

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.061/00033/2016

Chandigarh, this the 20th day of November, 2017

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE Ms. P. GOPINATH, MEMBER (A)**

Sunil Kumar Sawhney son of Lae Sh. Om Parkash Sawhney, Assistant Accounts Officer, Circle Stamps Depot, Industrial Estate Post Office Complex, Bari Brahmana, Jammu, Group -B, aged 56 years.

....Applicant

(Present: Mr. Anil Rana, Advocate)

VERSUS

1. Union of India, Ministry of Communication and Information Technology, Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi through its Secretary.
2. The Department of Posts, Dak Bhawan, Ashoka Road, New Delhi through its Secretary.
3. The Chief Post Master General, Jammu and Kashmir Circle, Meghdoot Bhawan, Bahu Plaza, Rail Head Complex, Jammu.
4. The Director of Accounts (Postal), Jammu and Kashmir Circle, Bakshi Nagar, Jammu.
5. The Superintendent Circle Stamps Depot, Industrial Estate Post Office Complex, Bari Barahmana, Jammu.

....Respondents

Present: Mr. K.K. Thakur, Advocate)

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (O.A.), instituted by applicant Sunil Kumar Sawhney son of late Sh. Om Parkash Sawhney, Assistant Accounts Officer, is to the impugned Show Cause Notice (SCN) dated 14.01.2016 (Annexure A-2), and the impugned order dated 23.06.2016 (Annexure A-8), whereby a recovery of Rs.92,527/- in lieu of excess payment of T.A. paid to him, was ordered, by the Competent Authority.

2. The pith and substance, of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant O.A., and expository from the record, is that the applicant was promoted as Assistant Account Officer on 12.04.1996, and is presently posted in J & K Postal Circle. He was stated to have claimed and paid excess impugned amount of Rs.92,527/-, in lieu of travelling allowances. As a consequence thereof, he was asked to deposit the impugned amount, vide letter dated 13.11.2015, which was challenged by him in O.A. No. 061/00094/2015. While quashing the impugned order therein, the respondents were directed to issue a SCN, afford an opportunity of hearing to the applicant, and then pass necessary order, after considering the pleas, to be taken by him against such recovery, within a period of one month, vide order dated 16.12.2015 (Annexure A-1), by the Co-ordinate Bench of this Tribunal.

3. In compliance thereof, the impugned SCN dated 14.01.2016 (Annexure A-2) was issued to the applicant, by the Competent Authority, in this relevant connection. Instead of filing reply, the applicant raised objection with regard to issuance of SCN and non-supply of complete material, vide letter dated 22.01.2016 (Annexure A-3). In pursuance thereof, the Competent Authority has provided all the requisite details and of the impugned amount, and asked the applicant to appear in the office of DAP, Jammu, for personal hearing, vide order dated 25.01.2016 (Annexure A-4). Thereafter, the applicant filed detailed reply dated 26.01.2016 (Annexure A-5). The applicant kept on moving representations one after another, demanding certain another documents, in order to delay the payment of the impugned recovery amount. However, the

relevant authority provided all the documents, asked for by him, vide letter dated 05.02.2016 (Annexure A-6). Not only that, the applicant again raised similar objections vide a detailed reply dated 11.02.2016 (Annexure A-7).

4. Having considered the entire record, the documents, and taking into consideration the replies, filed by the applicant, the Competent Authority negated his claim and again passed the impugned detailed order dated 23.06.2016 of recovery (Annexure A-8).

5. Aggrieved thereby, the applicant has preferred the present O.A., challenging the validity of the impugned order, on the vague grounds of non-supply of the documents, not affording effective opportunity of personal hearing, passed without objective consideration and assessment of all the relevant facts & circumstances. The applicant claimed that the impugned order of recovery is arbitrary, against the principles of natural justice and illegal. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order, in the manner, indicated hereinabove.

6. On the contrary, the respondents have refuted the claim of the applicant, and filed written statement, wherein it was, inter-alia, pleaded as under:-

"(i) That the journey was performed by the applicant between the places connected by the road and not by rail and as such payment of higher rate of mileage allowance to the applicant which is not in conformity with rates approved by State Govt. is irregular and as such recovery has been initiated on the objection being raised by DAP authorities.

(ii) That the basic plea of the applicant is that there is violation of principles of natural justice which is wrong hence denied. Earlier, also the applicant had approached this Hon'ble Tribunal with similar plea and while disposing of the O.A. this Hon'ble Tribunal directed the respondents to afford an opportunity of hearing to the applicant and then pass speaking order. In compliance to the said order, the show cause notice was issued and impugned order, Annexure A-8 has been passed which is liable to be upheld.

(iii) That the applicant claims that he is entitled to road mileage in lieu of air journey. The fact is that in J & K State, the road fare/mileage rates are being fixed regularly by State Transport authorities. The officers drawing grade pay of Rs.5400/- and above are entitled to air fare

while applicant being in grade pay of Rs.4800/- was not entitled to air fare rates. These journeys are to be paid at admissible road mileage roads which have been applied correctly while arriving at over paid T.A. amount of T.A. bills of the applicant.”

