Central Administrative Tribunal
Principal Bench, New Delhi.

OA-4432/2014

Reserved on : 29.08.2018.

Pronounced on : 23.10.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Ms. Madhuri Dabral,
Aged 51 Years,
D/o Sh. B.P. Dabral,
A Non-Functional Selection Grade Officer
of the Indian Postal Service,
Director (Training, Welfare and Sports)
Department of Posts,
Ministry of Communications and Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi-110001.

Now residing at :

B-87, Sector Gamma-I,
Greater Noida, UP. .... Applicant

(through Sh. S.K. Das, Advocate)

Versus

Union of India through
Secretary,
Department of Posts,
Dak Bhawan, Parliament Street,
New Delhi-110001. .... Respondent

(through Sh. Subhash Gosain, Advocate)

O R D E R

Briefly stated, the facts of the current O.A. are that the applicant is a 1989 batch officer of the Indian Postal Service (Group-A) under the Union Government. She was appointed as a direct

recruit through the Civil Services Examination conducted by the Union Public Service Commission.

2. The applicant was posted as Director (Work Study) at New Delhi vide Order dated 06.05.2010 after which she was transferred to Punjab Circle and joined Chandigarh on 20.06.2011. The applicant applied for government quarter on 24.06.2011 and was allotted one quarter above Sector-22, Post Office vide Office Memorandum dated 01.07.2011. Since the quarter allotted to her was in a commercial area, she requested for change of quarter on 06.07.2011 in a residential area. She was allotted Quarter in Postal Colony, Sector-37-A, Chandigarh vide Circle Office Order dated 03.08.2011. While awaiting possession of Government accommodation, she availed facility of Inspection quarters. She states that need to stay in the Inspection Bungalow arose because the Civil Wing of Postal Department took an abnormally long time to hand over the allotted quarter to her.

3. On 31.10.2011, the applicant received a letter from the Punjab Circle Office, enclosing Department of Posts letter No. 6-2/2004-Bldg. dated 04.08.2005 stating that for any stay beyond 60 days, permission of Director General Posts is required. The applicant submitted a letter dated 04.11.2011 to Assistant Director (Building) of Circle Office to get the civil work completed on her allotted quarter on war footing since she was keen to shift her family to Chandigarh

at the earliest. Thereafter, she informed the Circle Office vide letter dated 08.11.2011, that her stay in the Inspection quarter is not more than 60 days on any occasion. She also requested for grant of leave till handing over of allotted government accommodation to her by the Civil Wing. Further, she requested that she may be allowed to stay in Inspection quarter at normal rates in the interest of service.

4. The applicant applied for six months earned leave on 24.11.2011 on grounds of vitiated office atmosphere. On 02.12.2011 the Circle Office intimated the applicant that the annual repair and maintenance work has been completed. On 05.12.2011, she requested for joint visit and requested that the electrical work should also be completed. In the meantime, Private Secretary to Chief Postmaster General intimated her that Inspection quarter must be vacated on 10.12.2011. The possession of allotted quarter was taken over by her on 11.12.2011.

5. On 10.12.2011, the applicant submitted a representation to the Director General (Posts) alleging bias against her by certain officers of Punjab Circle. On 01.02.2012, she was informed that her request for transfer has been registered for consideration.

6. It is averred that the Accounts Branch of Regional Office, without asking the applicant, had on its own, correctly, drawn the house rent allowance from the date of joining till the date of possession of quarter (from 20.06.2011 to 11.12. 2011) as per the

prevailing Rules of the Ministry of Finance. The applicant submits that the Chief Post Master General, Punjab Circle intentionally delayed handing over possession of government quarter to her for six months despite availability, and ordered for retrospective recovery of the house rent allowance paid to the applicant from the month of May 2012 onwards without any formal order of recovery.

7. The applicant received a copy of letter dated 22.05.2012 in which the Accounts Officer of Regional Office had addressed the Assistant Director (Welfare) of Circle Office about the amount of house rent allowance paid to her. She requested the Accounts Officer of Regional Office to provide her a copy of the Circle Office letter dated 07.05.2012 mentioned therein. A perusal of the same showed that the Circle Office had given directions to deduct the amount of HRA paid to the applicant. After a few days, the applicant received a Salary Slip for the month of May, 2012 in which deduction of an amount of Rs.2500/- was shown. The applicant submits that there were no formal orders for any recovery and she was not afforded any opportunity to put forward her submissions. Hence, she received her salary under protest. Thereafter, she took up the matter with Director General Posts vide letters dated 23.05.2012, 01.06.2012, 13.06.2012 and 22.06.2012 but did not receive any reply. The applicant was suddenly transferred back to Delhi on 25.06.2012. She received a copy of her Last Pay Certificate dated 18.07.2012

issued by the Punjab Circle in which several deductions were made for which no recovery orders were received by her. The applicant protested against these illegal deductions vide her representation dated 27.02.2012, which was rejected by the respondents vide rejection letter dated 22.08.2012, without assigning any reason. When applicant's pleas fell on deaf ears, she had no alternative except to submit a Memorial to the Hon'ble Minister on 22.11.2012. This too was rejected by the respondents on 27.05.2013 without even placing it before the Hon'ble Minister. Thereafter, the applicant submitted a Petition dated 07.03.2014 against the aforesaid illegal deductions to the Hon'ble President of India.

8. Aggrieved, the applicant filed an OA No.2201/2013 before this Tribunal seeking a direction for disposal of her Memorials regarding adverse entries and below benchmark grading in her three ACRs, which was disposed of by this Tribunal vide order dated 20.12.2013 with a direction to the respondents to dispose of her representations regarding her ACRs by the Competent Authority. Taking a cue from this the applicant submitted several representations to the respondents for disposal of all her pending appeals/memorials/petitions in the light of the decision of the Tribunal. The respondents, vide impugned order dated 12.08.2014 rejected the petition dated 07.03.2014 of the applicant, addressed to the Hon'ble President of India. Aggrieved by Annexure A-1 order

of the respondents the applicant has filed the instant OA, praying for the following reliefs:

> "8.1 to allow the present Application;
>
> 8.2 to quash and set aside impugned Rejection letter dated 12.08.2014 (Annexure A-1) of the Respondent Department in as much as it relates to the issue at hand; and as a corollary thereto,
>
> 8.3 to direct the Respondent Department to refund the amount of money recovered from the Applicant towards House Rent Allowance paid to the Applicant at Chandigarh;
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> 8.4 to direct the Respondent Department to pay difference of House Rent Allowance of Delhi Rate and Chandigarh rate for the first two months;
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> 8.5 to direct the Respondent Department to give 18% compound interest annually, compounded monthly, from the date of the due/recovery of the money till the date the claim is paid;
>
> 8.6 to allow exemplary costs of the application;"

9. The applicant has relied upon judgments of the Hon'ble Supreme Court in the cases of **Swaran Singh Chand v. Punjab State Electricity Board**, [2009 (7) SCALE 622], **M.P. State Cooperative Dairy Federation Ltd. V. Rajnesh Kumar Jamindar**, [(2009) 15 SCC 221], **H.V. Nirmala v. Karnataka State Financial Corporation**, [(2008) 7 SCC 739 and **Ramana Dayaram Shetty v. International Airport Authority of India**, [(1979) 3 SCC 489].

10. The respondents in their counter affidavit submit that the applicant has not approached this Tribunal with clean hands and suppressed material facts. It is also contended that the Tribunal has no territorial jurisdiction to entertain the present OA, which is barred

by limitation as prescribed under the Administrative Tribunals Act, 1985.

11. The respondents submit that the applicant was repatriated to the Department of Posts prematurely in April, 2010 from Ministry of Urban Development where she was working as Director (Printing) on deputation basis. On her repatriation, she was posted as Director (Work Study) in Postal Directorate against a CSS post. Subsequent to the order of the Ministry of Finance for winding up all the Work Study Units across the Government, this Department was also wound up and so were the work study units functioning in the department. Resultantly, the officers/officials working in the Work Study Units were transferred to different vacant posts within the Department, including the applicant, who was transferred to Punjab Circle as DPS (Region) having headquarters at Chandigarh in June, 2011. The respondents state that the contention of the applicant that her transfer to Chandigarh was illegal is incorrect since it is the prerogative of the Department to transfer officers in the interest of service and administrative exigencies. The applicant applied for Govt. accommodation vide her application dated 24.06.2011 against which a type-V govt. quarter was allotted to her. She did not accept the allotted accommodation and applied for Govt. quarter at Sector 37A. On her request, two type-IV quarters no.105-106 were amalgamated and treated as one type-V and allotted to her vide

office memo dated 3.8.2011. Instead of taking possession of the accommodation the applicant requested for repairing work vide applications dated 5.8.2011 and 16.8.2011, which was carried out after obtaining approval of expenditure from competent authorities of civil wing. The possession of said quarter was taken over by her on 11.12.2011. It is pointed out that allotment was made within one month of her request and there is no delay at the level of Chief PMG in allotment and getting the work completed through Civil Wing.

