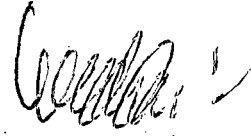


22/2/08 Mr. C.B. Sharma, counsel for applicant.  
Mr. Ganesh Jain, counsel for respds.

Heard the learned counsel  
for the parties.

For the reasons dictated  
separately, the OA stands disposed  
of.

  
(M.H. Chaudhary)  
MS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 22<sup>nd</sup> day of February, 2008

ORIGINAL APPLICATION No. 392/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Ganga Prasad Sharma,  
s/o Shri Ram Swaroop Sharma,  
r/o 4 B-32, Mahaveer Nagar Extension,  
Kota-09 and presently working  
as Postal Asistant, Head Office, Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Kota Postal Division, Kota.
4. Director of Accounts (Postal), Jaipur
5. Post Master, Kota Head Post Office, Kota.

... Respondents

(By Advocate: Shri Gaurav Jain)

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**O R D E R (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to restore the month of increment as February instead of September each year and not to recover any amount as ordered by quashing audit report (Annexure A/2) and amount already recovered be refunded to the applicant along with interest at market rate.
- ii) That respondents be further directed to allow the applicant to draw his pay and allowances with yearly increment in the month of February each year.
- iii) Any other order, direction of relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant while working as Postal Assistant at Sri Ganganagar Head Office w.e.f. 12.9.1994 to 10.5.1997 was transferred under Rule 38 of the Postal Manual Vol.IV from Sriganganagar Division to Kota Division and posted as Postal Assistant at Jhalawar Head Office w.e.f.16.5.1997. On introduction of the recommendations of Vth Central Pay Commission, which were accepted by the Government w.e.f. 1.1.1996, pay of the applicant was fixed at the stage of Rs. 4100/- in the pay scale of Rs. 4000-6000 on 1.1.1996 with date of next increment on 1.9.1996 by Post Master, Jhalawar Head Office. The applicant made a representation on 3.6.2000 to the Postmaster, N.G.

Mandi Head Office, Kota for fixing his pay at par with his junior Shri Jai Kishan Nagar. Accordingly, pay of the applicant was fixed at the stage of Rs. 4100/- w.e.f. 1.1.1996 with next date of increment on 1.2.1996 instead of 1.9.96, on the basis of pay which was drawn by Shri Jai Kishan Nagar, the so called junior to the applicant. The said fixation was made by the Postmaster, N.G.Mandi, Head Office, Kota. On an objection raised by the Audit Party, pay of the applicant was fixed again as per his initial fixation made by the Post Master, Jhalawar Head Office, which has resulted a recovery of Rs. 9281/- and the said amount was to be recovered in installments of Rs. 500/- p.m. (Ann.A1). It is this order which is under challenge before this Tribunal.

It may be stated that when notice was issued by this Tribunal on 26.9.2006, an ex-parte ad interim stay was granted thereby directing the respondents not to effect recovery from the pay of the applicant, which stay is still continuing. The said stay was granted on the premise that no adverse order can be passed against the affected person without issuing show cause notice thereby giving reasonable time to the affected persons to make representation.

3. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed by the respondents in the reply. However, the

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stand taken by the respondents in the reply is that pay of the applicant/date of increment was wrongly antedated on the basis of pay which was being drawn by Shri Jai Kishan Nagar, the so called junior, because as on 1.1.1996, the applicant and Shri Jai Kishan Nagar were belonging to different divisions. Since Postal Cadre is Divisional Cadre and stepping up was to be done within the division only, as such, the applicant was not entitled to the benefit of stepping up of his pay at par with his so called junior. It is further stated that refixation of pay of the applicant w.e.f. 1.1.1996 with next date of increment as 1.2.1996 was issued by the Post Master, N.G.Mandi Head Office, Kota who was not competent authority in allowing refixation of pay w.e.f. 1.1.1996, as the applicant was not born on the divisional cadre of Kota on that date. The said irregularity was pointed out by the Audit Party and accordingly, recovery of over payment of Rs. 9281/- and the date of next increment was restored to his original date i.e. 1.9.1996 onwards. According to the respondents, no show cause notice was required to be given in such cases as pay fixation and drawl of correct increment is subject to post check as envisaged vide G.O.I. M.O.F. No. 50(2)/97/1/C-1 dated 14.10.97 and No. 6-1/98/PA (IC)Vth Pay Commission/34-7 dated 7.4.98 as well as note 2 & 3 of Rule 86 of P&T F.H.B. Manual Vol.1 (A-4,A-5 & A-5(a)). Copies of these are annexed at Ann.R1

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to R3. It is further stated that any official who come on, transfer from other Division is ranked below to all other officials of the Division under Rule 38 of the Postal Manual Vol.IV and seniority is determined accordingly on their joining in new Division. Hence, stepping up cannot be allowed to the applicant.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. The respondents have also filed additional affidavit to the rejoinder filed by the applicant.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. It is admitted fact between the parties that pay of the applicant was refixed and recovery order was passed by the respondents without giving show cause notice to the applicant. The question which requires my consideration is whether the relief is required to be granted to the applicant solely on this ground that there has been breach of principles of natural justice. The law on the point has undergone sea change. The Apex Court has in number of cases held that there cannot be any doubt whatsoever, that the audi-alteram-partem is one of the basic pillars of natural justice which means no one should be condemned

