

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 27th day of January, 2011

ORIGINAL APPLICATION No.302/2007

CORAM:

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

Pushkar Narain
s/o Shri Amar Chand,
r/o JDA Colony,
House No.183, Sirsi Road,
Bankrota, Jaipur,
presently retired Jamadar Group-D
from the office of Railway Mail Service,
JP Division, Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Communication,
Department of Post,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent,
Railway Mail Service,
JP Division, Jaipur
4. Director Accounts (Postal),
Rajasthan Circle,
Tilak Nagar,
Jaipur.

5. Post Master,
Shastri Nagar Head Post Office,
Jaipur.
6. P.M. Post Master Bhankrota,
Post Office Bhankrota,
Jaipur.

.. Respondents

(By Advocate: Shri R.G.Gupta)

ORDER

This is second round of litigation. Earlier the applicant has filed OA No.569/2004 wherein grievance of the applicant was that the respondents have directed the applicant to refund the excess amount. The said OA was disposed of vide order dated 14th March, 2007 by quashing the recovery order on the ground that the recovery order passed by the respondents entails civil consequences, as such, it was essential for the department to put the applicant on notice. The respondents were further directed to refund the amount to the applicant. It was further directed that if there is any genuine recovery, the respondents may make recovery after putting the applicant on notice. Pursuant to the order passed by this Tribunal in the aforesaid OA, the respondents issued notice to the applicant of which the applicant filed reply. Vide impugned order dated 9.7.2007 (Ann.A/3), copy of which has been addressed to the applicant, reply dated 3.7.2007 to the notice issued to the applicant was rejected and it was ordered that over payment of Rs. 3325/- made to the applicant be recovered from Dearness Relief

payable on pension. At this stage, it will be useful to quote the impugned order dated 9.7.2007 in extenso, which thus reads:-

".....

It is intimated that as per DG (Post) New Delhi letter No.47-2/86-PA (Tech.I) 174 to 208 dt. 25/8/1992, recovery of Govt. dues can be made from the pension relief payable on the pension as it does not cover under the Pension Act. A photocopy of the same is enclosed.

As you are aware that Rs. 2320/- was excess paid to you on A/c of pay and allowance for the period 1.96 to 11-99 and Rs. 1005/- as Bonus for the year 1999-2000, thus this total excess paid amount comes to Rs. 3325/- which would be started to be recovered from the Dearness Relief Payable on pension commencing from August 2007 and onwards.

Your reply dated 3.7.2007 to the notice issued vide this office Memo No.B5/Pushkar Narain dated 19.6.2007 has been received in this office on 4/7/07, wherein you did not deny the overpayment but requested to recover it from the official who paid the amount. Your averment is not sustainable and the overpayment from your Dearness Relief payable on pension.

This is for your information.."

As can be seen from the impugned order, as reproduced above, it is evident that the applicant has not disputed correctness of the amount of recovery which was being effected from him. However, his stand was that the said amount cannot be recovered under Pension Act and also that over payment made, if any, be recovered from the official who has paid the amount.

Copy of the decision so taken vide Ann.A/3 was also endorsed to the applicant by the Senior Superintendent, RMS, JP Division, Jaipur vide letter dated 10.8.2007 (Ann.A/1) addressed to the Postmaster, Shastri Nagar, HPO, Jaipur. It is these orders Ann.A/1 and Ann.A/3 which are under challenge in this OA. The submission made by the

applicant is that the applicant has voluntarily retired on 1.12.99, as such, payment of excess amount to the applicant was in the knowledge of the department and the factum of such over payment was not brought to the knowledge of the applicant till his retirement. Thus, according to the applicant, recovery of the aforesaid amount could not have been made after a lapse of 11 years. The applicant has further averred in the OA that no excess payment has been made to the applicant and nothing was mentioned by the respondents in the impugned order Ann.A/3. Thus, in nutshell, the case as pleaded by the applicant is that he has neither taken excess payment nor excess payment has been given to him, as such, recovery of the aforesaid amount after a period of 11 years is not justified. It is on the basis of these pleadings the applicant has filed this OA thereby praying for quashing the impugned order Ann.A/1 and A/3.

It may be stated that this Tribunal issued notice on the basis of contention raised by the applicant that impugned order has been passed without considering his reply. However, while issuing notices in this OA, the Tribunal has not stayed operation of the impugned orders whereby recovery of over payment was to be made from Dearness Relief payable on pension.