12. The respondents further contend that the applicant had been occupying the inspection quarter from 20.06.2011 onwards and her stay in this quarter had exceeded 90 days. As provided in Para-9 of Appendix No.11 of Postal Manual Volume-II, the applicant was asked by the Assistant Director (Welfare) Punjab Circle Chandigarh vide letter dated 31.10.2011 to intimate the tentative date upto which the applicant intended to stay in the inspection quarter for the purpose of obtaining permission from Directorate New Delhi, since the stay beyond 60 days requires permission from D.G. Posts, New Delhi. As per the inspection quarter booking register, the applicant stayed there from 20.06.2011 to 10.12.2011.

13. The respondents aver that House Rent Allowance was drawn on the basis of LPCs received from Postal Directorate, New Delhi, and the Income Tax was calculated and deducted from the salary

of the applicant and Form 16 was also issued before recovery was pointed out. Since the applicant had been occupying the Inspection quarter w.e.f. 20.06.2011 to 10.12.2011, recovery for Rs. 57830/- of HRA was ordered. It started in small installments @ Rs.2500/- w.e.f. May 2012 from the salary of applicant. The applicant has concealed the information that Postal Directorate had replied to her vide letter dated 22.08.2012 in which her representations dated 23.05.2012, 01.06.2012, 13.06.2012 and 22.06.2012 were considered and she was transferred to Postal Directorate vide Memo dated 25.06.2012. As per her LPC, a total amount of Rs.2,09,734/- was to be recovered, out of which an amount of Rs.2,06,904/- has been recovered upto February, 2014 and Rs.2830/- are still outstanding.

14. It is mentioned in the reply that the issues raised in the representation of the applicant dated 27.07.2012 were examined and decision of the Competent Authority conveyed to her vide letter dated 27.05.2013. The petition dated 07.03.2014 of the applicant was also examined in the light of existing Instructions/Rules and appropriate speaking order were issued with the approval of the competent authority vide letter dated 12.08.2014. The present rule position stands since 1989 even with the induction of Ministry of Finance O.M. dated 27.10.1994. The HRA, which was paid to the applicant was ordered to be recovered as the same was not admissible to the applicant as per Instructions contained in

Directorate letter No. 26-16/85/NB(P) dated 21.03.1989 and para 273 of letter No. 26-16/85/NB(P)(pt) dated 17.09.1991, hence, the applicant has no case and the current O.A. needs to be dismissed.

15. The respondents have also relied upon Government of India, Ministry of Communication letter No. 14-4/85 NB dated 26.11.1985, as per which an officer staying in Inspection quarter, in the headquarter of his posting, is not entitled to draw HRA for the period during which he stays in the Inspection quarter.

16. During the course of hearing, both sides cited various Instructions issued by Government in support of their submissions. Apart from emphasizing the merit of his case, thrust of the applicant's counsel was that the impugned rejection letter dated 12.08.2014 and the impugned recovery of house rent allowance already paid without any statutory backing are bad in law as no show cause notice was ever issued to the applicant. Sh. S.K. Das, learned counsel for the applicant, submitted that the respondents have not complied with the statutory requirements and principles of natural justice. He argued that recovery from the salary of government employee is listed as a minor penalty under Rule 11 of the CCS (CCA) Rules, 1965, and no penalty can be imposed without following the due process of law as held by various judicial fora in a plethora of judgments.

17. Per contra, Sh. Subhash Gosain, learned counsel for the respondents argued that it was not considered necessary to issue a show cause notice to the applicant since it was merely an administrative decision and the applicant was already aware of the entire issue. Besides, the entire amount has not been recovered in lump sum but only small installments have been ordered to be recovered for the wrongfully availed house rent allowance.

18. I have gone through the facts of the case carefully. I am not impressed with the arguments advanced by the respondents that no show cause notice was necessary in the instant case. Nor, am I convinced by the arguments advanced by the respondents' counsel that the letter dated 22.05.2012 (Annexure R-XVIII) is akin to a show cause notice. Hon'ble Supreme Court in the case of **Swadeshi Cotton Mills** Vs. **Union of India**, (1981) 1 SCC 664, Justice R.S. Sarkaria, speaking for the majority in a three-Judge Bench lucidly explained the meaning and scope of the concept of 'natural justice". Referring to several decisions, his Lordships observed thus:-

> **"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. <u>The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain.</u> This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of**

the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. <u>But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.</u>"

Similarly, Hon'ble Supreme Court in the case of **A.K. Kraipak & Ors. Etc.** Vs. **UOi & Ors.,** AIR 1970 SC 150 has held as follows:-

