

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision : 14.7.2004

ORIGINAL APPLICATION NO.: 594/2003

RAJENDRA PRASAD VAISHNAV Son of Shri Prabhu Dayal Vaishnav aged about 46 years, resident of Village and Post Lorwara District Sawaimadhopur. Presently working as Gramin Dak Sewak Branch Post Master, Dubbi Branch Post Office under Surwal Sub Post Office District Sawai Madhopur.

.... Applicant.

V E R S U S

1. Union of India, through its Secretary to the Govt. of India, Department of Posts, Ministry of Communications, 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.
5. Director Postal Accounts, Jaipur-302 004.

... Respondents.

Mr.C.B.Sharma, Counsel for the applicant.
Mr.T.P.Sharma, Counsel for the respondents.

CORAM :

HON'BLE MR.S.K.AGRAWAL, ADMINISTRATIVE MEMBER
HON'BLE MR.J.K.KAUSHIK, JUDICIAL MEMBER.

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PER HON'BLE MR.S.K.AGRAWAL : O R D E R

This O.A. has been filed by the applicant with the prayer to direct the respondents not to reduce the allowance of the applicant and also not to recover any amount against so called excess payment and applicant be allowed to draw his allowances as per the grade of Rs. 1740-30-2640/- as being drawn by him since last one year by quashing internal check-party report and further to direct the respondents to post the applicant at Lorwara Branch Post Office against the vacant post with all consequential benefits.

2. The facts of the case in brief ^{de} that the applicant was appointed as Extra Departmental Chowkidar in the year 1979 and thereafter appointed as Extra Departmental Telegraph Messenger in the year 1981. Subsequently in the year 1988 work of Telegraph Branch ^{was} transferred to District Telegraph Office from Sawai Madhopur Head Post Office and the applicant was ordered to work in District Telegraph Office till absorption in Department of Posts in the year 1990. Vide letter dated 5.9.1990, applicant was absorbed against the vacancy of E.D.M.C./E.D.D.A., Lorwara Branch Post Office. It has been further mentioned by the applicant in the O.A. that in the year 1998 the respondents Department refixed the allowances in the name of Time Related Continuity Allowance for different categories and the applicant was allowed to draw the salary as per the grade of Rs. 1740-30-2640/-, where he continues to draw the same salary because in Lorwara Branch Office two posts are in existence i.e. one for Branch Post Master and another for E.D.M.C./E.D.D.A.. The applicant was allowed to perform duties of Branch Post Master on retirement of one Shri Shiv Sahai Sharma and the applicant also requested to post him as E.D.B.P.M., Lorwara, against the vacant post for which the applicant was fully qualified. But the request of the applicant was not duly considered by the respondents and one Shri Naresh Chandra Sharma appointed as E.D.B.P.M., Lorwara Branch Post Office and applicant

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continued to hold the post of E.D.M.C./E.D.D.A. for which his allowance was also enhanced vide Memo dated 27.12.2001.

3. It has further been submitted by the applicant that respondent No.3 without any reason directed Inspector of Post Offices to post the applicant as Branch Post Master Dubbi and thereafter the respondents called for certain information vide letter dated 5.11.2002 in connection with qualification, property and consent for appointment as E.D.B.P.M., Dubbi in pursuance to the information asked for by the respondents regarding his consent to the post. It was stated by the applicant that he is willing to work as E.D.B.P.M., if the applicant be allowed same allowances as being drawn by him at Lorwara Branch vide his request dated 11.11.2002. The applicant has further submitted that respondent No.3 issued formal orders for posting of the applicant on the post of Branch Post Master, Dubbi vide Memo dated 24.2.2003 w.e.f. 7.8.2002 and presently the applicant was holding the post of Branch Post Master, Dubbi since 7.8.2002 and drew pay and allowances of Rs. 1740-30-2640/- upto August, 2003 but suddenly respondent No.3 reduced the allowances as per internal check-Audit Party from Rs. 1740-30-2640/- to Rs. 1280-35-1960/- and also recovered Rs. 500/- per month from the salary of September, 2003 of the applicant against excess payment made to the applicant amounting to Rs. 3011/-. It has been argued by the learned Counsel for the applicant that he was never informed of the action of the Audit Party/respondents and no chance of hearing was extended to him prior to reducing the allowances and effecting recovery.

