

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH  
CIRCUIT AT INDORE  
O.A. NO.585/1998

This the 3rd day of September, 2003.

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

HON'BLE SHRI J. K. KAUSHIK, MEMBER (J)

S.H.H.Rizvi,  
Retired Deputy Divisional Manager (P.L.I.),  
Circle Office, Bhopal,  
Near Masjid Sikandari Sarai,  
Bhopal-462010. ... Applicant

( By Shri V. N. Deshpande, Advocate )

-versus-

1. Department of Communication  
through Secretary (Post),  
Dak Bhawan, Sansad Marg,  
New Delhi-110001.

2. Chief Postmaster General,  
M.P.Circle, Bhopal-462012.

3. Dy. Director Postal Accounts,  
Central T.T. Nagar,  
Bhopal-462003. ... Respondents

( By Shri Vivek Saran, Advocate )

O R D E R (ORAL)

Hon'ble Shri V. K. Majotra, Member (A) :

According to applicant, he was promoted to H.S. Grade-I cadre vide Annexure A-7 dated 21.1.1988. He joined duties as such on 22.2.1988 (Annexure A-8). Vide pay/leave salary slip (Annexure A-10) dated 22.4.1988 his pay was fixed at Rs.2450/- taking into account his previous pay as Deputy Post Master at Rs.2300/-. Thereafter his pay was fixed from time to time taking into account the usual increments even though he was transferred from one place to another. Applicant has challenged Annexures A-1 and A-2 whereby

respondents have effected recovery of alleged excess payments made on the basis that his pay was reduced on re-fixation almost at the time of superannuation.

Applicant superannuated on 30.6.1997.

2. The learned counsel of applicant stated that not only that respondents have arbitrarily reduced his pay from Rs.3400/- to Rs.3200/-, they had re-fixed his pay downward from 6.3.1988 without affording him an opportunity of showing cause. Respondents have also subjected him to recovery of Rs.38,378/- from his DCRG amount and have further arbitrarily fixed his pension at Rs.1570/- instead of Rs.1670/-.

3. The learned counsel of respondents, on the other hand, contended that respondents have followed the relevant rules in correcting the pay of applicant w.e.f. 6.3.1988 and also consequential pension on the basis of pay which he would have drawn and making recovery of the excess amounts paid to him. He particularly relied on rule 65 of the C.C.S. (Pension) Rules, 1972 under which the accounts officers are empowered to check the pay and allowances and assess the pension entitlements and issue AER one month prior to the date of retirement. He further relied on Annexure R-1 dated 28.5.1997 which is Accounts Enforcements Report (AER) in the case of applicant who retired on 30.6.1997. It is stated therein that orders under which applicant was approved and appointed as MSG-I cadre in the scale of Rs.2000-3200 w.e.f. 22.1.1988 were not mentioned in the service book. The accounts officer (pension) has gone on to re-fix applicant's pay and pensionary benefits at different stages from

22.1.1988 to 30.6.1997. Vide Annexure R-2 dated 26.6.1997 recovery of an amount of Rs.38,378/- on account of over-payment due to re-fixation of pay for the period from 6.3.1988 to 30.6.1997 has also been directed to be made from applicant's pay and allowances and DCRG.

4. There is no gainsaying the fact that pay could be fixed under FR-22-C in the higher post of HS Grade-II cadre as on 6.3.1988 with reference to the pay drawn in the lower post which had been held by applicant on regular basis, i.e., HSG-III and the accounts officers are empowered under rule 65 of the Pension Rules to check pay and allowances and assess the pension entitlements one month before the date of retirement of an employee. However, respondents cannot escape the impact of the provisions of rule 59(b)(iii) which reads as follows :

"Calculation of average emoluments. - For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the service book the Head of Office may verify the correctness of emoluments for the period of twenty-four months only preceding the date of retirement of a Government servant, and not for any period prior to that date."

5. It is found that respondents had not issued any show cause notice to applicant for downward re-fixation of his pay and consequential pension etc. which is obligatory as higher fixation of pay several years ago when <sup>such reduction in</sup> reduced/involves civil consequences and violation of natural justice. Furthermore, in terms of rule 59(b) ibid, respondents could have resorted to

verification of the correctness of emoluments for the period of 24 months only preceding the date of retirement of the Government servant and not for any period prior to that date. The inevitable conclusion of the discussion made above is that respondents have resorted to an arbitrary re-fixation of applicant's pay, emoluments and retiral benefits without following the relevant rules and principles of natural justice. They have also resorted to recovery of the so called over-payments after several years. The excess amounts thus paid to applicant were not on account of any fault of applicant but on account of the fault of respondents themselves.

6. In Annexure R-1 it had been stipulated that while the service book of applicant did not indicate that applicant had been approved and appointed in HSG-I cadre in the scale of Rs.2000-3200 w.e.f. 22.1.1988, respondents were required to verify whether he had been thus approved. If not, only then his pay could have been re-fixed downwards as stated in Annexure R-1. Respondents have nowhere stated that they had verified on this and on finding that he had not been approved for appointment in the HSG-I cadre in the scale of Rs.2000-3200, reduction in his emoluments had been effected. Respondents were required not only to verify these facts in terms of Annexure R-1, they were also required to put the applicant on notice before effecting reduction in his emoluments and directing recovery of the alleged excess payments made to applicant. These steps do not seem to have been taken by respondents and as such the entire action of respondents in reducing the emoluments and pensionary benefits and effecting recovery of excess amounts has to be set at naught in the interest of justice.



7. In the result, Annexures A-1, A-2, R-1 and R-2 are quashed and set aside. The amounts recovered from applicant in pursuance of the aforesigned Annexures be refunded to applicant within a period of one month from the date of receipt of these orders. Respondents shall, however, have the liberty to re-consider the case by putting applicant on notice and following the procedure as prescribed by law.

8. The O.A. is allowed in the above terms. No costs.

J. Kaushik  
( J. K. Kaushik )  
Member (J)

V. K. Majotra  
( V. K. Majotra )  
Member (A)

/as/

प्राप्तिकरण सं. ओ/न्या.....जखलपुर, दि.....  
प्राप्तिकरण वाचे गित:-

(1) नियम 1 का विवरण वाचे गित, जखलपुर  
(2) नियम 2 का विवरण वाचे गित, जखलपुर  
(3) नियम 3 का विवरण वाचे गित, जखलपुर  
(4) नियम 4 का विवरण वाचे गित, जखलपुर

सूक्ष्म. तुम्हें वाचन करनेवाला है

V. Sharman  
37 सितंबर 16/9/03

Shri V. N. Deshpande, Advocate  
Shri V. Sharman, Advocate  
by hand signature

For Vivek Sharman

Received  
17/9/03 (Aishu)