

Central Administrative Tribunal
Jabalpur Bench

OA No.552/05

Tuesday this the 28th day of March, 2006

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.G.Shanthappa, Judicial Member

Syed Hamid Hussain Rizvi
Divisional Manager
(P.L.I) (Retd) R/o Near Masjid
Railway Station
Bajaria
Bhopal.

Applicant

(By advocate Shri V.Tripathi)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Post
Dak Bhawan, Sansad Marg
New Delhi.

2. Chief Post Master General
M.P.Circle
Bhopal.

3. The Deputy Director
Postal Accounts Central
T.T.Nagar
Bhopal.

Respondents.

(By advocate Shri S.K.Mishra)

O R D E R (oral)

By Mr.G.Shanthappa, Judicial Member

This application has been filed by the applicant under Section 19 of the A.T.Act, 1985, seeking the following reliefs:

(i) Set aside the order dated 13.12.2004 (A-1) to the extent it imposes recovery on the applicant.

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(ii) Direct the respondents to pay all benefits as if the impugned recovery could not have been inflicted.

2. The applicant was issued a show cause notice dated 21st October 2004 (A-19) directing the applicant to explain as to why an excess payment of Rs.38,373/- on account of wrong fixation of pay from HSG-I to PSS Group 'B' for the period from 6.3.88 to 30.6.97 should not be recovered from him and why the pension already fixed at Rs.1570/- p.m. on the basis of re-fixation of pay should not be treated as final, failing which it would be presumed that the applicant had nothing to say in that regard and the case would be decided accordingly. The applicant submitted his reply dated 6.11.04 (Annexure A20) to the show cause notice. In his reply the applicant stated that as per the rules and law, the respondents could not fix his pay downward. If they were taking any action against him deducting the amount and refixing the pay, that would be violation of the principles of natural justice and law.

3. We have heard the learned counsel appearing on both sides. Learned counsel for the respondents has supported the impugned order on the ground that the applicant was not entitled for pay fixation. Wrongly it was fixed. At the time of his retirement, it came to the knowledge of the department. Then they had issued the show cause notice and passed the impugned order (A-1).

4. The respondents have referred in Para 9 of the reply statement that "the plea of the applicant that the payment is not due to his misrepresentation is not tenable. It was well known to him that he was entitled for Rs.2300 on 6.3.1988 and not Rs.2450/- which was wrongly fixed to him but he knowingly accepted the wrong fixation and did not disclose the mistake, which has resulted accumulation of excess payment. It amounts to his misrepresentation to the department, as he was not innocent." We consider the stand taken by the respondents.

5. We carefully examined the impugned order dated 13.12.2004 (A-1) It was passed after considering the representation of the

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applicant. They have referred the earlier order of this Tribunal in OA No.858/98 in which the Tribunal had quashed the order of recovery and directed the respondents to refund the amount within one month. At no point of time the applicant has misrepresented the matter before the respondents and there was no mistake on the part of the applicant. The applicant drew salary according to the pay fixation done by the respondents. When there is no mistake or misrepresentation on the part of the applicant, the action of the respondents to recover the excess amount is unwarranted. The learned counsel for the applicant has relied on the judgment of the Apex Court in the case of Sahib Ram Vs. State of Haryana & Ors. 1994 5 SLR 753. Para 5 of the judgment is extracted below:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

6. Learned counsel for the applicant has also referred a judgment of the Full Bench of this Tribunal in the case of All India Postal Employees Union & ors Vs. Union of India & Ors. reported in 2005 (2) ATJ 193, in which the Principal Bench has relied on the judgment of the Apex Court in the case of Sahib Ram ~~Verma~~’s case. When the applicant did not misrepresent and there was no mistake on his part, the order of recovery as referred in the impugned order A-1 is unwarranted and illegal.

7. We are of the considered view that in view of the judgment of the Apex Court which is referred ^{to} above, the law laid down by the

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Hon'ble Apex Court is squarely applicable to the present case. Accordingly the impugned order is not sustainable in the eyes of law and it is liable to be quashed.

8. Accordingly we quash the impugned order Annexure A.1. Since the relief (i) is granted, the relief (ii) is not necessary to consider.

9. The OA is disposed of as above. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

G. C. Srivastava
(Dr. G. C. Srivastava)
Vice Chairman

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मृत्युंकन दो लो/चा.....जम्हेलपुरा, दि.....
परिवर्तिती दोली दिना--
(1) संविधा. राजा राम. राम दो लो. रामपाल, जम्हेलपुर
(2) रामपाल दो/लो/दिना.....दो वार्षिक
(3) रामपाल दो/दिना.....दो वार्षिक
(4) रामपाल. कोपाल. जम्हेलपुर नामांक
सुना एवं अकर्त्ता कार्यालयी देश

V. Tripathi
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S. K. Mishra
Adv. JBD

*मृत्युंकन दो लो/चा.....जम्हेलपुरा, दि.....
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सुना एवं अकर्त्ता कार्यालयी देश*

*Ex-Regd
31.3.06*