7. However, on merits, it was pleaded that the show cause notice was issued to the applicant, in pursuance of the order of this Tribunal. He failed to file reply, and objected issuance of SCN and demanded certain documents, which were supplied to him. Then, he filed a detailed reply dated 11.02.2016 (Annexure A-7). According to the respondents, the recovery of the impugned amount of T.A. bills of the applicant was ordered in terms of Rule 86 of Financial hand Book, Volume I (Annexure R-1), and the relevant audit para (Annexure R-2). Instead of reproducing the entire contents of the reply in toto, and in order to avoid the repetition of the facts, suffice it to say that virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

8. Controverting the allegations of pleadings, filed by the respondents, and reiterating the grounds, contained in the O.A., the applicant filed rejoinder. That is how we are seized of the matter.

9. Having heard learned counsel for the parties, having gone through the record, with their valuable assistance, and after considering the entire matter, we are of the firm view that there is no merit and the present O.A. deserves to be dismissed for the reasons mentioned herein below.

10. As is evident from the record, that the applicant was working on the post of AAO, and he was not entitled to the air fare. No doubt, initially the respondents did not provide him the details of the impugned amount, but in pursuance of the order of this Tribunal

(Annexure A-1), the respondents have duly supplied him the details and the period relatable to the impugned amount vide letters (Annexure A-4 and A-6). A perusal of the record would reveal that the applicant raised as many as objections, as he could, to delay the payment of the impugned recovery amount, by filing applications/objections/representations. Ultimately, he filed a detailed representation dated 11.02.2016 (Annexure A-7), which was considered and negated by the competent authority, in terms of Rule 86 of Financial Hand Book, Volume I and the relevant audit para (Annexures R-1 and R-2).

11. Thus, it would be seen that the applicant was not entitled to the amount of TA, which he has already received. In the wake of Rule 86 of Financial Hand Book, Volume I and the relevant audit para (Annexures R-1 and R-2 respectively), the Competent Authority is well within its jurisdiction to rectify the factual mistake and recover the excess amount, in view of the ratio of law laid down by the Hon'ble Apex Court in the cases of **Jagdish Prajapat Vs. the State of Rajasthan and Others**, 1998 (2) ATJ 286, **Anand Prakash Vs. State of Punjab**, 2005 (4) RSJ 749, **Raj Kumar Batra Vs. State of Haryana**, 1992 (1) SCT, 129, **Chandigarh Administration Vs. Narang Singh**, JT 1997 (3) SC 536 and **G. Srinivas Vs. Government of A.P. & Ors** (2005) 13 SCC 712.

12. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As indicated hereinabove, it is not a matter of dispute that in pursuance of the show cause notice, ultimately, the applicant filed a detailed representation dated 11.02.2016 (Annexure A-7). Having considered the entire material, replies, and after affording an opportunity of hearing, to the

applicant, the Competent Authority has passed the detailed impugned order dated 23.06.2016 (Annexure A-8), which, in substance, is as under:-

“The representation of the said officer Sh. S.K. Sawhney was considered by competent authority viz DAP Jammu w.r.t. the records/documents of the case which revealed that

- (i) No orders of competent authority for undertaking journeys between Jammu to Srinagar, Srinagar to Jammu, Jammu to Leh and vice versa by air in respect of the officer have been produced by the applicant and as such the Air Travel for which officer is not entitled to are required to be limited to the admissible road fare.
- (ii) The road mileage in respect of tour TA bills have been correctly audited and calculated on the basis of fares notified by J & K Govt. from time to time (Annexure A)
- (iii) The internal audit inspection teams have full authority to check and point out excess payment in r/o all payments, Bills including TA bills duly passed and sanctioned by the higher authorities. Further, no orders of competent authority for allowing the applicant higher mileage allowances as submitted by the applicant in his application dtd. 11/02/2016 are available in relevant bill file and officer has also not submitted any such document in his representation.
- (iv) (v)(vi) The plea taken by the officer for increase of mileage allowance by 25% viz a viz DA quantum of 50% in r/o his claims is not correct as no such orders have been issued by the Govt. of India. The references/rules quoted by the applicant are applicable in places where prescribed road mileage rates are not available but in J & K state, the rates are being fixed regularly by State Transport authorities.
- (vii) The recovery pertains to excess travelling allowances paid during the undertaking of official tours by air by the non entitled officer between the places connected by the road and not by rail and as such payment of higher rate of mileage allowance to the officer not in conformity with rates approved by State Govt. is irregular.
- (viii) The extract of SR 48-D mentioned by the applicant are relevant to the journeys undertaken on the routes connected by Rail while as the present recovery pertains to grant of higher mileage allowance in respect of journey connected by well established road transport system of J & K Govt.

In view of the above, it is evident that the pleas taken by the officer against the proposed recovery of excess paid TA are not in conformity with relevant Govt. of India Rules and instructions and mileage allowance approved by J & K Govt. during the said period and, as such, the recovery of Rs.92527/- as pointed out vide DAP Jammu letter No. JK/IA/C.O. Jmu/13-14/234 dated 06.04.2015 in compliance of para 20 of Internal Audit Inspection report of Circle Office, Jammu hold good as per review of competent authority. This issues with the approval of DAP, Jammu.”

13. Meaning thereby, the Competent Authority has rightly placed reliance on the relevant material and examined the matter, in the right perspective. We do not see any reason, much less cogent, to interfere with the impugned order, in the obtaining circumstances of the case.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

15. In the light of the aforesaid reasons, as there is no merit, the instant O.A. is hereby dismissed as such. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 20.11.2017

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