IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of September, 2009

ORIGINAL APPLICATION No. 03/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Madan Lal Soni,
s/o Shri Chauth Mal Soni,
r/o Dadhichi Nagar, Sikar,
voluntary retired from the post of
Postal Assistant (BCR), Saving Bank
Control Organisation, Ratan Garh Head Office,
Churu Postal Division, Churu

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan, Western Region, Jodhpur
3. The Superintendent of Post Offices, Churu Postal Division, Churu
4. Director of Accounts (Postal), Jaipur
5. Post Master, Ratangarh Head Post Office, Ratangarh, Churu.

... Respondents

(By Advocate: Shri Gaurav Jain)

ORDER

Per Hon'ble Shri M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying for quashing the impugned order dated 24.11.2004 (Ann.A/1) and show-cause notice dated 6.8.2004 (Ann.A/2) with further prayer that respondents may be directed to refund Rs. 13623/- which amount has been recovered from the applicant with interest and further retiral benefits may be paid to the applicant on the pay of Rs. 6950/- instead of Rs. 6800/-. The applicant has also prayed for quashing letter dated 18.9.2000 (Ann.A/13) which deals as to how the pay fixation on two promotions under TBOP and BCR cadre before the date of next increment of lower cadre in UDC/PA cadre has to be regulated.

2. Briefly stated facts of the case are that the applicant while working as U.D.C.(SBCO), Fatehpur Shekhwati H.O. under Sikar Postal Division in the pay scale of Rs. 1200-2040 was drawing pay of Rs. 1560/- w.e.f. 1.12.1990 with date of next increment 1.12.1991. On introduction of Time Bound One Promotion (TBOP) scheme at par to P.A. in SBCO, the applicant was considered and granted TBOP in the next higher scale of Rs. 1400-2300 w.e.f. 1.8.1991 vide Memo dated 24.1.1992. Accordingly, his pay was fixed in TBOP scale at Rs. 1640/- w.e.f. 1.8.1991 with date of next increment 1.8.1992. It is also not disputed that second financial upgradation/promotion on completion of 26 years of service in basic cadre was also introduced w.e.f. 1.10.1991 and the applicant was further placed in the next higher scale of HSG-II in PA in the scale of Rs. 1600-2660

under BCR scheme w.e.f. 1.1.1996. This order was further revised vide Memo dated 18.6.1996 and the applicant was allowed HSG-II cadre w.e.f. 1.10.1991 retrospectively due to adverse effect of his seniority from his immediate juniors in the cadre. On retrospective promotion to the BCR scale, the applicant had opted his fixation of pay w.e.f. his date of next increment in lower cadre i.e. LSG PA cadre w.e.f. 1.12.1991 and he had also represented to revise his pay in LSG cadre w.e.f. the date of next increment in UDC i.e. from 1.12.1991. Accordingly, pay of the applicant was fixed with date of next increment in lower cadre of UDC/PA i.e. 1.12.1991 in both the cadre i.e. LSG/BCR. Since the applicant was granted double benefit of option on the same date by the Postmaster, Silkar, the respondents revised the pay fixation order and the over payment was ordered to be recovered. Feeling aggrieved by the action of the respondents, the applicant has filed OA No. 198/2003 before this Tribunal. This Tribunal vide order dated 23.4.2004 quashed the impugned order dated 22.6.2002 as the Tribunal was of the view that the action of the respondents was in violation of the principles of natural justice as no show-cause notice was given to the applicant before reducing his pay and effecting recovery. It was further observed that this order will not prevent the respondents from passing appropriate order following the principles of natural justice. Pursuant to the order passed by this Tribunal, the respondents issued show-cause notice dated 6.8.2004 thereby giving opportunity to the applicant to file representation in writing within 15 days from the date of receipt of the said notice. The

applicant submitted representation, which was considered by the respondents and ultimately passed a detailed order dated 24.11.2004 thereby rejecting claim of the applicant. It is these orders which are under challenge before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. In para 4(iii) of the reply affidavit the respondents have placed reliance upon the clarification issued by the D.G. Posts, New Delhi vide letter dated 18.9.2000 which stipulates that double benefit of fixation from the date of next increment of lower grade of UDC (SBCO)/PA cadre should not be allowed under saving clause of FR-22 (1(a)(i) and also reproduced the fixation made/drawn by the applicant and correct fixation as was admissible to the applicant in terms of letter dated 18.9.2000 (Ann.A/13). As can be seen from this chart, it is clear that pay of the applicant as on 31.7.1991 in the scale of Rs. 1200-2040 was at Rs. 1560/-. The applicant was granted TBOP promotion in the scale of Rs. 1400-2300 w.e.f. 1.8.1991. Thus, his pay was correctly fixed at Rs. 1640/- by granting benefit of two increments. He was granted benefit under BCR scheme in the same year w.e.f. 1.10.1991 and his pay was fixed at Rs. 1650/- with date of next increment as1.8.1992. However, subsequently his pay was refixed in the BCR scale on account of his option in the lower cadre of UDC/PA at Rs. 1750/-. At this stage, the respondents have committed mistake while refixing pay of the applicant as on 1.12.1991 at Rs. 1750/- and simultaneously granting increment on 1.8.1992 which course was not open for the respondents, inasmuch as, the increment is

