

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.511/2000

Date of order: 20/2/2002

Babulal Vyas, S/o Sh.Gyarsi Ram, R/o 51, Indira  
Colony, Alwar.

...Applicant.

Vs.

1. Union of India through Secretary, Govt of India,  
Deptt of Posts, Mini.of Communications, New Delhi.
2. Chief Post Master General Rajasthan Circle, Jaipur.
3. Dy.Director of Accounts (Postal) Tilak Nagar, Jaipur
4. Sr.Supdt.of Post Offices, Alwar Division, Alwar.
5. Asstt.Post Master(Accounts) Head Post Office, Alwar.

...Respondents.

Mr.K.L.Thawani : Counsel for applicant

Mr.S.S.Hasan, proxy of Mr.S.M.Khan - for respondents.

CORAM:

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

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

In this O.A filed under Sec.19 of the ATs Act, 1985,  
the applicant makes a prayer to quash and set aside orders  
at Annx.A1 dated 18.10.2000 and Annx.A2 dated 19.10.2000 and  
to direct the respondents to pay pension to the applicant  
with interest after treating the entire period from  
21.6.1982 to 25.6.1992 as qualifying period towards pension  
as per this Tribunal's order dated 14.7.2000 in O.A  
No.597/95.

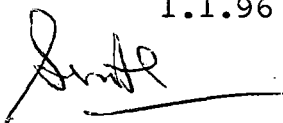
2. In brief, facts of the case as stated by the  
applicant are that while he working as Postal Clerk, <sup>he</sup> was  
compulsorily retired w.e.f. 21.6.82. The applicant  
challenged the said order vide T.A No.607/86 and this  
Tribunal set aside the impugned order vide order dated



19.12.91 with the liberty to the respondents to revise the proceedings and continue it in accordance with law from the stage of supply of enquiry report. The Sr.Suptd.of Post Offices, Alwar, in compliance of the orders of the Tribunal, supplied copy of the enquiry report to which the applicant submitted his defence and penalty of compulsory retirement was again inflicted on the applicant w.e.f. 25.6.92 treating the period of deemed suspension from 21.6.82 to 25.6.92 as leave due. The disciplinary authority subsequently issued order dated 23.6.93 and cancelled the following portion of his order dated 25.6.92:

"It is further ordered that the period of suspension will be treated as leave due but in no circumstances the leave salary should be less than the subsistence allowance already due.".

The applicant challenged the impugned order dated 23.6.93 through O.A No.597/95 before this Tribunal which was decided vide order dated 14.7.2000. This Tribunal vide its order dated 14.7.2000 quashed the impugned orders and directed the respondents to finalise the pay and allowances of the applicant in terms of the order of the disciplinary authority dated 25.6.92, within a period of 3 months. It is stated that in pursuance of this order, the respondents instead of increasing the pension had reduced the pension from Rs.1621/- to 1546/- per month vide the impugned order at Annx.A1 and also issued orders of recovery of Rs.5124/- vide order Annx.A2. It is stated that the applicant was sanctioned pension of Rs.1621/- per month w.e.f. 1.1.96 in view of the orders of the disciplinary authority passed on 25.6.92 but the same have been reduced to Rs.1546/- w.e.f. 1.1.96 considering the same order and without making any

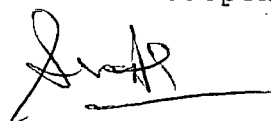


fixation of pay & allowances effective from 25.6.82 and the order of recovery of Rs.5124/- has also been issued with a view to harass the applicant. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply, it is stated that the applicant was initially retired on 21.6.82 but ultimately his retirement was effected from 25.6.92. It is stated that the pension of the applicant was incorrectly revised from Rs.375/- to Rs.1621/- assuming his date of retirement as 21.6.82 in place of 25.6.92 treating him pre 1986 pensioner instead of post 1986 pensioner and this error was committed because of the false information furnished by the applicant. It is stated that at the time of finalising the pension as per the order passed by this Tribunal on 14.7.2000 in O.A No.597/95, the error was detected and the pension of the applicant was refixed at Rs.1546/- per month which is correct as per his date of retirement as on 25.6.92. Thus, the order for recovering Rs.5124/- was also issued. Therefore, the applicant has no case for interference by this Tribunal.

