

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.

T.A. No.

446/2003

200

DATE OF DECISION

16.7.2004

Prabhu Lal Nath

Petitioner

Mr. C. B. Sharma

Advocate for the Petitioner(s)

Versus

Union of India & ors

Respondent

Mr. T P Sharma

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. S. K. AGRAWAL Adm. Member

The Hon'ble Mr. J K KAUSHIKI Judl. Member.

J. K. Kaushik
(J. K. KAUSHIK)
J M

S. K. Agarwal
(S K AGRAWAL)
A M

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No. 446/2003

Date of decision : 16.7.2004

Prabhu Lal Nath, son of Shri Laddu Lal Nath aged about 48 years, resident of Village and Post Dhanoli via Surwal District Sawaimadhopur. Presently working as Gramin Das Sewak Branch Post Master, Neenarda Branch Post Office under Surwal Sub Post Office District Sawaimadhopur.

....Applicant.

V E R S U S

1. Union of India, through Secretary to the Govt. of India, Department of Posts, Minsitry of Communication, Dak Bhawan, New Delhi - 110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302 007.
3. Superintendent of Post Offices, Sawaimadhopur Postal Division, Sawaimadhopur.
4. Post Master, Sawaimadhopur Post Office, head Post Office, Sawaimadhopur.

...Respondents.

Mr.C.B.Sharma, Counsel for the applicant.

Mr. T.P.Sharma, Counsel for the respondents.

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Contd...2

C O R A M :

THE HON'BLE MR.S.K.AGRAWAL, ADMINISTRATIVE MEMBER.

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

PER THE HON'BLE MR.J.K.KAUSHIK :

Shri Prabhu Lal nath has filed this Original application assailing the conjoint order by which the applicant's pay scale has been ordered to be reduced to a lower one coupled with recovery of alleged overpayment on account of erroneous pay fixation from the date of shifting the applicant ^{from} ~~to~~ the post of E.D.D.A. to the post of E.D.P.M. amongst other relief.

2. With the consent of parties the case was taken up for final disposal at admission stage keeping in view of the urgency of same. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have anxiously considered the pleadings and records of this case.

3. The factual matrix of the case as may be succinctly put in, is that the applicant was initially appointed to the post of Extra Department Delivery Agent (for brevity EDDA) (designated as Gramin Dak Sevak) at Sawaimadhpur Town P.O. on dated 1.10.83. he was paid his due allowances which came to revised to Rs. 1740-30-2640/-

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during the year 1998 and continued to be paid the same upto March, 2000, when the post of E.D.D.A. held by the applicant came to be abolished.

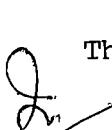
4. The further case of the applicant is that he was offered the post of E.D.B.P.M., Neenarda Branch Post Office. The applicant expressed his inability to accept the offer for the reason that the allowances for the Branch Post Master are lesser then that of the E.D.D.A. The Branch Post Master gets the allowances in the scale of Rs. 1280-1960/- whereas the one who has holding the post of E.D.D.A. gets the pay scale of Rs. 1740-30-2640/-. the Competent Authority vide communication dated 30.5.2000 at Annexure-A/3 asked applicant as to why he was not joining the post of Branch Post Master and apprised him that on joining on the said post there shall be no reduction in the pay and allowances being paid to him. The applicant thereafter joined on the post of Branch Post Master on 9.6.2000 and was allowed the due pay and allowances in the pay scale of Rs. 1740-2640/- upto August, 2003. Thereafter, he was informed by the respondent No.4 vide letter dated 16.9.2003 that as per the Internal check Audit Party's report his allowances have been ordered to be reduced to Rs. 1280-1960/- and amount of Rs. 21071/- is to be recorded from him which is the excess payment given to him after his posting on the post of Branch Post Master.

during the course of Audit and hence it was ordered to be recovered from the salary of the applicant and which has stopped due to Interim Order of this Tribunal. It has been also admitted that the S.P.Os, Sawaimadhopur informed the applicant that his allowances shall not be reduced on joining the post of Branch Post Master but the order of the S.P.Os, Sawaimadhopur was not as per the rules. The grounds raised in O.A. has been generally denied.

7. The learned Counsel for the applicant has reiterated the facts and grounds raised in the pleadings. He has submitted that there is a clear breach of principles natural justice inasmuch as the applicant has not given any pre-decisionary hearing or any show cause notice prior to issuance of the Impugned Order. It has been next contended that the applicant has acted on the promises of the Competent Authority and has also changed his position, now the respondents can not turn around and take a different stand. He has also submitted that no recovery or reduction in the pay can be ordered by the Internal Audit party and in support of this contention he has placed the judgment of Hon'ble Full Bench of the Tribunal in case of M.S. Sadanandan Vs Executive Engineer, (1997) 35 ATC, 584 and therefore the very Impugned Order can not be sustained since the Competent Authority has not applied his mind and simply ordered recovery on the basis of Audit Report. Therefore, the action of the respondents has not been fair.6

5. The Impugned Order has been assailed on multiple grounds enunciated in Para 5 and its Sub-paras. Some of them are that the action of the respondents is arbitrary, illegal, unjustified and against the principles of Natural Justice. There was no fault on the part of the applicant and the allowances were being paid to him as per the orders of Competent Authority. The applicant has been working for more than 17 years and was offered the post of Branch Post Master without reduction in the allowances. The action of the respondents can not be said to be justified. The another ground is that the Internal Audit Party has no power to order for any recovery of such allowances or reduction in the allowances. The Internal Audit Party is only Advisory Committee.

