

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/500/2013

Date of Reserve: 25.01.2019
Date of Order: 15.02.2019

CORAM:
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Basudev Nayak, aged about 45 years, S/o., late Bhikari Nayak working as GDSMC I/c., BPM, At/PO-Kainfulia BO, Dist-Nayagarh.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through:

1. The Secretary cum Director General of Poss, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001.
3. Sr. Superintendent of Post Offices, Puri Division, A/PO/Dist-Puri-752 001.

...Respondents

By the Advocate(s)-Mr.A.Pradhan

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as GDSMC I/c., BPM, At/PO-Kainfulia BO, Dist-Nayagarh. He had earlier approached this Tribunal in O.A.No.237 of 2013 challenging recovery from his Time Related Continuity Allowance (TRCA) without putting him to notice and hence, there was violation of the principles of natural justice. This Tribunal vide order dated 25.04.2013 disposed of the said O.A. in the following terms:

- "4. On perusal of the representation dated 25.2.2013 at Annexure-A1 it is seen that the applicant has specifically stated that without any order or prior notice in compliance of principles of natural justice, the Respondents have recovered an amount of Rs.740/- from the TRC of the applicant. Mr.Padhi, learned counsel for the applicant submitted that the recovery was also not for any fault of the applicant nor was it is by way of any disciplinary

proceedings. He has submitted that the applicant is not sure how long such recovery would continue and what is the exact amount to be recovered and for what purpose. But he apprehends further recovery from the TRCA even before taking a decision on the representation of the applicant at Annexure-A/1.

5. In view of the above and as agreed to by Mr.P.K.Padhi, learned counsel for the applicant, without expressing any opinion on the merit of the matter, we dispose of this OA at this admission stage with direction to Respondent No.3 to whom the applicant submitted his representation at Annexure-A/1 and is stated to be still pending to consider the same and communicate the decision in a well-reasoned/speaking order to the applicant within a period of sixty days from the date of receipt of copy of this order and until then there shall be no further recovery from the TRCA of the applicant. We also make it clear that on consideration of the representation, as directed above, if it is found that recovery from the TRCA of the applicant is not in accordance with Rules/Law then the same may be returned to the applicant forthwith. There shall be no order as to costs".

2. In compliance with the aforesaid direction, the respondents have passed an order dated 15.7.2013 rejecting the representation of the applicant. Assailing this order, the applicant has approached this Tribunal in this O.A. praying for the following reliefs:

"...to quash Annexure-A/2 and direct the respondents not to make any recovery and refund the amount already recovered with 18% interest and protect the TRCA of the applicant and impose exemplary cost and compensation".

3. The facts as revealed from the record are that arrears of TRCA with effect from 1.1.2006 to 30.9.2009 had been paid to the applicant in two instalments, i.e., 40% and 60% covering the financial years 2009-2010 and 2010-2011. Prior to payment of arrears, an undertaking had been submitted by the applicant as per the prescribed format (R/2) which states that any excess payment that may be found to have been made as a result of incorrect fixation of TRCA or any excess payment detected in the light of discrepancies

noticed subsequently will be refunded to the Government either by adjustment against future payments or otherwise. During verification of fixation of TRCA as on 01.01.2006 due to implementation of Shri R.S.Nataraja Murty Committee report, it was noticed that an amount of Rs.10,802/- had been overpaid to the applicant for the period from 1.1.2006 to 30.9.2009 and accordingly, excess amount paid was sought to be recovered from the applicant from January, 2013 onwards by the Postmaster Nayagarh Head Post Offices, who is the Drawing & Disbursing Officer and accordingly, the TRCA of the applicant has been regulated.

4. Respondents in their counter have stated that since the arrears on TRCA had been drawn and disbursed on the basis of the undertaking that the excess amount paid would be recovered, there was no need to issue prior to notice for the purpose of effecting recovery. Further, the respondents have pointed out that TRCA of the applicant had been fixed taking into account the workload of the post of GDS Mail Carrier on the basis of the standards prescribed by the Department. But as the workload of GDS posts was obtained after disbursement of arrears, overpayments occurred. However, in anticipation of excess payment, an undertaking had been obtained from the applicant.

5. We have heard the learned counsels for both the sides and perused the records. We have also gone through the order dated 3.4.2018 of this Tribunal in O.A.No.260/00764/2015 relied upon by the respondents.

6. In that case the applicant, Pradip Kumar Mohapatra was working as GDS Mail Deliverer in under Mayurbhanj Division. Aggrieved by the proposed recovery of TRCA as on 1.1.2006, he had approached this Tribunal. He had also furnished an undertaking that in case of excess payment made, the same

would be refunded. In that case the applicant had relied on the decision of Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih (AIR 2015 SC 696) stating that recovery is not permissible. On the other hand, the respondents therein had placed reliance on the decision of the Hon'ble Supreme Court in Punjab & Haryana vs. Jagdev Singh (AIR 2016 SC 3532). Referring the decision in Fafiq Mashi (supra), the Hon'ble Supreme Court has observed that if the officer had furnished an undertaking while opting for the revised pay scale, he is bound by the undertaking, albeit, it was directed that the recovery should be made in equal monthly instalments spread over the period of two years. In view of this, this Tribunal in O.A.No.260/764/2015 (supra) held that since the present applicant himself had furnished an undertaking before drawal of TRCA, he is bound by the undertaking as per latest dictum of the Hon'ble Apex Court and there is nothing wrong in the order of recovery calling for interference.

7. From the above narration, it is quite conspicuous that there was no discussion on the point of compliance of the principle of natural justice before effecting recovery. It is contended by the learned counsel for the applicant that even if the applicant had furnished an undertaking at the time of fixation of his TRCA, before effecting recovery, a show cause notice ought to have been given to him to know about the total amount sought to be recovered and in case he disagreed with the same as arrived at by respondents, he might have made a representation to that effect. The Tribunal finds considerable force in this argument. Therefore, the Tribunal is of the opinion that compliance of the principle of natural justice is a must notwithstanding the fact that the applicant had given an undertaking before fixation of his TRCA. In this view of the matter, the impugned order dated 15.07.2013 (A/2) is

quashed and set aside. The amount, if any recovered, shall be refunded to the applicant within a period of thirty days from the date of receipt of this order. However, Respondents are at liberty to take action as deemed fit and proper only after complying with the principles of natural justice.

8. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS