

OA.No.170/00032/2017/CAT/Banngalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00032/2017

DATED THIS THE 18th DAY OF SEPTEMBER, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri M.S.Mote

Age: 38 years

S/o. Subarayappa

Working as Postal Assistant

Ramadurg H.O.

Residing at:

Menasigi PO, Ron Taluk

Gadag Dt.

.....Applicant

(By Advocate Shri P.Kamalesan)

Vs.

1. Union of India
 Rep. by its Secretary
 Dept. of Post
 Dak Bhavan
 New Delhi-110 001.
2. Chief Postmaster General
 Karnataka Circle
 Bangalore-560001.
3. Post Master General
 N.K.Region
 Dharwad-580001.
4. Senior Superintendent of Post Offices
 Belagavi Postal Division
 Belagavi-590001.Respondents

(By Advocate Shri M.Swayam Prakash)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following
 relief:

- i. Quash the Letter No.NKR/ESA/1/197/2015-2016 dtd: 26.2.2016,Dharwad-580001, issued by Post Master General, North Karnataka Region, Dharwad, vide Annexure-A5.*
- ii. Direct the respondents to refund the recovered amount to the applicant.*
- iii. Declare the applicant is eligible for drawal of double rate of TA from date of appointment i.e. 15.7.2003.*

2. The facts of the case are as follows:

The applicant was selected under Physically Handicapped quota vide order dated 12.3.2003(Annexure-A1). Thereafter, the Medical Board of Lady Curzon Hospital and Bowring Institute, Bangalore issued a Medical Certificate to the applicant on 18.3.2003(Annexure-A2) certifying that the applicant was having 60 to 65% Locomotion disability. Thereafter the applicant was appointed as Postal Assistant at Savalgi SO vide letter dated 11.7.2003(Annexure-A3) and he assumed the charge as Postal Assistant w.e.f. 15.7.2003. The applicant was granted double rate of TA allowed to Physically Handicapped employees right from 15.7.2003. An Audit Party during audit in August 2015 observed that the sanctions authorised by the Head of the Department(HOD) regarding drawal of double rate of TA for PH employees are not available in service books. Therefore, it has been referred to the concerned sanctioning authorities for regularization(Annexure-A4). The Post Master General vide letter dated 26.2.2016 ordered for recovery of additional Transport Allowance drawn from the date of appointment till 17.12.2015(Annexure-A5). In spite of representation submitted by the applicant saying that the order of recovery is in violation of DOPT OM dated 2.3.2016(Annexure-A6), a communication was sent for making recovery from the applicant(Annexure-A7). The applicant was again directed to appear before District Surgeon, BIMS Hospital, Belagavi to produce medical certificates. Thereafter, in accordance

OA.No.170/00032/2017/CAT/Banngalore Bench with the recommendation of District Hospital, Belagavi, the Post Master General, North Karnataka Region, Dharwad, issued sanction for drawal of double the rate of TA to the applicant from 18.12.2015 onwards(Annexure-A8).

3. According to the applicant, the Physically Handicapped employees are eligible for drawal of double rate of TA in accordance with the orders/ rules on the subject. The same was granted by the respondents. The applicant has not played any role in drawal of double rate of TA in his favour nor committed any fraud nor misrepresented the facts to respondents. Therefore, the recovery from 15.7.2003 to 17.12.2015 is against the instructions/orders on the subject and also against the instructions regarding recovery of wrongful/excess payments made to Government servants vide DOPT order dated 2.3.2016(Annexure-A9).
4. The respondents while admitting the fact of allowing drawal of double the normal rate of TA to the applicant right from the date of his joining stated that during inspection, it was observed by the audit party that drawal of double rate of TA is being made without prior approval of the competent authority as prescribed in the Ministry of Finance OM dated 31.8.1978(Annexure-R1). Though the applicant requested for regularization of the said drawal of double TA, it was not considered possible as there is no provision to that effect. As per OM dated 31.8.1978(amended from time to time), the Govt. servants shall apply for the grant of conveyance allowance to the Head of their Department and the HOD has to consider the same only after the concerned employee was examined by the medical authority and report submitted to that effect. As this was not done in the instant case, the order for recovery of excess payment was issued. When

the applicant applied for the double TA allowance, he was asked to appear before the Medical Board and based on the recommendation, he was sanctioned the double rate of TA from December 2015 onwards.

5. We have heard the Learned Counsel for the parties. During the hearing, the Learned Counsel for the applicant produced a copy of the order dtd.17.1.2017 passed by this Tribunal in OA.No.638/2016 wherein the order for recovery of additional Transport Allowance drawn and paid to the applicant therein was set aside.
6. He submitted that the case of the present applicant is exactly similar to the applicant therein and accordingly the applicant is entitled to the same relief. The Learned Counsel for the respondents also accepted the fact that the case of the applicant in OA.No.638/2016 and the present applicant is exactly similar.
7. In OA.No.638/2016 wherein the Physically Handicapped person was allowed the double rate of TA right from the date of joining by the respondents themselves but was asked to refund the excess amount drawn towards TA till it was sanctioned based on the observation of audit that prior sanction of HOD was not taken. This Tribunal in its order dated 17.1.2017 in OA.No.638/2016 held vide para-7 & 8 as follows:

