

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00265/2017

Tuesday, this the 12th day of March, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

Shri P.Suseelan,
S/o Parameswaran Paniker (Late),
Aged 57 years,
Senior Superintendent of Post Offices,
Thrissur Division, Thrissur-680 001.
Department of Posts,
residing at 3/91 Sumy's Kunjaluvila,
Aruamanai P.O. Kanyakumari,
Tamilnadu – Pin 629 151.

....Applicant

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India,
Represented by the Secretary
to the Government of India,
Department of the Post,
Government of India, New Delhi – 110 001.

2. The Chief Postmaster General,
Kerala Circle,
Trivandrum – 695 033.

3. The Director of Accounts,
O/o Director of Accounts (Postal),
Kerala Circle, GPO Building,
IV FLOOR, Thiruvananthapuram-695 001.

4. The Postmaster,
Head Post Office,
Thrissur – 680 001.Respondents

(By Ms. P.K.Latha, ACGSC for Respondents)

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This application having been heard on 6th March, 2019, the Tribunal on 12th March, 2019 delivered the following :

O R D E R

OA No.265/2017 is filed by Shri P.Suseelan, Senior Superintendent of Post Offices, Thrissur Division, aggrieved by the steps being taken by the 2nd and 3rd respondents to recover a large amount stated to be overdrawn by the applicant during the year 2000 to 2017. He seeks the following reliefs:

- (i) To declare that the proceedings initiated by the Respondents to reduce the pay of the Applicant and to effect recovery from the monthly salary of the applicant is highly unjust and unsustainable in law.
- (ii) To direct the Respondents to not to reduce the basic pay being drawn by the Applicant as reflected in Annexure A2 and not to proceed with attempted recovery from the monthly salary of the Applicant.
- (iii) To direct the Respondents to reimburse the deduction of pay effected from the months of February 2007 and onwards till the disposal of the Original Application with interest @ 12% per annum.
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

2. The applicant had entered service in 1982 as a Postal Assistant. He was promoted to the cadre of Inspector of Post Offices w.e.f. 30.04.1992. From 04.09.2001, he was given officiating arrangements in the cadre of ASP in short intervals till 08.04.2005, when he was regularly promoted to ASP

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cadre. He got officiating promotion as SSP, Ernakulam for the period from 23.11.2015 to 18.11.2016. From 02.01.2017 he has been working as SSP, Thrissur. His Last Pay Certificate issued by the second respondent on 11.01.2017 is at Annexure A1.

3. It is submitted that the applicant had been drawing monthly salary of Rs.82,400/-, which is found to be reduced by Rs.2,400/- from the month of February, 2017 onwards. A copy of the Pay Slip for the month of February, 2017 is at Annexure A2. On enquiry the applicant was told that there was a direction from the second respondent to revise the applicant's pay from Rs.82,400/- to Rs.80,000/-, with intent to recover a sum of Rs.1,44,220/. A copy of the order dated 17.02.2017 is at Annexure A3.

4. Reason given for this step is the wrong fixation of his pay with effect from 04.09.2000. Annexure A4 dated 11.01.2017 is reproduced below:

“Office of the Director of Accounts (Postal), Kerala Circle
GPO Building, IVth Floor, Thiruvananthapuram-695 001
Phone No.0471-2472915 e-mail:japtvm@gmail.com

No.617/Admn II/GE/PF-587

dated: 11.01.2017

To
The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

Sub:- Discrepancy in pay fixation – c/o Shri P.Suseelan,
SSPO, Thrissur Dn

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On a review of the service book of Shri P.Suseelan, SSPO, Thrissur Dn, it was noticed that the pay fixation done at the time of regular promotion from the cadre of IRM (TV 1st Sub Dn) to the cadre of ASPO (Manager SPCC, TVM) appears to be incorrect. He was promoted with effect from 04.09.2000 and had opted for fixation from DNI, 01.12.2000. His pay was revised from the stage of Rs.6375/- to Rs.7100/- erroneously instead of Rs.6900/-.

The pay fixation may please be reviewed and necessary action taken. His Service book is forwarded herewith.

Sd/-
(Padmaja I.)
Sr.Accounts Officer
administration II"

5. The applicant has objected to this reduction on the ground as to how all these years it had been not pointed out, during which time he had been promoted on more than one occasion. His service book had been checked by Internal Audit Party on many occasions, but no objection had been noted. Citing various reasons he made representations dated 16.03.20017 (Annexure A5) to the office of the 2nd respondent. He submits that the calculations made as per Annexure A4 is erroneous. It remains a fact that he had officiated in higher position on several occasions and the fixation made had been in accordance with FR 22(1)(a)(i). It is on account of one Shri L.K.Gangadharan, who sought stepping up of pay with the applicant that the present proceeding had been started. While it is admitted that Shri Gangadharan was senior, unlike him the applicant had spent long spells of officiating services in the ASP cadre.