6. The respondents has contested the case and filed the detailed counter reply to the O.A. The Preliminary Objection has been raised regarding the maintainability of the O.A. on the ground that the applicant has rushed up to this Hon'ble Tribunal without availing the alternative remedy available to him. As regards the facts of this case, it has been averred that after abolition of the post of G.D.S.D.A., Sawaimadhopur for which the allowances prescribed is Rs. 1280-1960/- and the same was applicable to his case and not allowances of E.D.D.A. as per clarification of the Department of Posts dated 6.2.2001.

 The same was found unjustified by the Internal Audit Party

during the course of Audit and hence it was ordered to be recovered from the salary of the applicant and which has stopped due to Interim Order of this Tribunal. It has been also admitted that the S.P.Os, Sawaimadhopur informed the applicant that his allowances shall not be reduced on joining the post of Branch Post Master but the order of the S.P.Os, Sawaimadhopur was not as per the rules. The grounds raised in O.A. has been generally denied.

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7. On the contrary the learned counsel for the respondents has with usual eloquence has submitted that the applicant was very much issued with a show cause notice vide Impugned Order but without submitted any representation he has approached this Bench of the Hon'ble Tribunal. The applicant has not availed the alternative remedy available to him under Service Rules and the O.A. is not maintainable. He has also submitted that the respondents have every right to correct their mistakes. No fault can be fastened to the respondents and the O.A. deserves to be dismissed with cost.

8. We have considered the rival submissions put forward on the behalf of the both the parties. As far as factual aspect of the matter there is absolutely no quarrel. It is admitted position of the case that while posting the applicant on the post of Branch Post Master the 4th respondent categorically submitted that the applicant should join on the post of Branch Post Master and his pay and allowances shall not be reduced and then only the applicant joined on the post. It is also true that on the promises of the respondents the applicant has changed his position. As regards the Impugned Order the same can be by no stress of imagination said to be the show cause notice. It is also not the decision of the Competent Authority and it is a simple order of reduction in pay and recovery of the alleged over payment based on

the Audit Report without any thing more. It is wrong to contend that the applicant has given any show cause notice and any explanation or any pre-decisionary order before passing the Impugned Order. In this view of the matter we have no hesitation in reaching to a positive conclusion that there has been clear breach of principles of natural justice. It is also settled law that no adverse order which may visit the employee with evil or civil consequences can be passed until one has been given pre-decisionary hearing. This law on the point is well settled by the Hon'ble Apex Court in case of Union of India Vs H.L.Trehan, AIR 1989 SC 568 wherein their Lordships has held as under :-

The relevant portion from para 11 :-

"It is now a well established principles of law that there can be no deprivation of any existing right, advantage or benefit enjoyed by a Government Servant without apply the rules of principles of natural justice by giving a Government Servant concerned an opportunity of Hearing any arbitrary or whimsical exercise or power prejudicial affecting service of a Govt. Servant will offend the provisions of the Articles 14 of the Constitution of India."

Applying the aforesaid principles of law the Impugned Order can not be sustained on this ground alone. *The plea of alternative remedy has no legs to stand in such cases.*

8. Now advertting the other facet of the case. The

Impugned Order is in fact a communication of the observation of the Internal Audit party. The mere perusal of the same does not reflect that there has been any application of mind by the Competent Authority in issuance of the same. As a matter of fact it could safely be inferred that the recovery has in fact been ordered simply on the basis of the Internal Audit Report without any thing more. We have gone through the judgment cited by the learned Counsel for the applicant in this respect in case of M.S. Sadanandan (Supra) we find that the controversy involved in the instant case is covered on all fours and does not remain res-integra. Thus, the contention on this issue submitted by the learned counsel for the applicant is well founded and does have our concurrence.

10. Now adverting to the another submission that the applicant has changed his position on the promises made by the Competent Authority that his pay on the post of E.D.B.P.M. will not be affected. We find substance in the same. After all the Government which is a Model Employer can not be permitted to approbate and reprobate, below hot and cold together and can not be permitted to play with the Fundamental Rights of the Individual and that too in such an unceremonial way. In this view of the matter the respondents should thank to themselves for making a commitment and the position of the applicant have become irreverasable and

therefore we find that the action of the respondents is arbitrary, as well as unfair and therefore there is ample force in this O.A.

11. At the end of the arguments the learned counsel for the respondents submitted that in casse the Hon'ble Tribunal comes to a conclusion that Impugned Order is not sustainable , the respondents may ^{be} given liberty to pass a fresh order after giving a show cause notice. We have considered this prayer of respondents and find that in view of our aforesaid specific findings, no such liberty is call for.

12. The upshot of the aforesaid discussion is that the O.A. have ample merit and substance, the same stands allowed accordingly. The Impugned Order dated 16.9.2003 Annexure-A/1 is hereby quashed with all consequential benefits. Rule already issued is made absolute. No cost.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(S.K. AGARWAL)
ADMINISTRATIVE MEMBER

SHASHI/