

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 332/00346/2015

This the 23rd day of February, 2018

Hon'ble Mr. Justice V.C Gupta, Member - I

Ved Prakash Pathak, aged about 69 years, son of late Anand Ram at present residing at Azad Nagar Colony, District - Gonda.

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..... Applicant

By Advocate: Sri Surendaran P.

VERSUS

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P Circle, Lucknow.
3. Director of Postal Accounts, Aliganj, Lucknow.
4. Superintendent of Post Offices, Gonda.

..... Respondents

By Advocate: Sri Rajesh Katiyar

ORDER (ORAL)

Delivered by: Hon'ble Mr. Justice V.C Gupta, Member - I

This O.A has been filed by the applicant seeking the following reliefs:

- a. To quash the order dated 30.09.2014 & 16.09.2014 contained in Annexure A-1 & A-2 to this O.A and issue a direction to return back the amount received from the applicant.
- b. To issue a direction to restore his original basic pay with effect from November 1983 upto the date of retirement of the applicant and revise the pension, gratuity, commutation and other retiral benefits and pay the same with interest to the applicant.
- c. To issue any other order which this Hon'ble Tribunal deems just and proper.

2. The brief facts giving rise to this O.A are that the applicant was working on substantive post as Postal Assistant in Gonda Division and was appointed after qualifying the examination for the post of Accountant in 1974. The post of accountant was not of a separate scale of pay. It only carries a special pay of Rs. 45 over and above the substantive pay in lieu of separate higher scale. The applicant being the senior most

and qualified for the post of accountant was posted on a new created Head Office, Balrampur on 02.03.1981. He was transferred from Balrampur as Accountant to Gonda on 20.07.1982 and worked on such post till 30.11.1983, the day on which he was promoted under the Time Bound One Promotion scheme (OTBP) and he joined the promoted post and the pay of the applicant was fixed in November 1983 in Higher Promoted Scale after taking the special pay in lieu of separate higher scale under the letter of DG (P&T) dated 24.02.1981 and fixation was made under the provision of FR 22-C, copy of which has been annexed as Annexure A-3 to the O.A. As per FR 22-C, the condition of special pay have been given which specify that when a senior person promoted to the higher post after completing three years in the special pay post, draws less pay then his junior and is promoted after completing three years in the special pay post in such cases the pay of senior should be stepped up to the level of the pay of the junior from the date of promotion of junior provided that junior was not drawing the pay more then senior from time to time.

3. The applicant was getting the pay of promoted post from 1983 onwards but all of sudden an amount of Rs. 1000/- less has been paid to the applicant from the salary of April 2005. The applicant immediately raised his protest by giving application to the Post Master, Gonda who vide order dated 17.05.2005 informed that there is audit objection on the basis of which the pay was re-fixed because he has not completed three years and was not allowed the benefit of special pay. On the basis of audit objection deduction was started of Rs. 1000/- per month from the salary towards recovery of overpaid amount.

4. It was further contended that before making such recovery, no opportunity of being heard has been granted to the applicant.

5. Aggrieved by the action of the respondents, the applicant filed O.A before this Tribunal having O.A No. 239/2007, Ved Prakash Vs UoI & Ors. The O.A was allowed by means of order dated 22.11.2013, a copy of which has been annexed as Annexure A-4 to the O.A. This O.A was filed

with following reliefs as mentioned in the Para 1 of the judgement which reads as under:

- a. quash the orders contained in Annexure No. 1 and 2 with a direction to return back the same with interest.
- b. issue a direction to restore his original basic pay with effect from November 1983 upto the date of retirement of the applicant and revise the pension, gratuity, commutation and other retiral benefits and pay the same with interest to the applicant.
- c. Any other order which this Hon'ble Tribunal deems just and proper be also passed.

6. The operative portion of the judgement reads as under:

"12. Considering the submissions made by the learned counsel for the parties as well as on the basis of observations made by the Hon'ble Apex Court as observed in the case of State of Orissa Vs. Dr. Ms. Bina Pani Dei and Davinder Singh and others Vs. State of Punjab (supra), the O.A deserves to be allowed. Accordingly, the O.A is allowed. The impugned order dated 17.05.2005 and 12.06.2006 are quashed. However, the respondents are at liberty to pass a fresh order after due opportunity of hearing is given to the applicant before passing any order. No order as to costs."

7. Thereafter, the Department passed the impugned order in compliance of the order passed in the aforesaid O.A which reads as under:

"Department of Post India
O/o Supdt. Of Post Offices Gonda Dn. Gonda -271001

To,

Sri Ved Prakash Pathak
H.N. 50 Chandra Shekhar Azad Nagar Colony
P.O. Bus Station, Gonda 271003

No. B/V.P. Pathak

Sub: Regarding compliance of Hon'ble CAT order dated 22.11.2013 in O.A No. 239/2007.

Ref: Your representation dated 04.06.2014.