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the applicant was granted promotion/upgradation under the Time Bound One Promotion (TBOP) scheme w.e.f. 17.9.1995 prior to introduction of the revised pay scales w.e.f.

to

1.1.1996 in the scale of Rs. 800-1150 and pay of the applicant was fixed at the stage of Rs. 3090/- w.e.f. 3.1.1996 under 5th Pay Commission Rules, 1997 in the revised pay scale of Rs. 2650-4000. It is further stated that audit party during the audit inspection of the HRO, RMS, Jaipur Division, Jaipur for the period from 10.12.1998 to 31.12.1999 pointed out that on cadre review of Group-D vide letter dated 7.4.1995 from the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, copy of which was received under letter dated 19.6.1995 from DG (Post), New Delhi, two scales of Group-D i.e. Rs. 775-1025 and Rs. 800-1150 were merged into one single scale w.e.f 1.4.1995. Thus, according to the respondents, the pay of the applicant on account of his promotion under TBOP scheme w.e.f. 17.9.1995 could not have been fixed in non-existing scale of Rs. 800-1150 which stood already merged into the pay scale of Rs. 775-1150 w.e.f. 1.4.1995. Thus, the applicant who was promoted after 1.4.1995 and was allowed the pay scale of Rs. 2650-4000 as on 1.1.1996 was not in order. Therefore, pay of the applicant was revised from Rs. 3090/- to that of Rs. 3040/- w.e.f. 3.1.1996 in the revised pay scale of Rs. 2650-4000 (pre-revised scale of Rs. 800-1150), which resulted into reduction of pay of the applicant and the excess amount paid for the period 30.1.1996 to 3.11.1996 was ordered to be recovered. It is further stated that there was over payment of Rs. 2320/- towards pay and allowances alongwith excess paid bonus for the year 1999-2000 amounting to Rs. 1005/- i.e. total amount of Rs. 3325/-. It is further stated that pursuant to the order passed by this Tribunal in earlier OA, the excess amount of Rs.

3325/- was refunded to the applicant on 4.6.2007. The respondents have further stated that the applicant in his reply has not denied that he did not take above amount during the period of his service. Rather, he has requested not to recover the amount from his Dearness Relief payable on pension for the mistake of other official. Thus, according to the respondents, recovery is genuine and such recovery could have been made from the Dearness Relief of the applicant in terms of DG(Post) letter dated 25.8.1992.

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

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. It is not in dispute that the applicant was entitled for promotion/upgradation under TBOP scheme w.e.f. 17.9.1995. It is also not in dispute that the applicant was granted such financial upgradation in the non-existing pay scale of Rs. 800-1150. The respondents have placed on record copy of the Govt. of India, Ministry of Finance OM dated 7.4.1995 as circulated by DG(Post) letter dated 19.6.1995 as Ann.R/1 whereby cadre review of Group-D cadre was effected. Perusal of this document reveals that w.e.f. 1.1.1986 following three Group-D scales of pay were in operation i.e.

(i) Rs. 750-940, (ii) Rs. 775-1025 and (iii) Rs. 800-1150. Perusal of this document also reveals that on the demand of the staff side, the matter was considered by the Sub Committee of the National Council and it was mutually agreed that existing scale of Rs. 750-940 may be continued as the entry grade and that other two scales of

Rs. 775-1025 and Rs. 800-1150 may be merged into a single elongated scale of Rs. 775-1150. This decision was accepted by the Government and it was decided that w.e.f. 1.4.1995 from which date the said order has been made effective that the feeder post in the scale of Rs. 775-1025 and promotional post in the scale of Rs. 800-1150 will henceforth carry pay scale of Rs. 775-1150 and all the employees may be placed in the said scale whether they have been appointed on functional basis or in-situ basis. Perusal of this order further reveals that employees already appointed to the scale of Rs. 800-1150 may be allowed to continue in the scale on personal basis. Thus, from perusal of this OM, it is evident that w.e.f. 1.4.1995 there were only two pay scales in existence namely scale of Rs. 750-940 which was entry grade and another scale Rs. 775-1150 instead of three pay scales which were in operation w.e.f. 1.1.1986 till 1.4.1995 in Group-D category and the pay scale of Rs. 800-1150 was not in existence after 1.4.1995. From perusal of this order it is further clear that persons already appointed before 1.4.1995 in the then existing scale of Rs. 800-1150 were allowed to continue in that scale on personal basis. Admittedly, the applicant was granted financial upgradation after cut off date i.e. 1st April, 1995 w.e.f. 17.9.1995 in the non-existing scale of Rs. 800-1150 which stood already merged in the pay scale of Rs. 775-1150. Thus, according to us, it was not permissible for the respondents to grant financial upgradation under TBOP in the pay scale of Rs. 800-1150 w.e.f. 17.9.1995 whereas such fixation has to be drawn in the scale of Rs. 775-1150. Thus, we see no infirmity in the action of the

respondents whereby pay of the applicant on account of placement in TBOP scheme w.e.f. 17.9.1995 has been fixed in the pay scale of Rs. 775-1150.

6. Now the next question which requires our consideration is whether it was permissible for the respondents to effect recovery of the aforesaid amount from Dearness Relief payable on pension. The learned counsel for the applicant argued that excess payment made to the applicant was not on account of mis-representation or fraud on the part of the applicant and further such recovery has been made after a lapse of 11 years. Thus, it was not permissible for the respondents to make such recovery. The learned counsel for the applicant also argued that such recovery could not have been made from the pension of the applicant in terms of Pension Rules, although the applicant has neither made such specific plea in the OA nor challenged validity of the DG (Post) letter dated 25.8.1992 whereby in the impugned order Ann.A/3 it has been stated by the respondents that such recovery was permissible from the Dearness Relief payable on pension. Thus, such a bald contention raised by the applicant without there being any pleading to this effect requires out right rejection. So far as contention of the learned counsel for the applicant that such recovery could not have been effected after a lapse of 11 years and the applicant is not guilty of mis-representation or fraud, as such, recovery has to be waived, we are of the view that the applicant has not made out any case for waiver of the aforesaid recovery, although the applicant has made reference to certain judgments of Hon'ble Rajasthan High Court

where excess payment made to the employee on account of wrong fixation and without any mis-representation or fraud on his part recovery has to be waived, such decision need not be noticed as the Hon'ble Apex Court has already taken such view in the case of Sahib Ram vs. State of Haryana, 1995 SCC (L&S) 248 and Shyam Babu Verma vs. Union of India, 1994 SCC (L&S) 683. It may be stated that these two decisions were further considered by the Apex Court in the case of Registrar, Cooperative Societies, Haryana and ors. vs. Israil Khan and ors., (2010) 1 SCC (L&S) 1123. At this stage, it will be useful to quote para 7,8 and 9 of the judgment, which thus reads:-

"7. There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were 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."

8. In Col. B.J.Akkara (Retd.) v. Govt. of India, (2007) SCC (L&S) 529 this Court explained the reason for extending such concession thus:-

"28. 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 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, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, court may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

9. What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, court will not use their discretion to deny the right to recover the excess payment."

7. As can be seen from the law laid down by the Apex Court in the case of Israil Khan (supra) based upon its earlier judgments, more particularly, the law laid down in the case of Col. B.J.Akkara (Retd.), discretion in favour of the employees should be exercised where employee has received such payment for a long period and he would have been genuinely believing that he would have entitled for it and also to relieve the employee from the hardship if the recovery is implemented. Here the amount of excess payment is meager i.e. Rs. 3325/- (Rs. 2320/- on account of excess payment of salary besides Rs. 1005/- paid on account of arrear of bonus for the year 1999-2000). That apart, it is not a case of such nature, where such excess payment has been made by the employer by applying wrong principle for calculating the pay and allowances or on the basis of particular interpretation of rules/order which is subsequently found to be erroneous. As already stated above, the pay scale of Rs. 800-1150 was not in existence after 1.4.1995 which pay scale stood already merged in the pay scale of Rs. 775-1150. Thus, it is a case where the applicant was granted upgradation/promotion

under TBOP scheme in non-existing scale which goes root of the case. In other words, it was not permissible for the authority concerned to grant aforesaid financial upgradation in non-existing scale and they have subsequently reviewed the order and granted the financial upgradation in the existing scale of Rs. 775-1150, as such, no fault can be found. Besides this, as already stated above, the amount so recovered from the applicant is only $2320+1005 = 3325/-$ which can not be said to be excessive amount and also that the said amount stood already recovered from the applicant as no stay was granted by this Tribunal.

9. Even otherwise also in terms of provisions contained under Rule 3(o) of the CCS (Pension) Rules, 1972, the dearness relief does not form part of pension whereas gratuity is included in the term of pension. The contention raised by the learned counsel for the applicant that recovery of over payment cannot be made from the pension of the applicant once the service gratuity has been released, even though such fact has not been pleaded in the OA, cannot be accepted in view of the aforesaid substantive provision. The view which we have taken finds support from the Full Bench judgment of this Tribunal in the case of Srinivas B.Kulkarni & Anr. vs. Union of India and Ors., (1997-2001) ATFBJ 223.

10. Be that as it may, since the amount to be recovered from the applicant is too meager and the said amount stands already recovered as on today, as such, it is not a case where this Tribunal should exercise discretionary power to waive the recovery so made, more particularly, when the applicant was granted financial

upgradation/promotion under the TBOP scheme on non-existing scale.

11. For the foregoing reasons, the OA being bereft of merit, which is accordingly dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/