4. The applicant has also sought for the interim relief that

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respondent No.3 may be directed not to effect any recovery from the salary of the applicant from August, 2003 itself. The applicant has further stated that the applicant was never informed, nor any chance of hearing has been extended to him and such action can not be taken on the Audit Report as the Internal Audit Party has no power to reduce the allowances and on advice of Audit Party without passing any order of a Competent Authority and without opportunity of hearing, allowances can not be reduced and no recovery can be made. He has further submitted that the role of Audit Party is of advisory nature and no action can be taken on the report of Audit Report without passing order by the Competent Authority and without giving any opportunity of hearing.

5. The case of the applicant here is that the post of E.D.M.C./E.D.D.A., Lorwara Branch Post Office is still lying vacant and respondents without any basis posted the applicant at Dubbi inspite of these facts on the request made by the applicant his request was not duly considered and the respondents posted the applicant at Dubbi whereas original post of applicant is still lying vacant as per payment sheet of the month of April, 2003. The applicant has therefore argued in the O.A. that the action of the respondents is arbitrary, illegal, unjust and also against the principles of natural justice as the allowances of the applicant have been reduced and so called excess amount has been recovered without giving any chance of hearing to the applicant, because the action of the respondents is against the provisions of Articles 14 and 16 of the Constitution of India. The applicant has further submitted that the post at Lorwara is still lying vacant and the action of the respondents in connection with reducing the allowances and so called recovery is liable to be quashed and set-aside. The applicant is willing for reposting at

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Lorwara and the posting of the applicant at Dubbi is not at all justified. The applicant has further submitted that he drew his allowances upto August, 2003 without any interruption and Internal Audit Party has no power to reduce the allowances, since the same is simply advisory committee and the allowances can not be reduced without passing order by Competent Authority and without affording an opportunity to the applicant for hearing before passing such orders.

6. The respondents in the counter reply have stated in the first instance that the applicant has filed the O.A. without availing the remedy as provided under the provisions of Section 20 of Administrative Tribunals Act, 1985 and hence the O.A. is liable to be dismissed. The respondents are further stated that the Internal Audit Party carried out Audit of Sawai Madhopur Head Office during the period from 22.6.2003 to 1.7.2003 and reviewed the T.R.C.A. being paid to the applicant and ^{found} ~~find~~ that the applicant was wrongly been paid the T.R.C.A. in the scale of Rs. 1740-30-2640/-, which is applicable for G.D.S. Delivery Agent and not for G.D.S.B.P.M. and hence the recovery of excess paid amount of Rs. 3011/- was ordered to be recovered from the applicant's pay in instalments starting from the month of September, 2003. The respondents have, therefore, submitted that the action taken by them was legal and justified and according to the rules. Therefore, the O.A. is liable to be dismissed. On a review made of Establishment and Income and Cost of B.O. as per norms prescribed in the year 2002, the said B.O. was found in heavy loss reputed the post of G.D.S.M.C./D.A., Lorwara which was declared as surplus and the applicant who was working on the post of G.D.S.M.C./D.A., Lorwara was to be kept in waiting for appointment on other post, at that time the post of G.D.S.B.P.M., Dubbi was vacant.