"In State of Orissa v. Dr. (Miss) Binapani Dei and Ors.(1) Shah, J. speaking for the Court, dealing with an enquiry made as regards the correct age of a government servant, observed thus "We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. **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 natural justice after informing the first respondent of the case of the State. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propriacausa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural**

> **justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries**. Enquiries which were considered administrative at one time are now being considered as quasijudicial in character. **Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decison in a quasi-judicial enquiry**. As observed by this Court in Suresh Koshy George v. The University of Kerala and Ors.(1) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a cornplaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the obser- vance of that was necessary for a just decision on the facts of that case."

Again, in the case of **D.K. Yadav** Vs. **J.M.A. Industries Ltd.,** 1993 SCR (3) 930, the following has been held:-

> "**It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case**. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors. [1978] 2 SCR 272 at 308F the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages……"

19. Without citing all the judgments on the subject, I feel that it is important to refer to the judgment of Hon'ble Supreme Court in the case of **State of Orissa** Vs. **Dr.(Miss) Binapani Dei**, AIR 1967 SC 1269 which has been relied upon in the earlier judgments. It was held therein that:-

"In this background, the facts of the case may be reviewed. In. 1957 anonymous letters were received by the Director of Health Services that the first respondent had misstated her age, but no steps, were taken immediately to hold an enquiry. In 1961 some investiture was undertaken through the Vigilance Department. The Secretary to the Government in the Health Department on August 23, 1961 informed the first respondent that the Government of Orissa had information that when she was admitted into Class X in the Ravenousness Girl's School, her date of birth was 15 years, and when she was admitted into the First Year Class on July 9, 1924, her age was 17 years and 2 months, and she was required to show cause why May 9, 1907, should not be accepted as her date of birth on the basis of the entry in the Admission Register of the First Year Class. The first respondent submitted her explanation stating that she did not recollect if she had ever attended the Ravenous Girls' School. After 6 correspondence the Admission Register was examined by the first respondent in the presence of the Director of Health services and the officers of the Vigilance Department, and thereafter on March 19, 1962, she wrote a letter pointing out the irregularities in the entries relating to age in Ravenshaw Girls'. School Admission Register. The Additional Director of Family Planning Dr. S. Mitra was then asked to make a report. In his report Dr. S. Mitra largely relied upon a letter written by the Principal, Lady Hardinge Medical College, Delhi, that the birth date of the first respondent was April 4, 1908. In the course of the enquiry before Dr. S. Mitra the letter was shown to the first respondent but she declined "to make any comments thereon." Thereafter on September 28, 1962 there was a notice from the Secretary in the Department of Health stating that according to the, school Admission Register her date of birth was August 22, 1906, and according to the First Year Class Admission Register it was April 1907, and it was intended to treat the latter date as the date of her birth, and the first respondent was called upon to show cause why that date should not be accepted. The report which Dr. S. Mitra had submitted to the State was not disclosed to the first respondent. It may be recalled that there were four different dates before the State authorities ; (1)- the entry in the Ravenshaw Girls' School Admission Register showing the date of birth as August 22, 1906, (2) the entry in the Admission Register of the First Year Class showing the date of birth as some date in April, 1907; (3) the report of the Principal, Lady Hardinge Medical College, Delhi, showing the date of birth as April 4, 1908, as recorded in the Medical College Admission Register; and (4) the first respondent's statement supported by her father's statement at the time when she joined the service in 1938 giving her date of birth as April 10,1910. If an enquiry was intended to be made, the State authorities should have placed all the materials before the first respondent and called upon her to explain the discrepancies and to give her explanation in respect of those discrepant and to tender evidence about her date of birth.

It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. 'The rafter the first respondent was required to show

> cause why April 16, 1907, should not be accept das the date of birth and without recording any evidence the order was passed. **We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. 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 natural 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. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State**."

20. In view of the aforesaid citations, without commenting on the merits of the case, I set aside the impugned rejection order dated 12.08.2014. It needs no elaboration that the impugned action of recovery by the respondents is clearly violative of principles of natural justice since it has been issued without giving any opportunity to the applicant to present her side of the picture.

21. This order, however, will not preclude the respondents from proceeding against the applicant after issuing a proper show cause notice to her, if necessary, in accordance with law. The respondents may then pass necessary and appropriate orders after according her an opportunity for oral/written hearing as envisaged under law. The O.A. is thus partially allowed with these directions. No costs.

(Praveen Mahajan)
Member (A)

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