granted after completion of 12 months' service. In this case, the applicant has opted for increment w.e.f. 1st August, 1992. Thus, the applicant was not entitled to refix his pay w.e.f. 1.12.1991 under BCR scale when he has never exercised his open for deferring his increment when he was granted TBOP promotion in the scale of Rs. 1400-2300 w.e.f. 1.8.1991 which formed basis for granting benefit of increment instead of 1.12.1991. Thus, we see no infirmity in the action of the respondents whereby pay of the applicant was fixed in the manner as suggested in para 4(iii) of the reply and pay of the applicant as on 1.6.2002 i.e. the date of voluntary retirement was correctly fixed at Rs. 6800/- instead of Rs. 6950/- as claimed by the applicant. As such, we see no infirmity in the action of the respondents so far as fixation of pay of the applicant is concerned. As already stated above, pay of the applicant as on 31.7.1991 was Rs. 1560/- and within five months, the applicant was granted three financial upgradation instead of two financial upgradation with next date of increment as on 1.8.1992 which course, as stated above, was not permissible for the respondents and the respondents have committed illegality whereby order of refixation has been corrected subsequently.

4. The second question which requires our consideration is whether the applicant can be granted equitable relief for refund of a sum of Rs. 13,623/- which amount was recovered from the applicant on account of excess payment made to him.

5. We have given due consideration to the submissions made by the learned counsel for the applicant. According to us, the

matter is covered by the decision rendered by the Larger Bench of the Tribunal at Calcutta in OA No.1227/2005, Sudhir Kumar Pal vs. Union of India and other connected matters decided on 15.1.2009. As can be seen from para 10 of the said judgment, vi) issues were formulated for consideration by the Larger Bench. At this stage, we wish to quota Issue No.iv), v) and vi), which thus reads:-

> "…..
> (iv) Whether the character and requirement for a refund would differ as between cases where the payment was made at the behest of the concerned individual, and cases where he had not by himself contributed to the situation.
> (v) Can the matter be considered as settled by the decision of the Apex Court, when it is obvious that Rule 71 of the Central Civil Services Pension Rules had not been adverted to at any point of time.
> (vi) What can be the nature of the reliefs that could possibly be extended to the applicants in view of the Government of India OM dated 6.2.1952, while explaining Rule 17 of the Delegation of Financial Powers Rule, 1978."

The Larger Bench after considering the judgment of the Apex Court in paragraph No. 21 to 24 has held as under:-

> "21. In a circumstances where the employee concerned was not by himself responsible for the situation, the question is whether a different yardstick required to be employed. At the first blush, it could be felt that this situation require to be carved out for a separate treatment. We are conscious of the observations made by the Supreme Court in Shyam Babu Verma's case (supra) that it was only just and proper not to recover excess amounts, paid to the employee as the process is likely to result in hardship. In Col. Akkara, this specific issue has been addressed in Paragraph 28 of the judgment, which we may extract hereunder:-
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> > "Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will

> cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

The Supreme Court had taken notice of a variety of situations such as long duration of payments, bonafide belief, hardships that may involved etc. as extenuating circumstances, while a knowledge that one was receiving excess payment, expedition with which recovery steps followed up etc. should on the other hand support enforcement. Ultimately, it is left to the realms of judicial discretion, Court may on the facts and circumstances of a particular case refuse to grant relief against recovery. In this context, we may also deal with question No.5 posed earlier namely whether the issue could be decided as settled under Rule 71 of the CCS (Pension) Rules. It is admitted on all sides that the above aspect had not been adverted to at any point of time in the cited decisions. Of course, the rules refers to a situation where Government servant is on the verge of retirement. Positively it is required that the Government dues outstanding are ascertained and assessed by the Head of the Office as on the date of retirement of the Government servant. It requires to be adjusted against the amount of gratuity, which is becoming payable. Such a contingency has not arisen here, as the employees are continuing in service. As gatherable form the records they have a few more years of service remaining for superannuation.

22. Under Rule 71, dues pertaining to Government accommodation including arrears of licence fee, overpayment of pay and allowances/leave salary and arrears of income tax deductible at source etc. come within the expression. When the authorization is there to deduct such dues even at the time of retirement, from the gratuity payable, by necessary implication it has to be assumed that there is no limitation at all is envisaged. In fact Limitation Act do authorize retention of money, which has legally come to a party, to be set off against the claims otherwise barred. If that be the position, there cannot be a legal ban to make deduction form the salary payable from time to time when overpayments are admitted.