6. The respondents have filed a reply statement in which the contentions

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made by the applicant have been disputed. In order to facilitate better understanding of the case his service particulars have been extracted on page-2 of the reply statement. It is submitted that on being promoted to the cadre of ASP on regular basis the applicant had exercised option dated 21.10.2002 under FR 22(1)(a)(i) for fixation of pay on regular promotion from the date of next increment i.e., 01.12.2000. Accordingly, the pay of the applicant was fixed from the stage of Rs.6550/- to Rs.7100/- from that date and at subsequent stages it was revised on the basis of this fixation. He worked at different offices during the time and it was only during verification of service book of the applicant that it was found that fixation at Rs.7100/- in lieu of Rs.6900/- with effect from 01.12.2000 had been due to an error. It was found that the applicant was eligible for basic pay of Rs.80,000/- only with effect from 11.11.2016 as against basic pay Rs.82,400/- already drawn by him. Thus overpayment of pay and allowances amounting to Rs.1,44,220/- for the period from December, 2000 to January, 2017 had occurred and the respondents were left with no choice but to initiate recovery. The applicant submitted representation to the respondents and also simultaneously approached this Tribunal by filing the instant OA. This Tribunal was pleased to pass an interim order on 30.03.2017 staying further recovery and the order has been duly complied with.

7. Heard Shri Sajith Kumar for the applicant and Smt.P.K.Latha on behalf of the respondents. All the pleadings were examined. The contentions raised

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in the OA as well as the reply statement, the rejoinder filed by the applicant and the additional reply submitted by the respondents have been taken into consideration.

8. The particulars of the applicant's service are not under dispute. On examination of the details pertaining to the pay fixation, it is found that there were justifying reasons by which the later fixation computing over payment is the correct one. The applicant is working as Senior Superintendent of Post Offices and cannot plead that he was oblivious of the wrong fixation, the benefit of which he was enjoying. In **Syed Abdul Qadir & Ors Vs. State of Bihar & Ors**, the Hon'ble Supreme Court had ordered that:

"The relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid or in cases where the error is detected or corrected within a short time of wrong payment the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case order for recovery of the amount paid in excess."

The applicant had himself submitted an option to fix his pay with effect from 01.12.2000 on promotion to the post of ASP. At that stage the wrong fixation had occurred and this had continued for the next several years as he was granted upgradation by stages. The respondents' Counsel also referred to the decision of Hon'ble Supreme Court in **SLP(C) No.30858/2011** wherein it

was held that:

"we are concerned with the excess payment of public money which is often described as "tax payer's money, which belongs neither to the officers who have effected overpayment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations, question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee." Admittedly, this erroneous fixation of pay went unnoticed for a long period of time. However, when this came to light, the respondent's are duty bound to set right the mistake as it is trite law that any mistake cannot be allowed to perpetuate indefinitely."

9. However, the seminal judgment on the question of recovery of sums from employees is the judgment in **State of Punjab & Ors Vs. Rafiq Masih (White Washer) – 2015 (4) SCC 334**. The said judgment declared as impermissible recovery from employees in the categories noted below:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

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10. As can be seen, the recovery in the instant case relates to a period extending from 2000 to 2017 and clearly would attract the direction relating to category- iii. Under the circumstances, the OA succeeds, there shall be no recovery from the applicant. No costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00265/2017

1. **Annexure A1** – True copy of the Last Pay Certificate in Form 16 issued by the 2nd Respondent dated 11/01/2017 to the Applicant.
2. **Annexure A2** – True copy of the Pay Slip for the month of February, 2017.
3. **Annexure A3** – True copy of the Order No.AP/8-LF/PS/2009-10 dated 17/02/2017 issued by the 2nd Respondent.
4. **Annexure A4** – True copy of the proceedings bearing No.617/Admin II/GE/PF-587 dated 11/01/2017 issued by the 3rd Respondent to the 2nd Respondent.
5. **Annexure A5** – True copy of the Representation dated 16/03/2017 submitted by the Applicant before the Accounts Officer at the Office of the 2nd Respondent.
6. **Annexure R1** – True copy of Memo No.ST/18-2/2002 dated 11.10.2002.
7. **Annexure R2** - True copy of option dated 21.10.2002 from the applicant.
8. **Annexure R3** - True copy of the pay fixation statement in respect of the applicant for the period from 01.01.1996 to 01.12.2000.