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

5. It reveals that the applicant was earlier retired compulsorily w.e.f. 22.6.82 thereafter, ultimately he was retired w.e.f. 25.6.92. The provisional pension was granted @ Rs.375/- w.e.f. 26.6.92 subject to revision on regularisation of his suspension period by the competent authority. It also appears that vide order dated 14.7.2000 passed by this Tribunal in O.A No.597/95, the period of suspension from 22.6.82 to 25.6.92 was regularised by converting the suspension period into leave of any kind due as admissible

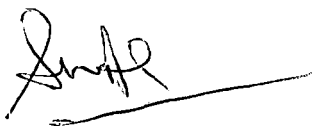


to the applicant. Therefore, in compliance of the order dated 14.7.2000 passed by this Tribunal, while recalculating the pension of the applicant, it was found that due to wrong information furnished by the applicant while applying for revision of pension as on 1.1.96, the pension of the applicant was incorrectly revised from Rs.375/- per month to Rs.1621/- per month assuming his date of retirement as 21.6.82 instead of 25.6.92, treating the applicant as pre-1986 pensioner instead of post 1986 pensioner. Therefore, the pension of the applicant was revised from Rs.1625/- per month to Rs.1546/- per month. Thus, the error detected at the time of compliance of the order dated 14.7.2000, was rectified and after such rectification the pension of the applicant was revised from Rs.1621/- per month to Rs.1546/- per month. Therefore, I am of the opinion that while rectifying the error/mistake, the respondents' department has not committed any illegality or irregularity.

6. On a perusal of Annx.A2, it appears that the pension @ Rs.1621/- per month was incorrectly fixed and after recalculation, in pursuance of the order dated 14.7.2000 passed in O.A No.597/95, the error committed by the respondents' department was rectified and pension @ Rs.1546 per month was fixed w.e.f. 1.1.96 and thus excess payment made to the applicant comes to Rs.5124/-.

7. As regards recovery of excess payment made is concerned, the law is well settled on the point that in all cases where the government has fixed the pay suo mottu even if the Govt has fixed the pay wrongly, no recovery can be made after a long lapse.

8. In Shyam Babu Verma & Ors Vs. UOI & Ors, (1994) 2 SCC 521, it was held by the Supreme Court that the



petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him.

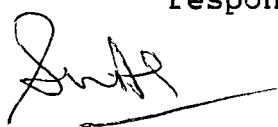
9. In Sahib Ram Vs. State of Haryana & Ors, 1995(Supp (1) SCC 18, it was held by Supreme Court that upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt was restrained from recovering the overpayment already made.

10. In Collector of Madras & Anr. Vs. K.Rajamonickam (1995) 2 SCC 98, it was held by the Supreme Court that the respondent was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during that period was prohibited.

11. In UOI & Ors Vs. Ram Gopal Agarwal & Ors, (1998) 2 SCC 589, it was held by the Supreme Court that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered.

12. In State of Haryana Vs.Om Prakash & Anr. (1998) 8 SCC 733, it was directed by the Supreme Court that in case he had withdrawn that amount, the same should not be recovered from him.

13. Merely, that the applicant has furnished a statement that he is pre 1986 retiree or retired from 21.6.82 in place of 25.6.92, does not give an authority to the respondents' department to recover Rs.5124/- already paid to the applicant as excess pension. It was the duty of the respondents while fixing the pension to verify/attest the




particulars as mentioned by the applicant in the requisite form. Therefore, merely that the applicant himself has given incorrect information in the form does not empower the respondents' department to recover the amount already paid.

14. Therefore, on the basis of the above legal position and the facts and circumstances of this case, I am of the considered view that no recovery can be made from the applicant in pursuance of the impugned order at Annx.A2.

15. I, therefore, allow this O.A partly and direct the respondents not to make recovery Rs.5124/- from the applicant in pursuance of order at Annx.A2.

16. No order as to costs.



(S.K. Agarwal)

Member (J).