

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.856/99

Date of Order: 14.12.1999

BETWEEN :

Rukmuddin

..Applicant.

AND

The Superintendent of Post Offices,
Wanaparthi Postal Division,
Mahaboobnagar District.

..Respondent.

Counsel for the Applicant

..Mr.S.Ramakrishna Rao

Counsel for the Respondent

..Mr.V.Vinod Kumar

CORAM :

HON'BLE JUSTICE SHRI D.H.NASIR : VICE CHAIRMAN

O R D E R

[As per Hon'ble Justice Shri D.H.Nasir, Vice Chairman]

Heard the learned counsel Mr.S.Ramakrishna Rao, for the applicant and

The learned counsel Mr.V.Vinod Kumar, for the respondents.

2. The applicant was appointed as EDDA, Rayanapet w.e.f. 13.8.79. His post was however abolished from 13.9.85 and he was treated as surplus ED Agent and alternative appointment was therefore provided to him from 28.7.89 at Madanapuram SO as ED/DA. The applicant further submits that he was drawing Rs.420/- (pre-revised) as the basic allowance being the single EDDA in a large township S.O. like Madanapuram continuously from 1989.

3. Further according to the applicant the Inspection wing of the Director of Accounts (Postal) vide their report submitted in December 1997 pointed out that according to letter No.14/11/87-PAP dated 5/6.1.88 of the Director General of Postal fixing of the allowance of ED Agent was according to cycle beat and instructed the respondent to revise the allowance of those appointed after 1.11.87.

4. According to applicant this was not in order because without working out the revised allowance and without communicating to the applicant that the amount was to be recovered, the respondent unilaterally came to a conclusion that recovery of about Rs.25,000/- was warranted and fixed the amount to be recovered in monthly instalments of Rs.400/- without passing any order in that regard. According to applicant he was taken unaware of such recovery and he was arbitrarily subjected to such recovery.

5. The main plea taken by the applicant is to the effect that the order of recovery was bad in law because the applicant was a pre 1987 appointee. He could therefore not be treated as the post November 1987 employee. The applicant was an ED Agent drawing the maximum allowance of Rs.420/- at the time of discharge and was allowed the same scale of pay on reemployment and on that ground also according to the applicant, there was no rationale in recovering the so called excess payment. The applicant urged that he was displaced due to administrative reasons and placed due to compulsion of rules and that his position as ED Agent who was drawing Rs.420/- could not be altered when he was again brought back to duty.

6. The respondents are opposing the applicant's case firstly on the ground that the applicant had a break in service of about 4 years and therefore had no claim of allowance for the period of break and for that reason the allowance of the applicant was fixed on cycle beat basis and recovery was ordered for the excess allowance paid. Further according to the respondents since the applicant was appointed on regular basis on 28.7.89 he was entitled to basic pay of Rs.278/- but not Rs.420/- and therefore the recovery of Rs.22,616/- was directed to be made in 56 equal instalments at the rate of Rs.400/- p.m. It is also contended by the respondents that the applicant's service as ED Agent was terminated due to

administrative reasons and the applicant was not justified in claiming higher allowance of Rs.420/- basic as against his entitlement of basic of Rs.278/-. The applicant's date of appointment on regular basis could be treated as 28.7.89 but not as 13.8.79 and there was also a break of 4 years in service.

7. It is also contended by the respondents that it was not necessary to give any notice to the applicant as what was sought to be recovered was the excess paid only to the applicant. The learned counsel Mr.S.Ramakrishna Rao, for the applicant submitted that according to the instructions issued by the D.G. Posts vide letter dated 5.1.88 the calculation of the allowance payable to ED Agents should be based on old calculation in case of those ED Agents who were recruited prior to 1.11.87. According to the learned counsel, the applicant was appointed in 1979 and only owing to departmental reasons he was thrown out, but he was reinstated and therefore his date of appointment had to be taken as 1979 and not as 1989. Further according to Mr.S.Ramakrishna Rao it was well established that excess payment made to ED Agent due to administrative fault could not be recovered as observed by Madras Bench of this Tribunal in (1993 (25) ATC 655). In the present case also the applicant's allowance was not revised at the time of reemployment and therefore he was entitled to draw the maximum allowance of Rs.420/- even after reemployment and in any case according to Mr.S.Ramakrishna Rao a notice should have been served upon the applicant before directing recovery from his pay and on that account also according to Mr.S.Ramakrishna Rao the impugned order was illegal and void and that recovery made in pursuance to the said illegal order is also liable to be refunded to the applicant.

8. In a similar situation a Single Member Bench of this Tribunal in OA.980/96 dated 19.8.96 made observation that the Postal Department had introduced cycle beat abolishing foot beat. An order passed in that regard was

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challenged before the Tribunal in that case. The OA was disposed of in terms of the order passed in OA.252/96 in which similar question was involved and in which it was held that "the reduced allowance for the applicants shall be effected from the date of issue of the impugned order by R-2 i.e. the Superintendent of Post Offices, Gudur Division, if they are similarly situated as the applicants in OA.252/96. The amount if any recovered retrospectively for the period prior to the issue of the impugned order be paid back to the applicants within a period of 3 months from the date of receipt of a copy of this order".