With reference to your dtd. 04-06-2014 it is to intimate that in compliance of Hon'ble CAT order dated 22.11.2013 your representation dated 04.06.2014 was sent to the DA (P) Lucknow which has been examined by the competent authority and found that the recovery amounting Rs. 64719/- due to wrong fixation of pay w.e.f. 30.11.1983 to 31.03.2005 against item No. 19 of Gonda H.O.I.R 2004 detected during the inspection of internal audit item is in order. The above recovery was made according to rules hence it is not refundable. The decision of competent authority i.e. DA(P) Lucknow letter No. IA-I/P-II/IR-2004/Gonda H.O/V.P. Pathak/D-510 dated 16.09.2014 is also enclosed for your kind perusal.

DA
As Above.

Supdt. Of Post Offices
Gonda Dn. Gonda-271001"

"O/o Director of Accounts (Postal) U.P. Circle
Sector 'D' Aliganj, Lucknow: 226024

No. IA-I/P-II/IR-2004/Gonda H.O/V.P. Pathak/D-510

Dated 16.09.2014

To
Supdt. Of Post Offices,
Gonda Dn.
Gonda

Sub: Regarding compliance of order of Hon'ble CAT in O.A No. 239/2007 dated 22.11.2013.

Ref: Your letter No. B/V.P. Pathak/dated at Gonda the 12.08.14.

Kindly refer to your letter on the subject cited above. In this connection, it is intimated that the case of Shri V.P. Pathak has been examined in the light of rules and found that recovery amounting Rs. 64719/- due to wrong fixation of pay w.e.f. 30.11.1983 to 31.03.2005 against item No. 19 of Gonda HOIR-2004 detected during the inspection of Internal Audit team is in order. The above recovery has been made according to rules. This has already been intimated to you vide this office letter No. even dated 07-07-14. It is therefore emphasized that further the needful action in compliance of the order of Hon'ble CAT, Lucknow may be taken.

The service book of Sri V.P. Pathak Ex. PM Balarampur HO is returned herewith.

Enclosure: Service book of Sri V.P. Pathak

Accounts Officer
Internal Audit."

8. The impugned aforesaid order reveals that the earlier order was affirmed for recovery of amount of Rs. 64719/-. Aggrieved by the aforesaid orders the present O.A has been filed.

9. CA has been filed by the respondents. In Para 3, the respondents have contended that the applicant was working as Post Master since 18.05.2005 at Balrampur Head Office and was retired after attaining the age of superannuation on 31.08.2006. He entered in the Postal

Department as Postal Assistant on 07.11.1966 and qualify the P.O and RMS account examination in 1974 and performed the duties of accountant/LSG accountant from 03.03.1980 till 29.11.1983 i.e. 29 months 74 days in total. However, it was further contended that the applicant perform the duties of the LSG accountant continuously from 02.03.1981 to 29.11.1983. He continuously worked with or without special pay substantively and thereafter the applicant was promoted in LSG (Norm based) cadre against 1/3 LSG quota and his pay was upgraded under TBOP scheme and he was posed as LSG Supervisor since 30.11.1983 and his pay was accordingly fixed. It was pleaded that in a audit which was conducted in 2004 at item no. 19 of 2004, it was pointed out that pay fixation of the applicant was wrongly made and pointed out over payment of Rs. 64719/- and consequently the point was examined by the audit department and found that this item cannot be dropped. Consequently, the recovery was initiated. The respondents also pleaded the facts of earlier O.A filed by the applicant.

10. In Para 10, it has been categorically stated that vide letter dated 04.01.1972 of DG (P&T), it was clarified that post of accountant/ Assistant accountant is in the cadre of time scale clerk and not of a separate cadre and as such, the applicant cannot held to be promoted substantively to the aforesaid post. It was further pleaded that special pay in this case will be treated as part of the basic pay for the purpose of fixation of pay on promotion to the higher post only if the same has been drawn for atleast three years subject to fulfillment of other conditions. It was contended that this condition has not been fulfilled by the applicant and the recovery was rightly made and properly ordered and there is no fault in taking the decision of recovery.

11. In Para 15 of the CA, it has been contended that the basis of special pay having been drawn continuously for minimum period of three years as well as certificate of continued drawn of special pay the applicant cannot claim promotion. It was also contended that the exemption is not available to the officer holding substantive post in a cadre and also holding the post carrying special pay in lieu of separate higher scale in

the cadre as confirmation of officers in the cadre is not made against individual post. The condition of drawl of special pay against such posts continuously for lesser than three years should be applied in such type of cases. On the strength of it, it has been contended that the applicant was on the lower post substantively worked as accountant from 02.03.1981 to 29.11.1983 and as such the case is covered by category 1 noted herein above.

12. Supplementary affidavit has been filed on behalf of the respondents whereby the audit report has been placed on record. Supplementary reply to the same has also been filed.

