

CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

O.A.No.315 of 2006

Decided on: October ^{5th} 13, 2006

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN (JUDICIAL)

Mahaveer Singh S/o Late Shri Narayan Ram, aged about 55 years, by Caste Jat R/o D-57, Hanuman Nagar, Jaipur, at present posted as Revenue Secretary, Government of Rajasthan, Secretariat, Jaipur.

By: Mr. P.D.Singh Tilotia, Advocate.

Versus

1. The Union of India through its Secretary, Department of Personnel & Training, New Delhi.
2. The State of Rajasthan, Department of Personnel & Training (A-1), through its Secretary, Secretariat, Jaipur.
3. The Assistant Secretary, Department of Personnel & Training (A-1), Government of Rajasthan, Secretariat, Jaipur.

By : Mr.V.D.Sharma, Advocate.

O R D E R (ORAL)

KULDIP SINGH, VC

The applicant is an I.A.S. Officer, working as Revenue Secretary, Government of Rajasthan. He is aggrieved of an order dated 4.8.2006 (Annexure A-1) by which recovery of an amount of Rs.11,700/- on account of over payment of transport allowance has been ordered

The facts as pleaded by the applicant are by order dated 28.2.2002 (Annexure A-2), he was granted transport allowance @ Rs.800/- per month w.e.f. 1.9.2001, in pursuance of the Circular dated 22.2.2002 and 15.4.1998 of the Government of India. The applicant started getting this benefit of Rs.800/- per month w.e.f. 1.9.2001.

He pleads that now the respondent No.2 has issued an order dated 31.12.2004 (Annexure A-3) whereby the benefit

of transport allowance of Rs.800/- per month has been withdrawn with further clarification that officers who are discharging duties in the Jaipur City are entitled to T.A. @ Rs.400/- per month only instead of Rs.800/-. It has been further decided that the excess amount paid to the employees w.e.f. February, 2002, be also recovered @ Rs.400/- per month from the salary.

The applicant submits that he has not been afforded any opportunity of hearing before issuance of Annexure A-1. However, the respondents have worked out a recovery of Rs.11,700/- from the applicant which is sought to be recovered by order, Annexure A-1 dated 4.8.2006. It is pleaded that the benefit which was granted under the provisions of the Circulars issued by the Government of India cannot be withdrawn at this stage. There is violation of principles of natural justice. Even if over payment was a mistake, it was not committed by applicant and thus he cannot be punished.

Respondents have filed a reply to contest the O.A. They submit that matter regarding entitlement of Transport Allowance to IAS officers posted at Jaipur was examined in consultation with the Ministry of Finance, Department of Expenditure, and it was clarified that the concerned officers are eligible for transport allowance at the rate applicable at 'B-1' class cities w.e.f. 1.8.1997 in terms of para (vi) of Annexure II of Department of Expenditure's OM dated 22.2.2002. The said letter further states that the excess amount paid, if any, to any officer,



may be recovered immediately. (Annexure R-1). The applicant has not challenged the order dated 30.7.2004.

As per the Government of India, DOPT, New Delhi order dated 15.4.1998, the Central Government decided that the Members of AIS serving in connection with the affairs of the Stat shall be entitled to receive Transport Allowance @ Rs.800/- Per month for A-1 and A class cities and Rs.400/- P.M. for other places w.e.f. 1.8.1997. (Annexure R-2). Governments of India, Ministry of Finance, vide OM dated 22.2.2002 clarified the position that the special dispensation extended to HRA/CCA is not applicable to Transport Allowance. Since the Jaipur City has been categorized as "B-1" City and as such amount of Rs.400/- only is payable as Transport Allowance.

They plead that applicant has been inadvertently and erroneously allowed Transport allowance @ Rs.800/- per month by wrong interpretation of the OM. This mistake was noticed by the Indian Audit and Accounts Department, which has been corrected now. The competent authority can rectify a mistake in fixation of pay scale and payment of allowances whenever the same comes to its notice and in such cases principles of natural justice is not attracted. Reliance has also been placed on State of Karnataka and Another vs. Mangalore University Non-Teaching Employees Association & Others, AIR 2002 SC 1223.

