

Central Administrative Tribunal
Principal Bench

OA No.2119/2015

Reserved on: 07.03.2017
Pronounced on: 20.03.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Sunil Kukreja, Joint Director,
Group 'A', Aged 60 years
S/o Sh. Veer Bhan,
R/o 8/12, Ashok Nagar,
New Delhi – 110 018. ...Applicant

(By Advocate: Sh. Ashish Nischal)

Versus

National Rural Roads Development Agency
Through its Director General,
Ministry of Rural Development,
5th Floor, 15-NBCC Tower,
Bhikaji Cama Place,
New Delhi – 110 066. ...Respondent

(By Advocate: Sh. Mayank Yadav with Sh. Jitender Verma)

O R D E R

The applicant has filed the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main relief(s):-

- “i) *The impugned order be quashed and the proposed recovery of Rs.3,25,619/- may be set aside and quashed.*
- ii) *The amount of Rs.7,170/- on account of personal pay (2) already recovered in April month salary and a further recovery on this account for Rs.5,551/- (till 24.05.2015) and reduced deputation allowance amounting to Rs.9,713/- (from September, 2014 to 24.05.2015) be refunded to the applicant with 9% interest p.a. thereon.”*

2. The brief factual matrix of the case is that the applicant initially joined M/s. Projects & Equipment Corporation of India Limited (PEC Limited) as Stenographer

on 26.03.1977 and was elevated upto the post of Chief Finance Manager. Counsel for the applicant states that the applicant was selected as Deputy Director (Finance & Administration) by the respondent department vide letter dated 25.10.2010 on certain terms & conditions, one of which being that the deputation allowance will be @ 10%. The applicant accepted the offer of appointment and joined the respondent department as Deputy Director (F&A) on 30.11.2010 on deputation basis, which post was later redesignated as Joint Director (F&A). The applicant was also communicated the Memorandum of Association, Rules & Regulations & Bye Law, which also contained the provision that deputationists will be paid the deputation allowance @ 10%. Counsel for the applicant states that when the pay of the applicant fixed by the respondent was less than what he was getting in his parent department, the applicant made a representation on 01.09.2011. The respondent issued an Office Order dated 30.03.2012, *inter alia*, granting deputation allowance @ 10% and personal pay (2) at Rs.7,170/- p.m. Counsel for the applicant states that on 05.12.2012, the respondent issued amended Bye Laws relating to Pay & allowances in respect of deputationists thereby introducing new pay scales with a provision of option to switch over to new pay scales or to continue with

existing one. But, the applicant did not exercise any option which meant that he wanted to continue with whatever he was already drawing. He further states that the applicant was informed vide letter dated 28.04.2015 that in view of re-fixation of his pay, deputation allowance and personal pay (2), an over payment of Rs.3,38,657/-, which has since been revised to Rs.3,25,619/-, has been made to him and the same is to be recovered as excess payment for the period from 30.11.2010 to 31.03.2015.

3. Being aggrieved by the wrong fixation and recovery of alleged excess amount, the applicant made a representation on 28.04.2015 to the respondent against the recovery by re-fixation of deputation allowance and personal pay(2) in an unilateral, arbitrary and illegal manner. It is the contention of the counsel for the applicant that the respondent, without responding to the applicant's representation and even without assigning any reasons thereof, made a recovery of Rs.7,170/- from the salary of April, 2015 and likely to recover Rs.5,551/- (till 24.05.2015) from the salary of May, 2015 on account of personal pay (2), and further restricting the deputation allowance to Rs.4000/- w.e.f. September, 2014. The respondent also informed the parents department of the applicant to recover a sum of Rs.3,25,619/-, which was

alleged to have been over-paid to him. Counsel for the applicant states that the applicant was repatriated to his parent department on 22.05.2015 on completion of his term of deputation, and he stood retired on 31.05.2015 attaining the age of superannuation. Counsel for the applicant states that before passing the order of recovery, the applicant was neither given an opportunity of hearing nor issued any Show Cause Notice (SCN) which act of the respondent qua recovery of the alleged amount is illegal, arbitrary, against the rules & regulations and also violative of principles of natural justice. He also states that when the respondent did not agree to the request of the applicant for not giving effect to the impugned recovery, he approached this Tribunal by filing of the instant OA for redressal of his grievance.

4. It is seen that the Tribunal, vide order dated 29.05.2015, while issuing notice to the respondent directed that in the interregnum, the disputed amount would be deposited in the Bank and kept in a separate account and proper receipt would be produced on the next date of hearing.

5. Per contra, counsel for the respondent states that the applicant was selected on deputation basis as Dy. Director but he was categorically informed that his pay would be

fixed in accordance with Govt. of India Rules & Regulations with reference to his last pay drawn by him in his parent department. It is also stated that re-designation of the post as Joint Director (F&A) was without any additional monetary benefit nor it was treated as promotion. Counsel for the respondent states that as the applicant managed to get his pay fixed on wrong calculation in March, 2012 to be effective from 01.09.2011, a corrective measure was taken when the internal audit team pointed out the anomaly in this regard and the applicant was communicated the same asking him to offer his comments, if any. Counsel for the respondent reiterated that the recovery is in accordance with the audit objection. He further added that as the amount paid to the applicant was inadmissible under the extent orders and instructions of the Government of India, hence, corrective measures were taken to effect recovery of over payment from the applicant. Counsel for the respondent strongly urged that the action of the respondent in effecting recovery of the disputed amount is legal, justified and in accordance with the rules and regulations. He also argued that since the applicant has deposited the excess amount paid to him, he cannot now take advantage of his own misdeeds. He further states that as the recovery of the excess amount paid to the applicant is legal, justified

and being in accordance with rules, the applicant is not entitled to any of the reliefs prayed for in the instant OA and, hence, the OA deserves to be dismissed with costs.

6. Heard the rival contentions of the parties, perused the pleadings, and documents placed on records.

7. It is seen that the facts, except issuance of SCN, are not disputed. It is the settled position of law that whenever any action of the government attracts civil consequences to its employee, the respondent is duty bound to issue SCN to the concerned employee before effecting recovery from him. In the present case, it is the categorical contention of the applicant that before passing the order of impugned recovery, the respondent has never served any SCN on him nor an opportunity of being heard has been provided to him. It is also seen that the respondent has not been able to produce any document to show that any SCN was ever served on the applicant before passing the impugned order of recovery. It is also seen that the applicant has since retired on attaining the age of superannuation way back on 31.05.2015. Therefore, I am fully convinced and of the considered opinion that the respondent has failed to issue SCN before passing the recovery order and they are not justified to compel recovery of alleged excess amount from the applicant with hearing him.

8. In view of the above discussion and taking into consideration of the fact that as per the settled principles of law the respondent has failed in its duty to serve SCN to the applicant before passing of the impugned recovery order, the impugned order 20.05.2015 is quashed and set aside. OA is accordingly disposed of with a direction to the respondent to issue SCN to the applicant within fifteen days from the date of receipt of certified copy of this order and have applicant's representation/reply, which will be filed by him within a period of one month from the date of receipt of the SCN, and decide his representation within a further period of two months from the date of receipt of such representation from the applicant, by passing a detailed, reasoned and speaking order. It is also made clear that the applicant would be at liberty to approach the Tribunal again in case he feels aggrieved by the order of the respondent to be passed on his representation to the SCN. The respondent is also directed that till the exercise, as ordained above, is completed, the disputed amount lying deposited in the bank as per Tribunals' order dated 29.05.2015, shall remain as it is. No costs.

(Jasmine Ahmed)
Member (J)