, Office
of Chief Post Master General, Andhra
Pradesh Circle, Hyderabad.
4. Post Master, Buckinghampet H.O.,
Vijayawada. .. Respondents.

Counsel for the applicant: Sri K.S.R. Anjaneyulu

Counsel for the Respondents: Sri V.Rajeswara Rao.

JUDGMENT:

(by Hon'ble Shri H.Rajendra Prasad, Member(A) . *[Signature]*
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[Signature]
Heard Sri D. Subrahmanyam for Sri K.S.R. Anjaneyulu,

learned counsel for the applicant, and Sri V.Rajeswara Rao
for respondents.

2. The applicant was promoted as Mail Overseer
in 1974 and retired on superannuation on 31-7-1995. His
pay was fixed at Rs.240/- p.m. as on 1-1-1975. He drew

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annual increments in the usual course and his pension claim was forwarded for sanction to Director (Accounts) Postal, who is said to have raised an objection that the applicant's pay had been incorrectly fixed from 1.1.1975 and that a sum of Rs.9,101/- had to be recovered as having been paid in excess of his entitlements on account of the wrong fixation and excess drawal of his pay and allowances from 1-1-1975 to 31-7-1995. Consequently, the pay of the applicant was ordered to be curtailed to Rs.1390/- from Rs.1420/-. Gratuity, commutation of the pension and pension due to the applicant were also redetermined on the basis of the reduced pay and the alleged excess Payment was recovered from the gratuity of the applicant.

3. The grievance of the applicant is that his pay which had been fixed in the year 1975, and allowed to continue at the same rate for twenty years until his retirement on 31-7-1995, was arbitrarily reduced retrospectively without any notice and the recovery of alleged excess payment was also made equally arbitrarily.

4. In support of his case the applicant cites Rule 59(1)(b)(iii) of the CCS Pension Rules, 1972 which reads as under:

"Calculation of average emoluments: -- For the

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purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book the Head of office may verify the correctness of emoluments for the period of twenty-four months only preceding the date of retirement of a Government servant, and not for any period prior to that date."

The applicant complains that he played absolutely no role in the alleged wrong fixation of his pay and was therefore in no way responsible for excess payment, if any.

5. The respondents explain the background of facts leading to the excess payment and recoveries. It would appear that the DG (Posts) had decided in June, 1978, to revise the pay scale of eight categories of officials (including Mail Overseer) from Rs.225--350 to Rs.260 -- 350 with effect from 1-1-1978. Later, it was decided that the said revision would be applicable to only five categories from 1-1-1975 and in respect of remaining categories the date of revision would be effective from only 1-1-1978. According to this clarification, the revised scales in respect of Mail Overseers (to which category the applicant belongs)

were to take effect only from 1-1-1978. It is to be

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noted that the revisions and the subsequent clarification was lost sight of in the case of the applicant and his pay was erroneously fixed in the higher scale from 1-1-1975. This was noticed by the Audit after the applicant's superannuation and hence the orders of recovery and other consequential or attendant reductions.

6. Primarily, the contention of the applicant is that he was himself not responsible for the wrong fixation of his pay in 1975; that the pay erroneously fixed was allowed to remain unaltered for more than two decades, that the reduction in his pay and allowances/recoveries of so called excess payments/ reduction in the scale of pension and its commutation/ withholding of the gratuity were purely administrative decisions and were taken unilaterally without a whisper of an advance notice at any stage.

7. The applicant's grievances appear to be based on valid grounds as discussed below.

(a) In NARINDER MARWAH (SMT) vs. UNION OF INDIA [(1994) 26 ATC 179] the Principal Bench of this Tribunal held that recovery from the pay or its reduction on the ground that the earlier fixation was erroneous was bad in law and violated the principles of natural justice as well as the concept of Legitimate Expectation.

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(b) In SWAPAN KUMAR SAHA & OTHERS Vs. UNION OF INDIA

[(1993) 23 ATC. 902] it was held that the recovery after a considerable lapse of time of any over payments which had resulted due to erroneous fitment in a higher grade was arbitrary and violative of principles of natural justice.

In support of this finding the Hon'ble Members relied on the judgments reported in

V.D.CHITALKAR V. UNION OF INDIA: (1987) 2 SLJ (CAT) 305
Delhi

C.S.BEDI V. UNION OF INDIA: ATR (1988 2 CAT 510 (ND)

PUSHPA BHIDE V. UNION OF INDIA: (1989 10 ATC 90
(Jabalpur)

T.R.Sundararaja Iyengar V. P.M.G.Karnataka Circle

[(1989) 9 ATC 43 (Bangalore) & (1989) 1 SLJ (CAT) 238]

Alphonse Louis Earayil V. Secretary to Govt.
of India [(1992) 19 ATC 210 (Ernakulam):
(1990 4 SLR (CAT) 383]

(c) In SAHIB RAM V. STATE OF HARYANA & OTHERS

[(1995) SCC (L&S) 248] it was held that when upgraded pay scales ^{were} given due to wrong construction of relevant order by the Authority concerned and without any misrepresentation by the employee himself, in such circumstances the Authorities would be restrained from recovering any excess payments already made.