13. My attention has been drawn towards the judgement rendered by the Hon'ble Allahabad High Court in W.P No. (SB) 176 of 2009, UoI through Superintendent Post Stores Depot & Ors Vs Zahiruddin Ahmad decided on 17.02.2017. The perusal of this judgement reveals that the facts are identical to the case in hand. In the aforesaid case the relevant portion of the judgement contained in Para 2, 3, 4, 5 and 6 are extracted herein below for ready reference:

"2. This writ petition has been filed against judgment and order dated 24.09.2008 passed by Central Administrative Tribunal, Lucknow (hereinafter referred to as 'Tribunal') in Original Application No.101 of 2006, whereby Tribunal has allowed the said original application filed by Respondent No.1 and set aside the order of re-fixation and recovery of amount passed by the Authorities of Union of India at the fag end when the petitioner was going to retire on 30.06.2004.

3. Learned counsel for the petitioner contended that a wrong fixation of pay was made and when detected, it was sought to be rectified and recovery of excess payment was sought to be made. It is admitted that the alleged fixation was made on 26th July, 1983 and impugned order alleging rectification and recovery was passed on 17th May, 2004, i.e. after almost 21 years.

4. We inquired from learned counsel for the petitioner as to whether such review after more than two decades is permissible in law. It was always open to the petitioner to take action against the person concerned, who made such a wrong fixation and recovery loss, if any, sustained by Government, from such person but review after more than two decades, in our view, is not permissible. It is true that in respect to aforesaid matter no period of limitation is prescribed but when no period of limitation is provided, authorities are supposed to act within a reasonable period and in our view, in a case like this reasonable period shall be a period within which a suit for

such cause of action i.e. recovery could have been filed.

5. This court in *Service Bench No.3137 of 2017 (State of U.P. through Principal Secretary, Public Works Department, Lucknow and another v. Ram Naresh and another)* has held as under:

"9. However, we do not find ourselves in agreement with aforesaid submission. Whenever any action prejudicial to interest of a Government servant is taken, Competent Authority must exercise its power within a reasonable time and it cannot be appreciated that such power should be exercised after decades and that too after retirement of Government servant. In the present case, impugned order has been passed after almost 6 years from the date of retirement.

10. It is well established that when a power is there and there is no period prescribed under law, power should be exercised reasonably and within a reasonable period also and not after a very long time or at any time. In these facts and circumstances, we are of the view that if there is any error in pay fixation etc., Competent Authority is entitled to rectify mistake within a period of three years. We further provide that in case such a mistake is detected after three years in that case instead of taking action against the person who is benefited with such wrong fixation, Competent Authority must take action against the person who caused such mistake and is responsible and recover loss suffered by department."

6. In view thereof, in our view, the judgment of Tribunal has resulted in substantial justice and it is not a fit case warranting extraordinary, discretionary equitable jurisdiction under Article 226 of Constitution of India."

14. It was further contended that though as per the case of the applicant, fixation is correct and even the fixation was incorrect and has been correct after lapse of more than two decades no recovery can be made from the applicant in view of judgement of Hon'ble Allahabad High Court in Zahiruddin case (Supra).

15. It is not in dispute that the applicant has continuously worked for 29 months 74 days. It appears that the calculation made by the respondents is correct. The period is admittedly less than three years. According to respondents, the special pay could be granted only when an incumbent worked for minimum period of three years but as per plea taken by the applicant as contained in Para 15 of the RA, the case of lesser period can be considered if the applicant is working substantively on the lower post and worked on a higher post for grant of special pay.

16. One more glaring factor is available in the case is that promotion of the applicant was not on the post of accountant but he was promoted against regular promotion for the quota reserved to the extent of 20% for the post of LSG against 33.33% quota and the applicant continued to work as accountant even after promotion while working on the post under the LSG quota. It is the case of the respondents that post of accountant is not in separate cadre but it is post in time scale of clerk. It shows that the post of accountant is not in separate cadre and if the work of accountant has been taken from the applicant and he worked continuously for more than three years inspite of promotion on another post which does not carry the work of accountant he would be entitled atleast special pay of Rs. 45/- admissible to work as an accountant after completing three years w.e.f. 02.03.1981.

17. Hence, in view of above, this Tribunal is of the view that granting the special pay of Rs. 45/- per month to the applicant after promotion ought not to have been excluded for determining the pay by adding special pay for the work of accountant. However, even if the pay has been wrongly fixed and deduction after more than two decades are going to be made, the same in view of judgement of Hon'ble High Court in Zahiruddin Ahmad's case, the recovery cannot be made.

18. Hence, I find substance in the O.A. and the same is allowed. Impugned orders are set aside. The amount, if any, recovered from the applicant be returned to the applicant within a period of two months from the date of receipt of certified copy of this order.

19. With the above observations, the O.A is disposed of. There shall be no order as to costs.

(Justice V.C. Gupta)
Member (J)

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