7. It is clear from the records that the applicant was appointed under the Physically Handicapped category and a medical certificate was submitted by him at the time of appointment. The applicant was sanctioned transport allowance at higher rate by the local authorities right from the beginning and hence there was no necessity on his part to make any further application for sanction of the transport allowance. It was the responsibility of the local authority who were required to obtain necessary approval of the higher authority if the relevant rule requires the same. But they did not make any reference to the higher authorities and paid higher rate of transport allowance to the applicant. Further there is no ambiguity regarding entitlement of the applicant for grant of higher transport allowance. When the applicant was asked to submit a representation and then to undergo an examination he did so and based on the medical certificate he was sanctioned TA at higher rate. It is quite clear that in this

OA.No.170/00032/2017/CAT/Banngalore Bench case neither there is a case of non-entitlement of transport allowance at higher rate nor was there is any misrepresentation by the applicant in obtaining sanction for transport allowance at the higher rate. For the lapse was on the part of the local authorities, the applicant cannot be penalised. Our attention has also been drawn to the Hon'ble Apex Court's order in CA.No.11527/2014 in case of Rafiq Masih & Ors. and based on which the Department of Personnel & Training issued memorandum dated 2.3.2016. The Hon'ble Supreme Court has postulated certain situations wherein recovery is impermissible under law which included recovery from Class-III and Class-IV service or Group 'C' and Group 'D' service.

8. On detailed consideration of the facts of the case and also keeping in view the order of the Hon'ble Apex Court as stated above, we hold that the order of the Post Master General, NK Region dated 2.3.2016 ordering recovery of additional transport allowance drawn and paid to the applicant from his date of appointment i.e. 13.7.2003 till August, 2015 cannot be considered as justified. Therefore, we set aside the order dated 2.3.2016(Annexure-A9) ordering recovery of excess amount drawn. We further direct the respondents to refund the amount already recovered from the applicant's salary based on the order dated 2.3.2016 issued by the Postmaster General, North Karnataka Region.

8. The present case is exactly similar and hence we are inclined to take a similar view in the matter. Therefore, on the same analogy, we hold that the order dated 26.2.2016(Annexure-A5) regarding recovery of excess amount drawn towards TA by the applicant is unjustified and hence the same is set aside. In case the respondents have already recovered some amount from the applicant's salary based on the said order dated 26.2.2015, the same shall be refunded to the applicant by the respondents.

9. The OA is accordingly allowed in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

- Annexure-A1: Copy of the Superintendent of Post Offices, Bijapur Division, Bijapur letter No.B-1, 2/32/02 dtd.12.3.2003
- Annexure-A2: Copy of Medical certificate issued by Medical board of Bowring lady Curzon Hospital, vide letter No.MBD/B & LCH/52/02-03 dtd.18.3.2003
- Annexure-A3: Copy of Senior Superintendent of Post Offices, Bijapur Division, letter No.B-1/2/32/2003 dtd.11.7.2003
- Annexure-A4: Copy of Audit inspection report of Ramdurg HO from 22.8.15 to 29.8.15
- Annexure-A5: Copy of Post Master General, North Karnataka Region, Dharwad- 580001, letter No.NKR/ESA-1/197/2015-16 dtd.26.2.2016
- Annexure-A6: Copy of the representation of applicant dtd.28.2.2016
- Annexure-A7: Copy of Superintendent of Post Offices, Belagavi Division, letter No.L/PH/Dlgs/MSM/2016 dtd.1.3.2016
- Annexure-A8: Copy of Post Master General, North Karnataka Region, Dharwad letter No.NKR/ESA-1/197/PH/2015-16 dtd.25.2.2016
- Annexure-A9: Copy of DOPT OM No.F.No.18/03/2015-Estt.(Pay-I) dtd.2.3.2016
- Annexure-A10: Copy of Government of India, Ministry of Finance, Dept of Expenditure, OM No.21-1/2011-E.II(B) dtd.5.8.2013

Annexures with reply statement:

- Annexure-R1: Copy of Min. of Finance OM No.19029/1/78-E.IV(B) dtd.31.8.1978
- Annexure-R2: Copy of letter dtd.7.10.2015 of the applicant
- Annexure-R3: Copy of letter dtd.6.11.2015 passed by respondent No.3
- Annexure-R4: Copy of representation dtd.27.11.2015 of the applicant
- Annexure-R5: Copy of the medical certificate dtd.18.12.2015 issued by the District Hospital, Belgaum
- Annexure-R6: Copy of the representation dtd.23.2.2016 of the applicant
- Annexure-R7: Copy of the letter dtd.26.2.2016 issued by respondent No.3
- Annexure-R8: Copy of the representation dtd.30.4.2016 of the applicant
- Annexure-R9: Copy of the letter dtd.25.5.2016 issued by respondent No.3
- Annexure-R10: Copy of letter dtd.15.6.2016 issued by respondent No.4

Documents supplied by the applicant:

- Document No.1: Copy of the order dtd.17.01.2017 passed in OA.No.638/2016 by CAT, Bangalore Bench
