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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.168/98

Date of order: 20/10/99

Manna Lal Bhil, S/o Shri Mangal Ram Bhil, R/o 2119,
Near Mistri Khana, Gangori Bazar, Jaipur.

...Applicant.

VS.

1. Union of India through the Secretary to the Govt. of India, Deptt. of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Southern Region, Ajmer.
4. Senior Superintendent, Railway Mail Service, JP Dn, Jaipur.
5. Superintendent, Railway Mail Service, J. Dn, Ajmer.

...Respondents.

Mr.P.N.Jati - Counsel for applicant

Mr.M.Rafiq - Counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order dated 12.1.98 (Annx.A1) and order dated 3.10.96 (Annx.A6) and to direct the respondents not to deduct Rs.10,436/- from the gratuity payable to the applicant.

2. In brief facts of the case as stated by the applicant are that while working as HSA, Udaipur RMS, applicant had performed over-time duties from 1993 to 1996 and he was paid over-time allowance. But the respondents tried to recover the same stating that the applicant is not entitled to over-time allowance. O.A No.251/97 was filed by which this Tribunal had observed that recovery can only be made after giving an opportunity to the applicant. The applicant filed reply to the show cause notice dated 19.11.97 and thereafter the impugned order dated 12.1.98 was issued for recovering Rs.10,436/- from the applicant. It is stated that the impugned order of recovery is arbitrary and illegal. The competent authority has sanctioned the over-time allowance, therefore, no recovery can be made from the applicant. It is, therefore, prayed that the impugned order of recovery be quashed and respondents be directed not to recover this amount from the gratuity payable to the applicant.

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3. Counter was filed. In the counter it has been stated by the respondents that Rs.10,436/- were wrongly sanctioned to the applicant as he was not entitled for the same as per rules. It is stated that the applicant was drawing substantive pay of Rs.2250/- per month and as per D.G Posts letter dated 20.3.91, the applicant was not entitled to over-time allowance because of his substantive pay of Rs.2250/- per month. It is stated that similar controversy has also arisen in O.A No.458/97 and O.A No.502/97 and this Tribunal took the view that the respondents committed no error in recovering the excess payment of over-time allowance. Therefore, this O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder has also been filed which is on record. In the rejoinder it has been stated that the decision given in O.A No.458/97 is not para materia of this case and the applicant should not be suffered because of the mistake of the Govt.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant during the course of his argument has submitted that any amount paid by the competent authority cannot be recovered from the applicant on the ground that it was paid wrongly. In support of his contention, he has referred 1995 SCC (L&S) 248, Sahib Ram Vs. State of Haryana and 1995 SCC (L&S) 522, State of Orissa Vs. Adwait Charan Mohanty.

7. He has also referred certain orders passed by the Tribunal which are as under:

ATC 1992 Vol. 21 page 645
ATC 1992 Vol. 21 page 826
1996(2) SLJ Vol.60 page 434
1996(3) SLJ Vol.61 page 223
1997(1) SLJ page 232
1997(2) SLJ page 192
1997(2) SLJ page 365
1997(2) SLJ page 473
1997(3) SLJ page 92
1997(3) SLJ page 223
1997(3) SLJ page 376
1997(3) SLJ page 586
1994(3) SLJ page 334.

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8. On the other hand the learned counsel for the respondents has opposed all these contentions made by the learned counsel for the applicant and submitted that the legal citations referred by the applicant are not applicable as the facts and circumstances of the instant case are different.

9. The clear cut stand of the respondents in the instant case has been that when it has come to the notice of the respondents that the overtime allowance paid to the applicant has been against the criteria laid down in D.G Posts letter dated 20.3.91

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and the applicant while working as HSA, RMS Udaipur, had drawn more than Rs.2200/- per month as his pay and has drawn Rs.10436/- as over-time allowance which was not admissible to him according to the rules. Therefore, it was ordered to recover the same from the amount of gratuity payable to the applicant and this way Rs.10436/- has been recovered from the DCRG payable to the applicant as the over-time allowance paid to the applicant was not at all payable as per rules. Hence in my considered view the respondents have not committed any irregularity or illegality by issuing the impugned order.

10. I have also given thoughtful consideration to the Over-time Allowance Rules. Para 4.1 of the notification regarding over-time allowance payable to the Central Govt employees which reads as under:

"4. Operative Staff

(1) Operative staff drawing pay (as defined in F.R 9(21))
(a) upto Rs.2200/- per month under CCS(RP) Rules, 1986 and falling in the categories already identified by the concerned Department as Operating Staff, shall be paid OTA at the following rates:


| Emoluments range | OTA per Hour Working days | Holidays |
|-------------------|------------------------------|-----------|
| Upto Rs.1200 | Rs 7.95 | Rs. 10.60 |
| Rs.1201 - 1450 | Rs.9.55 | Rs.12.75 |
| Rs.1451 - 1700 | Rs.11.35 | Rs.15.15 |
| Rs.1701 - 1950 | Rs.13.15 | Rs.17.55 |
| Rs.1951- 2200 | Rs.15.95 | Rs.19.95 |
| Rs.2201 and above | Rs.15.95 | Rs.21.15 |

11. From a perusal of the table given as above, it is clear that pay as defined in these rules is including Dearness Pay, Compensatory Allowance, Composite Hill Compensatory Allowance, excluding all other allowances, incentive, etc. It is undisputedly clear that in the instant case during the whole period from 1993 to 1996, the applicant was in receipt of pay more than Rs.2200/- per month which is decidedly the upper limit for the category of the applicant for admissibility of over-time allowance. The applicant cannot be allowed to take advantage of this situation that he has been paid the amount therefore it cannot be recovered.

12. I am, therefore of the considered opinion that the respondents have committed no irregularity or illegality while issuing the impugned order for recovery of over-time allowance wrongly paid from the balance of Gratuity payable to the applicant and the order passed in O.A No.502/97 are para materia with the case in hand and the legal citations referred

by the learned counsel for the applicant in no way helps the applicant as the facts and circumstances of the instant case are different.

13. The O.A is, therefore, dismissed with no order as to costs.


(S.K. Agarwal)
Member (J).