

Central Administrative Tribunal
Jabalpur Bench

OA No.426/05

Jabalpur, this the 11th day of November, 2005.

C O R A M

Hon'ble Mr.Madan Mohan, Judicial Member

Dr.A.N.Singh
Son of Late Shri A.P.Singh
R/o 12, Anchal Vihar, Katanga
Jabalpur (MP). Applicant.
(By advocate Shri M.K.Verma along with
Shri Gopi Chourasia)

Versus

1. Union of India through its
Secretary
Ministry of Mines
Shastri Bhawan
New Delhi.
2. The Director General
Geological Survey of India
27, Jawaharlal Nehru Road
Kolkata.
3. Deputy Director General
Geological Survey of India
Central Region
Seminary Hills,
Nagpur.
4. The Director
Geological Survey of India
Operation M.P.II Sanjeevni Nagar
Garha Road
Jabalpur. Respondents
(By advocate Shri Manish Chaurasia)

ORDER

By Madan Mohan, Judicial Member



By filing this OA, the applicant has claimed the following reliefs:

- (i) Set aside the order dated 23.11.2004 (Annexure A1).
- (ii) Direct the respondents to refund the amount of Rs.24,522/- as recovered by them.

2. The brief facts of the case are that the applicant who was initially appointed as Geologist Junior in the Geological Survey of India was sent on deputation to the Geological Survey of India, Bhutan unit in the same capacity with effect from 22nd May 1993 till April 1996. Thereafter he was posted to Jabalpur and was promoted as Geologist (Senior) with effect from 14th December, 2001. While being posted to Bhutan unit on foreign Department, such persons are not entitled to any salary but are entitled for Bhutan compensatory Allowance (BCA). Vide circular dated 13.11.96 the Ministry of External Affairs enhanced the rate of BCA. The servant wages have been the component of BCA and there is no separate servant allowance (Annexure A2). The applicant being Group 'A' officer was entitled for two servants but since he was maintaining only one servant, the competent authority made the payment of arrears of BCA to the applicant with retrospective effect i.e. 1.11.1995. When the applicant received an order of recovery of BCA amounting to Rs.22,000/-, he filed an OA No.185/03. The Tribunal vide order dated 6.4.2004 quashed the order of recovery, giving liberty to the respondents to issue a show cause notice. The applicant submitted his reply to the show cause notice (Annexure A6). Respondents vide order dated 23.11.2004 (Annexure A1) rejected the reply and withheld the amount of Rs.22000/- from the gratuity, which is under challenge in this OA.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the impugned order is illegal, arbitrary, unreasonable and passed without application of mind, hence it is



liable to be set aside. It is the settled position that the payment made to the employee without any misrepresentation cannot be recovered. The applicant has never misrepresented nor the payment was wrongly made. He was entitled for the amount, which was paid to him. Learned counsel further argued that according to Rule 9 of CCS (Pension) Rules, the President reserves to himself the right of withholding a pension or gratuity or both, while the President passed no such order. Hence the action of the respondents is illegal.

4. In reply, learned counsel for respondents argued that the applicant was sent on deputation to Geological Survey of India, Bhutan Unit, Samtse from 22.5.1993 to 9.4.96 in the capacity of Geologist (Jr.). As per the order of the Ministry of External Affairs dated 13.11.1996, the wages for maintenance of servants could be drawn only after the certification by the concerned officer. The applicant was claiming servant allowance @Rs.800/- per month as per the earlier order dated 18.3.1993 and submitted the certificate accordingly. This was again revised to Rs.5456 with retrospective effect from 1.11.1995. The applicant submitted the certificate for revised wages for maintenance of servants only from November 1996. The arrears that were paid to the applicant with retrospective effect included the period for which he had already submitted certificate for servant allowance and, therefore, was disallowed by the Joint Secretary, Central Audit, New Delhi vide letter dated 3.2.1998. The Director, Geological Survey of India, Bhutan Unit requested the Dy. Director General, GSI, Central Region, Nagpur to recover Rs.22,000 towards the overpayment on account of servant wages made to the applicant. It was found that there was no merit in it and the order of recovery of Rs.22,000 towards the overpayment on account of servant ages paid to him for the period from 1.11.1995 to 8.4.96 during his posting on deputation to GSI, Bhutan unit from 22.5.93 to 8.4.96 was correct. An amount of Rs.22,000 was withheld



from the gratuity as per rules in force and no illegal act was done by the respondents.

5. After hearing learned counsel for both parties and careful perusal of the records, I find that admittedly the applicant has served in Bhutan from 22.5.1993 to 8.4.96. He has certified the engagement of one servant during this period for which he was paid accordingly, though he was entitled for two servants. He was not serving in November 1996 i.e. after 8th April 1996. The argument advanced on behalf of the applicant is that the question does not arise to submit any certificate after 8.4.96 for claiming the servants allowance by the applicant and he has submitted the required certificate to the respondents, for which he was legally entitled. Respondents could not have shown any document by which the applicant has claimed the BCA at the enhanced rate according to the A-2 letter from November 1996, as mentioned in another show cause notice Annexure A5, and it was the duty of the respondents to produce documents in support of their contention. The applicant has submitted his reply against the show cause notice on 8.9.04 (Annexure A6). I have perused both the documents and also Annexure A9 dated 19th May 2000-Internal Audit Report for GSI, Bhutan Unit for the period from 4/96 to 3/99 – Recovery of Rs.22,000 on account of revised wages for maintenance of servants. The argument advanced on behalf of the applicant in this regard seems to be correct, as he had handed over the charge on 8th April 1996. Hence this internal audit report is not applicable in the case of applicant, which is about the period 4/96 to 3/99. The applicant had submitted the required certificates to the respondents. I have also perused the Rule 9 of CCS (Pension) Rules, which is about the right of the President to withhold pension or gratuity. The respondents have not filed any order passed by the President in this regard.

6. Considering all facts and circumstances of the case, I am of the considered view that this OA deserves to be allowed. Therefore, the



17/11/23