23. At this point, we may notice that the rule does not differentiate between payments made by a mistake and payment made on misrepresentation or even by Court orders. The view taken by the Division Bench in Sanatha Kumar's case (cited supra), therefore, becomes relevant and

an answer to the situation. It had been categorically held that there was a duty for the Government to effect recovery in respect of overpayments, for the reason that such payments had been made over and above the entitlement of the employee. Perhaps such recoveries may create difficulty to the person concerned, and especially as cited by the Supreme Court, in respect of low paid employee. But when the statutory provision is un ambiguous and mandatorily worded that recovery is to be made, even at the time of retirement, The Tribunals are not expected to strike a different note, for the only reason that this does not appeal to them as just. Courts are expected to enforce the law, and are not expected normally to lay down their opinion, overlooking the statutory prescriptions. We find that power is vested with the administration to go on with recovery irrespective of whether there was inducement at the hands of the employee or where overpayments have resulted by oversight of some other person. To suggest in absolute terms that recovery is impermissible where the concerned employee was not involved in the fixation of pay would lead to a dangerous position, and also not too desirous situations. Definitely such a view would result in administrative and supervisory lethargy, and anull standards of devotion and efficiency. Government acts through its officers and an abstract approach may not be therefore, tenable.

24. When mistake is committed in matter of refixation correspondingly there has to be an individual who become answerable for the lapse. The government is not expected to suffer a loss for the oversight of an officer. If a person has come across benefit by a mistaken payment, it might directly be because of a reason that his counterpart had not been vigilant in discharging his duties. Ultimately, the question will be as to whether the beneficiary is to be let off, and responsibility to compensate the Government should be shunted on to the person who was negligent. It would always be equitable that the person who got the benefit is compelled to refund the amount. Pension Rules imposes a duty on the Head of the Office to ensure that govt. dues are recovered, which by itself indicate that if such procedure is not followed, ultimately the concerned authority becomes answerable for the loss that has resulted. This leads us to conclude that irrespective of involvement or otherwise, in case of an overpayment, a liability for reimbursement normally could not be got over. The money requires to come back to the Government exchequer. A refund cannot normally be avoided."

Thereafter the Larger Bench considered Rule 17 of the Delegation of Financial Powers Rules, 1978 as also the instruction dated 6.2.1995 and in paragraph 27 held as under:-

> "27. Mr. De, had, thereafter taken us to Rule 17 of Delegation of Financial Powers Rules, 1978. Government has power to waive or to write off excess payment upto certain limits. Government of India decision No.1, under Rule 17 is an index. Policy advisedly is to enforce recovery unless it is impossible and where the concerned employee is not clearly entitled to the benefit received by him. The Notification G.I., M.F., O.M. No.F.24(5)-EG-1/52 dated 6.2.1952 runs as following:-
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> > "Recovery of overpayments made to Government servants should not be waived merely on the ground that the overpayment was made in good faith and that recovery would cause hardship. In this connection attention in invited to Para 5 of the report of the Military Accounts Committee on the appropriation Accounts for 1943-44, wherein it has emphasized that every overpayment of money to a public servant is, and must be regarded as a debt owed to the public and all possible action should be taken to recover it with dispatch. The policy of the Government will be to enforce recovery in all cases where it is possible and where the Government servant concernedis not clearly entitled to the money is question even after it has been drawn in good faith. It is now however, intended that the extreme criterion of physical impossibility to recover the dues should be enforced, where such recovery might cause, in the opinion of the competent authority, undue hardship or distress in genuine cases."
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> Ultimately, we find that in Shyam Babu Verms and Col. Akkara' cases (cited supra), the Supreme Court had applied the quintessence of the above principle. In any case of deduction, the concerned employee will have a right to address the Government on the issue for appropriate waiver, the situation may justify. "

Ultimately, the reference was answered in the following terms:-

> "28. Overpayments, received irrespective of the manner in which they came into operation, are recoverable and are debits of the concerned person to be repaid to Administration. However, in the matter of recovery there is discretion vested in the Government as referred to in the OM

cited (supra). A Court will have jurisdiction in the matter only to a limited extent viz. when there is arbitrariness in the discretion employed by the Government while deciding about the extent of recovery."

6. Thus, in view of the decision rendered by the Larger Bench of 5 Members, which we are bound to follow, it will be open for the applicant to make representation to the appropriate authority for waiver of the amount in terms of Government of India, Ministry of Finance OM dated 6.2.1952, as reproduced above, at the first instance. It is only thereafter the applicant can approach this Tribunal and the matter can be decided in the light of the findings recorded by the Larger Bench in Para 28 above.

7. With these observations, the OA stands disposed of with no order as to costs.

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

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