(d) In MAHAVEER SINGH vs. UNION OF INDIA & OTHERS

[(1996) 33 ATC 683.] it was held that in cases where over payments were made due to a conscious decision of the Competent Authority

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which was later on considered to be wrong, any subsequent recovery of amount over-paid was not permissible, and the recovery order was therefore invalid. In the same case it was held that any reduction in the pension, on the ground that it was determined on the basis of wrong fixation of pay, was not permissible because the applicant had been in receipt of a particular level of pay, even though owing to an administrative mistake, which could not be rectified after his retirement when his pension was determined on the basis of average pay drawn by him during the 10 months prior to his retirement.

- (e) In P.J. NAIDU V. CHIEF POST MASTER GENERAL & OTHERS [(1996) 33 ATC 489] it was held that verifying the correctness of emoluments fixed on promotion more than 24 months prior to the date of retirement and recalculating the average pay and reducing the same for the purpose of fixing pension was impermissible, particularly when it was done without affording an opportunity to the affected employee. In this case it was also held that the principles of natural justice were violated since no notice was served on the affected employee regarding the contemplated reduction.
- (f) In P.KANDAPPAN V. UNION OF INDIA & OTHERS (O.A.No.813/1996)Ernakulam Bench of this Tribunal) it was held that whenever an order is passed to the detriment of an official, it shall have to be a speaking order with self-evident reasons.

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(g) In NATHI LAL Vs. UNION OF INDIA AND ANOTHER

(O.A.286/1996 of Jaipur Bench of this Tribunal)
it was held that where the retiree was not found at fault or seen not to have made any actuation or misrepresentation for undue benefits while he was in service, the payments made by the order of the Competent Authority for several years, even if wrongly paid in excess, cannot be recovered.

(h) In ARJUN SINGH V. UNION OF INDIA & OTHERS

(O.A.No.130/95) the Jodhpur Bench of this Tribunal held that the recoveries from the retiral benefits of over payments made during the preceding 13 years, solely due to an administrative error, would not be in conformity with the rules and instructions and held further that such withheld amounts should be refunded with interest from the date they become due.

(i) In M.VENKATAPATHY v. UNION OF INDIA

(O.A.No.894/96 of this Bench of the Tribunal held that an alleged erroneous fixation detected at the time of the official's retirement was not valid.

(j) In ADITYA RAO SINGH V. UNION OF INDIA

[(1988) 7 ATC 269] the Allahabad Bench of this Tribunal held that where no show cause notice was served nor an opportunity afforded to the applicant to explain his point of view before reducing his salary, any peremptory

reduction was in violation of principles of

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natural justice. It was observed that inasmuch as the order reducing the salary and emoluments of a person entails civil consequences, it was necessary to provide an opportunity to the affected official to represent his case before passing an order detrimental or prejudicial to him.

(k) In P.K.ANIL Vs. DIRECTOR GENERAL C.S.I.R. & OTHERS

(ATR (1991) 2 CAT(Madras) 96) the Madras Bench of this Tribunal held that any refixation of pay in supersession of the earlier pay fixation order, without notice to the concerned employee to show cause against such refixation, was in flagrant violation of the principles of natural justice.

8. The principle enunciated in the above decisions is so very well established that any further supportive or annotative comment is wholly unnecessary. The proposition vests on the principle of AUDI ALTERAM PARTEM which is basic to the concept of principles of natural justice.

9. In view of what has been discussed above and in the light of plethora of judgments cited, it is evident that the impugned action of the respondents in this case cannot be upheld on any score.

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10. The O.A., is allowed and the orders contained in Letter No. AC/Pen/DS/95 dated 8.8.1995 of the Post Master, Buckinghampet, Vijayawada, (Annexure 1-Page 7-to the O.A.) and Memo No.C4-342/DS dated 9-8-1995 (Annexure 2-page 8-to the O.A.) of the Senior Superintendent of Post Offices, Vijayawada Division, Vijayawada are hereby set aside.

Rs.9,101(Rupees Nine Thousand One Hundred and one) ordered to be recovered from the DCRG of the applicant shall be refunded to him within 30 days from the date of receipt of a copy of this order. It is also directed that the pension (and commutation amount~~y~~ thereof) of the applicant shall be determined and sanctioned on the basis of the pay actually drawn by him during the ^{preceding} ~~preceding~~ ten months of his retirement. Since the above amounts were withheld or ~~not~~ sanctioned and paid due to reasons which ~~are~~ are now ~~be~~ held as invalid, it is further directed that an interest at 10 per cent be added to each of the amounts that may be released in favour of the applicant, from the date that they became due till the date of the actual payment, within sixty days from the date of receipt of a copy of this order.

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To

1. The Chief Postmaster General, Union of India, Hyderabad.
2. The Senior Superintendent of Post Offices, Vijayawada Division, Vijayawada.
3. The Director of Postal Accounts, O/o Chief Postmaster General, A.P.Circle, Hyderabad.
4. The Postmaster, Buckinghampet, H.O.Vijayawada.
5. One copy to Mr.K.S.R.Anganeyulu, Advocate, CAT.Hyd.
6. One copy to Mr.V.Rajeswar Rao, Addl.CGSC.CAT.Hyd.
7. One copy to HHRP.M.(A) CAT.Hyd.
8. One copy to D.R.(A) CAT.Hyd.
9. One spare copy.

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CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE
VICE-CHAIRMAN

and

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 13-8-1997

ORDER/JUDGMENT

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

in

C.A.No.

112/96.

T.A.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.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
श्रेष्ठ / DESPATCH

22 AUG 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH