

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision :

27/9/04

1. OA No.573/2002.

Shiv Charan son of Shri Summera Ram aged about 53 years, resident of 1-B-17, Mahaveer Nagar, III, Kota, presently working as Postal Assistant (HSG-II) Kota Head Post Office, Kota.

2. OA No.574/2002.

Bhagwan Dass son of Shri Udai Ram aged about 53 years, resident of 3c-50, Mahaveer Nagar-III, Kota-5, presently working as Postal Assistant (HSG-II) P.I.P. Post office Kota.

3. OA No. 19/2003.

Vijay Kumar Choudhar son of Shri Laxmi Lal aged about 55 years, resident of 3/140 Ganesh Talab, Behind Modi College, Kota, Presently working as Sub-Post Master, (HSG-II), Kuthoni Pole, Kota (Under New Grain Mandi Head Post Office).

... Applicants.

v e r s u s

1. Union of India, through Secretary to the Govt. of India, Department of Posts, Ministry of Communication Dak Bhawan, New Delhi 110 001.

2. Post Master General, Rajasthan Southern Region, Ajmer.

3. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

4. Deputy Director of Accounts (Postal) Jaipur 302004.

5. Post Master New Grain Mandi, Kota 324007.

... Respondents.

Mr. C. B. Sharma counsel for the applicants in all the OAs.

Mr. E. H. Sandu counsel for the respondents in all the OAs.

CORAM:

HON'BLE MR.J.K.KAUSHIK, JUDICIAL MEMBER

HON'BLE MR.A.K.BHANDARI, ADMINISTRATIVE MEMBER

ORDER

Applicants, Shiv Chavan, Bhagwan Dass & Vijay Kumar Chaudhary, have filed these OAs under Section 19 of the Administrative Tribunals Act, 1985. As identical question of facts and law is involved in these cases, they are being disposed of by this common order.

2. Applicant Bhagwan Dass (OA 574/2002) was initially appointed as Time Scale Clerk and was redesignated as Postal Assistant on 25.1.69. He enjoyed his further promotion on completion of 16 years of service in the year 1985 and thereafter allowed the next higher grade of Rs.1600-2660 on completion of 26 years of service w.e.f. 1.7.95 instead of 25.1.95. The specific direction was given that the fixation will be done under FR 22-i (A) (1). He was allowed due fixation in the higher scale with next date of increment from 1.1.96 and his pay was fixed at Rs.6050/- on recommendation of the Fifth Pay Commission and the applicant reached to the stage of Rs.6950/- upto October, 2002 and thereafter his pay has been suddenly reduced to Rs.6800/-. The amount of Rs.1000/- was deducted from the pay of the month of November, 2002 on account of so called excess payment and also his pay was reduced from the stage of Rs.6950/- to Rs.6800/- on the basis of internal audit report carried out in the year 1998.

3. Applicant Vijay Kumar Chaudhary (OA 19/2003) was initially appointed as Time Scale Clerk, redesignated as Postal Assistant on 25.1.69, and was allowed his next promotion on completion of 16 years service in the year 1985 and another promotion on completion of 26 years of service w.e.f. 1.7.95 instead of 25.1.95 as that of Bhagwan Dass above on similar terms.

Other facts are similar as narrated above except that the recovery of

Rs.2000/- was started from the month of June, 2002.

5. Applicant Shiv Charan (OA 573/2002) was also initially appointed as Time Scale Clerk, which was redesignated as Postal Assistant on 9.4.70. He was allowed one Time Bound Promotion on completion of 16 years of service in the year 1986 and thereafter he was promoted on completion of 26 years of service against short-fall point of SC w.e.f. 1.7.95 with similar direction of fixation under FR 22-i (A)(1). His pay was accordingly fixed at the stage of Rs.1900/- on 1.4.96 and he has reached to the stage of Rs.6800 w.e.f. 1.4.2002, which is indicated in the pay slip of the month of November, 2002. From the month of November, 2002 the respondents have deducted Rs.1000/- on account of excess payment on the basis of audit report.

6. The common fact in all these cases is that the applicants were never informed of the action of the audit party and no chance of hearing was extended to them. Even the deduction started simply on the basis of the audit report. In all these cases the options were accepted by the department and the due fixation was made. The OAs have been filed on multiple grounds. The significant ^{ground of challenge} is that there has been breach of principle of natural justice inasmuch as no prior notice or personal hearing has been given to the applicants.

7. There was no fault on the part of the applicants and the pay fixation was done by the competent authority. The due fixation has been made as per the rules in force and the applicants were asked to give the option, which they have exercised. The same cannot be reopened on the basis of report of the internal audit party, who has got no such power and at the most it is simply advisory committee and the pay cannot be reduced without passing specific order by the competent authority.

8. The respondents have resisted the claim of the applicants and have

filed detailed counter replies in all these cases. It has been averred that no show-cause notice is required in view of para 4 & 5 of MDP OM dated 14.10.97, wherein it has been provided that over payment on account of pay fixation under CCS (RP) Rules, 1997 can be recovered and the undertaking required under this rule is also submitted by the applicants. The internal check organisation of the department is fully empowered to point out any financial or procedural irregularity committed by the Postal Units and respondent No.5 is bound to comply with the orders of respondent No.4. Detail has also been given narrating that the pay fixation was wrongly given to the applicants and due to wrong pay fixation the over payment has been made, which is sought to be recovered.

9. We have heard the learned counsel for the parties at a considerable length and have bestowed our earnest consideration to the pleadings and the records of these cases.

10. Both the learned counsel for the parties have reiterated their pleadings and there is hardly any quarrel as far as the facts of these cases are concerned. It is admitted position that no prior notice or pre-decisional hearing has been given in the matter before resorting to reducing the pay or making recovery from the salaries of the applicants. It is also admitted that the competent authority has so far not passed any final order. In other words, the competent authority has not taken a final decision in the matter regarding re-fixation of the applicants or for making the recoveries and the recoveries have been given effect to only on the basis of audit report. We would like to make it very clear that no recovery or reduction in pay can be made until unless a firm decision is taken and specific order is passed by the competent authority. The audit report or the audit objection may be the significant for the competent authority to take appropriate decision but the same cannot be acted upon as such and effecting of the recovery or reducing their pay cannot be justified in the facts and circumstances of this case. Now, adverting to

the facts of these cases, admittedly no show-cause notice has been given to the applicants prior to reducing their pay and effecting the recoveries from the their pay. The law is well settled on this point that if any order is required to be passed involving civil consequences detrimental to the interest of an employee, it would be necessary to give a pre-decisional hearing before passing any such order. This proposition of law is propounded by the Apex Court in a celebrated judgement in the case of H.L.Trehan & Ors. v. Union of India & Ors., 1989 802 (L&S) 246, wherein their Lordship have held as under :-

"It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution."

Further, in the case of Shri Sardar Gulzar Singh v. Union of India & Ors., SLJ 1998 (1)(CAT) 21, the Tribunal was dealing with a case regarding revision of the pay fixation, wherein no show-cause notice was given to the parties. The Tribunal held as under :

"4. We note that the impugned order dated 22.10.92 despite having civil consequences and operating to the disadvantage of the applicant, and that too retrospectively, has been issued without giving him even an opportunity to show cause against the same. Manifestly such an order cannot be sustained in law more so as no blame attaches on the applicant for the issue of the appointment orders and the consequent pay fixation done by respondents.

5. In the particular facts and circumstances of this case therefore the OA succeeds and is allowed. The impugned orders dated 22.10.92 are quashed and set aside. No recoveries shall be made from applicant and any recoveries already made shall be refunded to him within two months from the date of receipt of a copy of this judgement. No costs."

Similarly, the law regarding recovery is also well settled that no recovery can be made from an employee until unless there was no misrepresentation on his part. This proposition of law is taken from a recent decision of the Chandigarh Bench of the Tribunal in the case of Ram Prakash Bhatti v.

Union of India & Ors., 2002 (3) ATJ 430, wherein it has been held as under:

"10. The recent decision of the Apex Court rendered by a Bench of Hon'ble three Judges in the case of P.H.Reddy (supra) clinches the issue. The Apex Court found that on facts the authorities were entitled to re-fix the pay if the same is erroneously fixed earlier, but, no recovery can be made from the employee concerned. To be precise and accurate we would do better to extract the observations of the Apex Court which runs as follows :-

".... the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of directions of the appropriate authority requiring reimbursement of the excess amount is annulled."

12. In the instant case, since the competent authority has not so far taken any decision and also the deductions from the salaries of the applicants as well as revision of pay has been made without following the principle of natural justice, the action of the respondents cannot be sustained and we accept the contention of the learned counsel for the applicants and the OAs are sustainable on this ground alone. In view of the aforesaid authorities on the point, we are refraining from examining the other grounds raised in these OAs.

13. The upshot of the aforesaid discussion is that the OAs have ample force and substance. The same stand allowed accordingly. The applicants shall be entitled to all consequential benefits and the amount already recovered from them shall be refunded to the applicants within a period of three months from the date of receipt of a copy of this order. No costs.

(A.K.SHANDARI)

MEMBER (A)

(J.K.KAUSHIK)

MEMBER (J)