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7. The respondents have further submitted that the applicant was erroneously paid the pay and allowances of Rs. 1740-30-2640/- upto August, 2003 which was pointed out by the Internal Check Audit Party and his T.R.C.A. was refixed to Rs. 1280-35-1960/-from the month of September, 2003 and the recovery of excess paid amount Rs. 3011/- was effected from his pay as per provisions contained in Rule 86 of P & T Financial Hand Book Volume - I. The respondents have further submitted that the Internal Check Audit Party have carried out audit of Sawai Madhopur H.O. and found that the allowances being paid to the applicant irregularly and ordered to refix the allowances of the applicant as per Rules. The respondents have further submitted that the applicant was posted on the post of G.D.S.B.P.M., Dubbi on his willingness and he is entitled for the allowances which is prescribed for the post of G.D.S.B.P.M. on which he is working at present. It has further been submitted by the respondents ^{that} as there is _{no} justification for the post of G.D.S.M.C. at Lorwara Branch Office owing to loss incurred by the Department, ~~and~~ the post of G.D.S.M.C./D.A., Lorwara will be abolished.

8. The respondents have further stated that the applicant has not submitted any Appeal and Petition to the Competent Authority before filing this O.A. hence this O.A. filed by the applicant is premature and is liable to be dismissed.

9. Learned Counsel for the applicant has cited the Full Bench decision of the Central Administrative Tribunal, Ernakulam Bench in the case of M.S.Sadanandan Versus Executive Engineer and Another, reported in (1997)35 Administrative Tribunal Cases, P.584 decided on 26.11.1996 wherein it was held that

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the applicant's pay which was reduced from Rs. 2900/- to Rs. 2825/- as ~~the~~ result of Internal Audit was not in order. It was further held by that the role of Auditor is advisory in character and the decision making authority has to make ~~his~~ decision after following the principles of natural justice.

10. Another decision cited by the applican's counsel is also of the Supreme Court in the case of H.L.Trehan Vs Union of India, reported in AIR 1989 SC 568 and it was held in Para 11 of the Judgment that

"11.It is now a well established principle of law that there can be no deprivation or curtailment of nay existing right, advantage or benefit enjoyed by a Govt. Servant without complying with the rules of natural justice by giving the Govt. Servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Govt. Servant will offend against the provisions of Article 14 of the Constitution. Admittedly the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular can not, therefore, be sustained as it offends against the rules of natural justice."

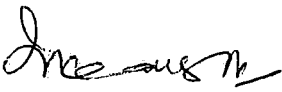
11. He have gone through all the facts of the case and submission made by learned counsel for the applicant as well as

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learned counsel for the respondents.

12. We are of the view that the respondents action in reducing the pay of the applicant erroneously on the basis of check made by the Internal Audit Party was totally unjustified. It was obligatory on the part of the respondents to have considered the report of the Internal Check/Audit Party and passed an order after following the principles of natural justice of giving an opportunity to the applicant to show cause why his salary be not reduced. In this regard we are in agreement with the Full Bench decision of Ernakulam Bench of Central Administrative Tribunal in the case of M.S.Sadanandan (Supra) and held that the role of the Auditor is advisory in character who is to tender his advice and to record his observations but he is not a decision maker. His roll does not go beyond that. Such professional advice must be considered in all earnestness by the Decision Making Authority and the Decision Making Authority has to make his decision guided by the counsel of the Internal Auditor and not by his command. Before doing that the respondents must give an opportunity to the applicant to put up his case before effecting any deduction in the pay.

13. In view of the above the action of the respondents can not be upheld. The respondents are directed to restore the pay and position to the applicant, by posting him as E.D.B.P.M./E.D.D.A. ~~at~~ Lorwara which is the post lying vacant ^{on} and all the allowances drawn by him earlier namely Rs. 1740-30-2640/-. The Internal Check Audit Party Report is accordingly quashed. The respondents are further directed to refund the amount of recovery made from the applicant's salary ² ~~that~~ to the applicant within one month from the date of receipt of the order. In the result the O.A. is allowed giving no order as to costs.


(J.K.KAUSHIK)

Member(J)


(S.K.AGRAWAL)

Member (A)