

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.75/2001

Date of order: 12/4/2002

Mukut Behari Sharma, S/o Sh.Ramanand Sharma, R/o 458
Mahaveer Nagar, Tonk Road, Jaipur.

...Applicant.

Vs.

1. Union of India through the Assistant Commissioner,
Kendriya Vidyalaya Sangathan, 92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur.
2. Principal, Kendriya Vidyalaya, Bajoria, Sawai
Madhopur.
3. Education Officer, Kendriya Vidyalaya Sangathan,
Regional Office, Jaipur.

...Respondents.

Mr.Manish Bhandari : Counsel for applicant
Mr.V.S.Gurjar : Counsel for respondents.

CORAM:

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

Hon'ble Mr.A.P.Nagrath, Administrative Member.

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

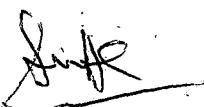
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant has challenged Annx.A8 by which he was directed to deposit Rs.14,476/- which the applicant received as transfer benefits in pursuance of his transfer from Suratgarh to Sawai Madhopur.

2. In brief, facts of the case as stated by the applicant are that he was transferred from Kendriya Vidyalay Air Force, Suratgarh to Kendriya Vidyalay Sawai Madhopur vide order dated 5.8.97 but this order could not be effected and by over-laping this order on the same day another order was issued by the respondents' department by which his

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services were sought at Jaipur and the applicant remained posted at Jaipur for 3 months and relieved him on 15.11.97 for joining at Kendriya Vidyalay, Air Force, Suratgarh. It is stated that the applicant was ultimately relieved in the month of December for joining at Kendriya Vidyalay, Sawai Madhopur in pursuance of order dated 14.12.97. It is further stated that the applicant was paid Transfer TA/DA by the respondents and after expiry of 3 years, the applicant was served with a notice dated 11.12.2000 directing him to deposit Rs.14,476/- which was paid to him as Transfer TA/DA on the ground that this payment was not admissible to him as he had not completed 5 years stay at Suratgarh on the date of his transfer order. The applicant filed representation but without dealing with the point raised in the representation, the impugned order was passed. It is stated that the impugned orders dated 11.12.2000 and 22.12.2000 are totally illegal and without jurisdiction as the respondents did not consider the fact that the order dated 5.8.97 was not given effect on account of the overlapping order issued on the same day. In pursuance of order dated 14.12.97, the applicant was relieved from Kendriya Vidyalaya Suratgarh and by that time the applicant had completed 5 years of stay at Suratgarh. Therefore, the recovery of the transfer TA/DA after 3 years is not sustainable in law specially when there is no misrepresentation on the part of the applicant. Therefore, the impugned orders are not sustainable in law and liable to be quashed. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that Internal Audit Wing of KVS (Regional Office), pointed out vide communication 20.10.2000 that the applicant was not

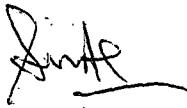


entitled to Transfer TA/DA. Thereafter, the competent authority considered the issue relying the admissibility of Transfer TA/DA in view of the instructions Anxx.R1 and it was found that on the date of issue of transfer order dated 5.8.97, the applicant had not completed the minimum period of 5 years stay at Suratgarh. Hence, the action of the respondents is perfectly legal and valid. It is stated that the applicant joined duty at Sawai Madhopur in pursuance of order dated 5.8.97. Therefore, this O.A is without any substance and liable to be quashed.

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

5. At the time of argument, more emphasis have been laid by the learned counsel for the respondents that the Internal Audit Party noticed this fact at the time of audit that the applicant has not completed 5 years stay at Suratgarh, therefore, he is not entitled to Transfer TA/DA. It appears that this fact had escaped from the notice of the Internal Audit Party that on the same day i.e. 5.8.97 another order was issued over-laping the first order by which the applicant was required to work at Jaipur and in pursuance of that order, the applicant had worked at Jaipur for more than 3 months. It is also evident that during this period, salary of the applicant was drawn from Suratgarh and he was relieved on 19.12.97 to join at Kendriya Vidyalay, Sawai Madhopur in pursuance of order dated 14.12.97 and by that time the applicant had completed 5 years or more stay at Suratgarh.

6. It is also an undisputed fact that the applicant was paid Transfer TA/DA in the year 1997 and there was no misrepresentation on the part of the applicant. It also



appears that after the period of 3 years, only on the basis of an internal audit report, the recovery of 14476/- was started from the applicant by issuing the impugned orders at Annex.A1 & Annex.A2. It is settled law that if payment to the employee has been made *suo-motu* by the department and there has not been any misrepresentation on the part of the employee, no recovery should be made after a lapse of long period.

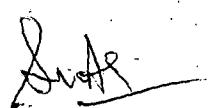
7. In Shyam Babu Verma Vs. UOI, 1994 SCC (L&S) 683, Hon'ble Supreme Court held that it shall be just and proper not to recover any excess amount already paid to the petitioner. In this case, higher pay scale was given erroneously to the petitioner since 1973 and the pay scale was reduced in 1984. The petitioners received higher pay scale due to no fault of theirs and in this case the Apex Court held that there will be no justification to recover the excess amount already paid to the petitioners.

8. Not only this, but it appears that the principles of natural justice and fair play have been grossly violated in this case.

9. In Menaka Gandhi Vs. UOI (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

9. In Delhi Transport Corpn. Vs. DTC Mazdoor Congress, 1991 (Supp) (1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.

10. In Olga Tellis Vs. Bombay Municipal Corpn, (1985) 3 SCC 545, it was held that the applicant has been deprived of



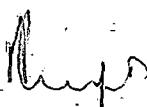
his livelihood without even being held in the matter and without any notice merely on the basis of an ongoing police investigation. Right to life includes right to livelihood and thus the order is violative of Article 21 of the Constitution of India.

11. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, if an order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with audi alteram partem, party should be given an opportunity to meet his case before an adverse decision is taken.

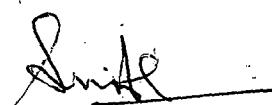
12. In the instant case, the applicant on show cause notice given to him tried to raise the issues to which the respondents did not reply at all.

13. In view of the facts and circumstances of this case and settled legal position, we are of the opinion that it was not just and proper on the part of the respondents' department to recover Rs.14476/- from the applicant which was paid to him suo mottu as Transfer TA/DA and there was no misrepresentation on the part of the applicant.

14. We, therefore, allow this O.A and quash the orders at Annx.A1 and Annx.A2 and direct the respondents not to recover Rs.14476/- from the applicant in pursuance of orders at Annx.A1 & Annx.A2. No order as to costs.


(A.P.Nagrath)

Member (A).


(S.K.Agarwal)

Member (J).