9. Similar view was taken in an earlier decision of this Tribunal in OA.69/96 which was disposed of by order dated 23.1.96. The following observation which is relevant to the facts of this case is reproduced herein under :

"The applicants are working as EDDA/EDMC in the Branch Post Office in Mahaboobnagar Division. While they were working thus and receiving allowances as per extant rules, the respondents without prior notice or without assigning reasons reduced the allowances with retrospective effect.

The case of the respondents in the said OAs was that the allowances in respect of the applicants were fixed on the basis of "cycle bear time factor work load" whereas the allowances should have been fixed on the basis of "foot beat time factor". This discrepancy was detected by the audit and accordingly the respondents had ordered necessary revision of the allowances admissible to the applicants. As the order of the respondents was without compliance of principles of natural justice the Tribunal had no hesitation in setting aside the orders therein. There is no reason why the applicants, who are similarly situated should not be given the same relief."

10. With the above observations the OA was allowed and the impugned order was set aside. The respondents were also directed to refund the amount recovered from the applicant.

11. In the case before us no fresh orders are passed in respect of "Recovery" and the recovery is suddenly made from January 1999 without even a notice to the applicant on what account and for what reason the recovery was made. The above rulings could therefore be squarely applied to the facts of the case before us.

12. In the case of Chamel Singh v. Union of India and others reported in 1992 (1) (CAT) 315 the Bombay Bench of this Tribunal held that recovery of wrong payment should not be ordered after long years.

13. On the question of long time having elapsed the action of making recovery is also disapproved by the Bombay Bench by reference to a decision of Calcutta Bench of the Central Administrative Tribunal dealing with a cause of recovery of over payment reported in 1978 SLJ 307 (Nilakantha Shah v. Union of India).

Para-7 of which is relevant is reproduced below :-

"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".

14. The question of no notice having been given to the applicant prior to recovery is also considered by the Bombay Bench of this Tribunal in Chamel Singh's case (supra) in which it is held that when a Government servant's pay is fixed and he continues to draw the same, such pay cannot be refixed to the disadvantage of the government servant, without giving him an opportunity to show cause why such refixation should not be done. The Principal Bench of this Tribunal in Hari Singh v. Union of India reported in 1997 (3) SLJ 36 directed the respondents not to recover over payments if the same was detected after 7 years, in view of the fact that rules provide for such recovery if over payment was detected within one year and procedure in Para-1016 was followed.

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15. In a subsequent decision the Principal Bench of this Tribunal in *Bachan Singh v. Union of India* 1999 (20 (CAT) All India Service Law Journal 1995 held that in a case where pay was reduced and pension refixed after retirement and no notice is given and no representation is even considered, rules provide for recovery within one year and empower waiver there after which if not considered, was clearly in violation of principles of natural justice and such orders deserved to be quashed.

16. From the above rulings, the application of which cannot be denied to the applicant's case before us, the following points emerge:-

- (I) The reduced allowance can be effected only from the date of impugned order.
- (ii) Recovery made, if any, prior to the impugned order should be refunded.
- (iii) Recovery orders issued without prior notice was violative of the principles of natural justice and deserved to be quashed and set aside.
- (iv) In a case where mistake is pleaded, the detection of such mistake after as many as seven years cannot be treated as rendering any justification for making the recovery and the same cannot be viewed with an eye of approval.

17. With the above situation in view, the recovery already made in the case before us without any specific order and without any notice to the applicant is bad in law and the deductions made in that regard from the applicant's pay deserve to be refunded forthwith. Future recovery cannot be permitted without following the rules of natural justice.

18. The submission made by the counsel Mr.S.Ramakrishna Rao that the applicant was not liable to pay back the alleged excess payment on the ground that the applicant was appointed prior to 1.11.87 also cannot be accepted, because the applicant's appointment made on 28.7.89 was a fresh appointment which is an undisputed fact and he cannot claim the protection of pre 31.10.1987 as provided in para 3 (i) of the letter No.14/11/87-PAP dated 5/6.1.1988 issued by the Director General, Posts, New Delhi appearing in this case immediately after the reply

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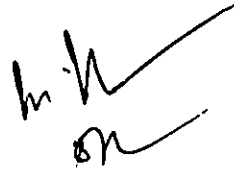
statement dated 19.8.1999 on the record of this case. However, the applicant shall be at liberty to press into service that the terms and conditions of the applicant's letter of fresh appointment (Annexure A-III at page 9 of the OA) ^{were} ^{at} was silent about the requirements of the letter dated 5/6.1.1988 and on that ground also the applicant was not liable to suffer reduction of his emolument, if and when it becomes necessary to initiate a fresh proceeding on this subject, so that the same could be examined on merit, but at this stage it is not found necessary to deal with that point.

19. The OA is therefore allowed accordingly. The disputed recovery is not justified and hence the same cannot be enforced against this applicant. The recovery already made, if any, shall be refunded to the applicant on or before 31.1.2000. No costs.


(D.H.NASIR)
Vice Chairman

Dated : 14 December, 1999

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on

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

1ST AND 2ND COURT

COPY TO.

1. HON'BLE ✓
2. HRRN M (ADMN) ✓
3. HRRN M. (JUDL) ✓
4. D.R. (ADMN) ✓
5. SPARE ✓
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE DH. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

DATE OF ORDER

14/12/99

MA/RA/CP. NO.

IN

CA. NO.

856/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

OR CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(6 copies)

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