

ORAL
Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/01060/2013

This the 20th day of March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Rajendra Singh son of late Mithan Singh r/o Village and
P.O. Mulhera, District-Meerut

Applicant

By Advocate: **Sri B.N. Singh**

Versus

1. Union of India through its Secretary, Ministry of
Communication and Information, Technology
Department of Post, Dak Bhawan, New Delhi.

2. The Sr. Supdt. Of Post Offices, Meerut Division,
Meerut.

3. The Sr. Post Master, Meerut Cantt. HO Meerut
Cantt.

Respondents

By Advocate: **Sri D. Tiwari for Sri R.K. Srivastava**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under
Section 19 of the AT Act with the following reliefs:-

- i) To issue a suitable order or direction to call for record and set aside the impugned order dated 10.7.2013 (Annexure No. 1).
- ii) To issue a suitable order or direction to the respondents to give the benefit of regularization dated 27.6.2012 and protect the pay (TRCA) of applicant and seniority since 6.8.98 with all consequential benefits.

iii) To issue a suitable order or direction to the respondents to refund the amount which has already recovered.

iv) To pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

v) To award cost of the petition in favour of the applicant.

2. The brief facts of the case are that the applicant was initially engaged as EDBPM Mulhera on 6.8.1998 and service of the applicant was terminated vide order dated 12.4.2002 and in pursuance of order passed by this Tribunal in O.A. No. 421/2002, service of the applicant was regularized vide memo dated 27.6.2012 since 7.8.1998 with all benefits. The respondent No. 2 issued appointment letter dated 25.4.2012 on the post of GDSBPM, Mulhera.

2.1 Respondents have reduced pay of the applicant as fresh appointment whereas the regular scale of pay and increment provided to the applicant time to time. As per rule, the pay must be protected after re-appointment or regularization or promotion.

2.2 Bare perusal of pay slip shows that pay scale (TRCA) of applicant reduced from Rs. 8241 to 689 and recovery Rs. 3050 per month made since July, 2013.

2.3 Applicant made application under RTI and requested to provide copy of order which is mentioned in the impugned order dated 10.7.2013 and also made request to provide order of regularization dated 27.6.2012 but the same are not provided till date.

2.4 It is also submitted that impugned order is a non-speaking order and unreasoned.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that Vikram Singh, EDBPM, Mulhera Branch Office , Meerut was granted leave from 6.10.1998 to 20.3.1999 and the said Vikram Singh, EDBPM, Mulhera arranged the applicant of present O.A. to work as substitute on the post of EDBPM, Mulhera during his leave period on his own responsibility. Thereafter, Vikram Sigh submitted his resignation from service during his above leave period and it was accepted by the competent authority i.e. Superintendent of Post Offices, Meerut vide letter dated 21.3.1999. Resultantly, the applicant worked continuously on the said post as substitute EDBPM. The Sub Post Master, Sardhana under whose jurisdiction the said Branch Post Office- Mulhera falls made a complaint to Sr. Superintendent of Post Offices, Meerut vide letter dated 10.7.2000 that the work of substitute EDBPM i.e. applicant is not satisfactory. Consequently one month notice was given to the applicant on 21.8.2000. Against

the said notice, the applicant obtained stay order by the Tribunal by filing O.A.No. 909/2000. Thereafter vide order dated 16.1.2002, the O.A. was dismissed by the Tribunal as pre-mature. Applicant again filed O.A.No.412/2002 before the Tribunal and the O.A. was disposed of by the Tribunal by passing the judgment and order dated 19.8.2003 stating that "In our opinion the applicant is entitled to continue until regular selection is completed and selected candidate joined.

3.1 Superintendent of Post Office issued notification on 15.2.2012 for filling up the vacant post of GDSBPM, Mulhera Branch Office. The applicant also applied as a fresh candidate and got selected and posted as GDSBPM, Mulhera Branch Office. Thereafter, applicant joined his duty as regular GDSBPM, Mulhera Branch Office. The TRCA of the applicant was fixed as per new appointment i.e. at minimum of TRCA. The applicant through representation dated 20.6.2012 requested that since he was working as TRCA since 7.8.1998, his TRCA be fixed after taking into account his past services to avoid monetary loss. The then Senior Superintendent Post Offices, Meerut considered his request erroneously and directed Senior Post Master, Meerut ivied letter dated 27.6.2012 to fix his pay and allowances taking into account his past service which was ordered without support of any rules. Hence in compliance of R.O.

Bareilly letter dated 21.5.2013, the order of recovery of overpaid TRCA has been issued by Senior Postmaster Meerut, Cant. and recovery is being made against which the applicant filed the present O.A. which is not sustainable in the eyes of law.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of the counter reply.

5. Heard learned counsel for applicant Sri B.N. Singh and learned counsel for respondents Sri Dharmendra Tiwari proxy for Sri R.K. Srivastava.

6. From perusal of record, it is clear that before passing the impugned order dated 10.7.2013, the respondents have neither given any show cause notice to the applicant nor provided any opportunity of hearing to the applicant. It is also clear that applicant under RTI made a request to provide copy of orders which is mentioned in the impugned order dated 10.7.2013 and also requested to provide order of regularization dated 27.6.2012 but the same were not provided to the applicant till date.

7. The Hon'ble Apex Court in the case of **State of Orissa Vs. Binapani Dei reported in AIR 1967 Supreme Court 1269** observed as under:-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the

rules of nature justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. "

8. Once again in the case of **Smt. Meneka Gandhi Vs. Union of India and another reported in AIR 1978 Supreme Court 597**, the Hon'ble Apex Court observed as under:-

"Natural justice in the field of administrative law. Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must always be does fairness in action demand that an opportunity to be heard should be given to the person effected."

9. Again in the case of **Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases 88**, the Hon'ble Apex Court has been pleased to observe as under:-

"29. In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to Rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice."

10. Since, in the present case before issuing impugned order dated 10.7.2013 neither any show cause was given

to the applicant nor any opportunity of hearing was provided to the applicant, as such the same amounts to violation of principle of natural justice and therefore, the impugned order is liable to be quashed on this ground alone.

11. Accordingly, O.A. is allowed. Order dated 10.7.2013 is quashed and the matter is remitted back to the competent authority to consider the case of the applicant afresh after giving proper opportunity to the applicant. No order as to costs. Since, the court is only remitting the matter back to the competent authority, this court has not expressed any opinion on the merit of the case.

**(Justice Dinesh Gupta)
Member (J)**

HLS/-