unheard. However, whenever possible the principles of natural justice should be followed. The earlier view was that breach of principles of natural justice itself causes prejudice and no other 'de-novo prejudice' is needed to be proved. This view was subsequently deviated and two exceptions were carved out from this principle - i) if upon admitted or undisputed facts only one conclusion was possible, then in such a case principle that breach of natural justice was itself a prejudice would not apply. In other words, if no other conclusion was possible on the admitted or undisputable facts, it is not necessary to quash the order which was passed in violation of natural justice and ii) in addition to breach of natural justice real prejudice must also be proved to have been caused. I do not wish to multiply the authority on this point. At this stage, it will be useful to quota decision of the Apex Court in the case of Ashok Kumar Sonkar vs. Union of India, 2007 (3) AISLJ 420 whereby the Apex Court has noticed its earlier decision in the case of Aligarh Mulsim University and Ors. vs. Mansoor Ali Khan, 2001 (1) SLJ 409, Karnataks State Road Transport Corporation and Anr. Vs. S.G.Kotturappa and Anr., 2005 (2) SLJ 208 (SC) and Punjab National Bank and Ors. vs. Manjeet Singh and Anr., (2006) 8 SCC 647, whereby it was stated that principles of natural justice are not required to be complied with when it leads to an empty

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formality. It will not issue such direction where the result would remain the same, in view of the fact and situation prevailing or in terms of legal consequences.

Now let me examine the case in the light of the law laid down by the Apex Court as noticed above. Admitted facts are that the applicant prior to his transfer to Kota Division was working in Sri Ganganagar Division w.e.f. 12.9.94 to 10.5.1997. He was transferred to Kota Division under Rule 38 of the Postal Manual Vol.IV in May, 1997 i.e. after 10.5.97. Thus, he was not born in the cadre of Kota Division on 1.1.96, as such, the Postmaster, N.G.Mandi Head Office, Kota was not competent to refix his pay when the applicant made representation in the year 2000. That apart, the applicant has got no legal right to fix his pay at par with Shri Jai Kishan Nagar, as both the applicant and Shri Jai Kishan Nagar belonged to different cadres and seniority units. In the year 1996, as already stated above, the applicant belonged to Sri Ganganagar Division whereas Shri Jai Kishan who was working with Army Postal Service authority w.e.f. 13.2.92 to 10.3.99 belonged to Bhilwara Division. Thus, the pay fixation done by the Post Master, N.G.Mandi Head Office, Kota on the representation of the applicant at par with his so called junior Shri Jai Kishan was not in order because the Postal Assistant cadre is divisional cadre and stepping up of



pay was to be done of the employees belonging to same division only. Moreover, as already stated above, the Postmaster, N.G.Mandi, Head Office was not competent to allow refixation of pay w.e.f. 1.1.1996 with next date of increment as on 1.2.1996. Further, the applicant became member of Kota Division in the year 1997 in terms of rule 38 of Postal Manual Vol.IV whereas Shri Jai Kishan became members of the Kota Division in the year 1999 in terms of Rule 38 of the Postal Manual Vol.IV when both of them sought transfer. Thus, both of them were not members of Kota Division at the relevant time when pay of the applicant was fixed w.e.f. 1.1.1996 with next date of increment as on 1.2.1996. Further, in terms of Rule 38 of Postal Manual Vol.IV seniority is to be determined according to their joining in new division. Even on this ground stepping up cannot be claimed on transfer to new division. When the matter is viewed from the facts as stated above, it is quite evident that quashing of the impugned action of the respondents solely on the ground of violation of principles of natural justice will be useless formality in the facts and circumstances of this case as admittedly, the result would be same even after issuing show-cause notice and affording opportunity to the applicant. Thus, according to me, pay of the applicant refixed on account of his representation was wrong and without authority of law as Post Master, N.G.Mandi Head

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Office, Kota has no power to pass such order, thus nullity and according to me, the applicant is entitled to pay which he was drawing prior to passing of such orders.

Now the further question which requires our consideration is whether relief against the recovery of the excess payment made by the Government to the applicant on account of wrong fixation should be granted to the applicant or the applicant should be directed to deposit the excess amount in easy installments. At this stage, it may be useful to notice decision of the Hon'ble Apex Court where the Apex Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled:-

- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
- (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

The Hon'ble Apex Court has taken this view in the case of Sahib Ram vs. State of Haryana, 1995 SCC (L&S) 248, Shyam Babu Verma vs. Union of India, 1994 SCC

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(L&S) 683, Union of India v. M.Bhaskar, 1996 SCC (L&S) 967 and V. Gangaram vs. Regional Jt. Director, 1997 SCC (L&S) 1652.

Such relief, restraining back recovery of excess payment is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee has knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to

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recover excess wrong payment would cause undue hardship to them.

Viewing the matter from the aforesaid legal position as settled by the Apex court, the question which requires my consideration is whether it is a case where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment so as to disentitle the applicant for grant of relief against the recovery. Admittedly, the applicant had no knowledge that his pay has been wrongly fixed and such payment received was in excess of what was due to him or has been wrongly paid. As such, according to me, the applicant who has generously spent the amount received by him for upkeep of his family, it will cause undue hardship to him, if he is asked to repay the excess amount.

8. Accordingly, in the facts and circumstances of this case and in view of the reasons stated above, I am of the view that relief against recovery of excess payment made to the applicant is required to be granted. Accordingly, the impugned Audit Para (Ann.A2) is quashed and respondents are directed not to effect recovery of Rs. 9281/- from the pay and allowances of the applicant. Recovery, if any, made pursuant to

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Ann.A2 shall be refunded to the applicant within two months from the date of receipt of this order.

9. The OA is disposed of accordingly with no order as to costs.



(M.L. CHAUHAN)

Judl.Member

R/