The applicant has not filed any rejoinder.

I have heard learned counsel for the parties and perused the material on the file.

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It is not disputed at all that the applicant was not entitled to Transport Allowance @ Rs.800/- per month and he has rightly been given this allowance @ Rs.400/- per month. This has been specifically pleaded by the respondents in their reply which has gone unrebutted as the applicant has not filed any rejoinder. Moreover, there is specific plea of the respondents in the reply that applicant has not challenged the basic order dated 31.12.2004 (Annexure A-3) and order at Annexure A-1 is only a consequential order. In the absence of any challenge to the basic order, the same stands impliedly accepted by the applicant. Moreover, even during the course of arguments, learned counsel for the applicant could not bring to the notice of the court any document by virtue of which the applicant can be said to be entitled to the transport allowance @ Rs.800/- per month. Thus, it is accepted at all hands that grant of transport allowance @ Rs.800/- to the applicant was a mistake.

It is well settled that the Government is well within its power and authority to correct an administrative error. It has been held that a factual error can be rectified by the Government in the case of Jagdish Prajapat Vs The State of Rajasthan & Others, 1998(2)ATJ, Page 286. Further in Chandigarh Administration Vs. Narang Singh, JT 1997 (3) SC, page 536, it has been held that a mistake can be corrected at any point of time. Thus, the respondents have rightly corrected the administrative error and no fault is found in such course of action adopted by them.

At this stage, learned counsel for the applicant submitted that there is violation of principles of natural

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justice and moreover, since applicant was not involved in any concealment of fact of mis-representation and as such no recovery can be made. He has placed reliance on judgment of the Hon'ble Supreme court of India in 1995 Supp (1) SCC, 18, Sahib Ram Vs. State of Haryana & Others, and two decision of the Hon'ble Punjab & Haryana High Court in V.P.Dubey, IAS (Retd.) Vs. State of Punjab & Another and 2003 (1) SLR, Page 668, Jatinder Kumar Grover and Others Vs. State of Punjab & Others; Tej Singh Retired superintendent Vs. The State of Punjab & Others, 2003 (2) SLR, Page 243. In all these cases it has been held that if there is no mis-representation on the part of the employee, recovery should not be effected.

On the other hand learned counsel for the respondents has relied upon decision of the Hon'ble Supreme court in AIR 2002 SC, 1223 (State of Karnataka & Another Vs. Mangalore University Non-Teaching Employees Association and others. In that case, it was held that by now it is well settled that in all cases of violation of principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of principles of natural justice. When indisputably the action taken is within the parameters of the Rules governing the payment of HRA and CCA, it is difficult to visualize any real prejudice to the

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respondents on account of non affording the opportunity to make representation. It was held the HRA and CCA etc. are part of conditions of service which can be unilaterally altered so long as such action is in conformity with legal and constitutional provisions. In this case also, the applicant was granted transport allowance which is part of condition of service and can be altered in accordance with the legal and constitutional provisions. The respondents have acted on correct interpretation of the rules and as such no fault can be found with it.

No doubt, the law is that if there is no misrepresentation on the part of an employee, the recovery of excess payment should not be made but this is only in cases where the recovery is going to hurt the employee badly and he will suffer financial hardship. The law cannot be applied as a straight jacket formula. Each case has to be dealt with on its own merit. In this case the applicant is an IAS Officer. The recovery is only of an amount of Rs.11,700/-. He has not challenged the basic decision, Annexure A-3, which is adverse to his interest. He has not disclosed any prejudice having been caused to him due to non following of principles of natural justice. Moreover, he has not even cared to file any rejoinder to rebut the pleas taken by the respondents in their reply.

The O.A. is therefore found to be devoid of any merits and is rejected.


(KULDIP SINGH)
Vice Chairman (J)

5th.
October 22/2006
HC*