

**SIN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/460/2017

Date of Order: 06.03.2019

Between:

Bojja Sunil Kumar, S/o. Ramakrishnaiah,
Aged: 48 years, Occ: Postal Assistant,
Miryalaguda HO – 508 207, Suryapeta Division.

... Applicant

And

1. The Union of India, rep. by its Secretary,
Ministry of Communications & IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General,
Telangana Circle, Hyderaad – 500 001.
3. The Superintendent of Post Offices,
Suryapet Division, Suryapet.
4. The Postmaster (HSG),
Head Post Office, Suryapet.

... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA has been filed challenging recovery of amount paid towards Children Educational Allowance to the tune of Rs.1,00,930/- from the applicant by order dt. 19.12.2014 of the 4th respondent.

3. Brief facts of the case are that the applicant is working for the respondent organization as Postal Assistant. He has been blessed with three children. All the children were put in school and they pursued their education. The applicant has claimed for Children Education Allowance (for brevity "CEA") only for the third child namely Kum. B. Mamatha. On claiming CEA, the respondents released a sum of Rs.1,00,930/- for the years 2008-09, 2009-10, 2010-11, 2011-12. However, Audit objection was raised stating that the third child is not eligible for CEA. Therefore, the applicant was asked to credit an amount of Rs.1,00,930/-. The applicant agreed to credit the amount in instalments as he was forced to do so by the respondents.

4. The contentions of the applicant are that the Rules on the subject state that CEA can be claimed for two children, but it did not say as to which child is eligible or ineligible. Audit objection has been raised based on the clarification given by DOPT No.21011/08/2013-Estt.(Al) dt. 25.03.2013 wherein it was clarified that third child cannot be granted CEA. The main contention of the applicant is that DOPT clarification shall be put to operation prospectively from 2013 onwards and cannot be applied retrospectively denying benefit granted prior to 2013.

5. Respondents in their reply confirm that the applicant had three children namely. B. Kautilya Kumar, son; B. Sowmika, daughter; and B. Mamatha, daughter. Applicant claimed CEA for his three children, but they have regulated the claim by granting only for two children on 18.11.2002, 25.03.2003, 01.04.2004, 16.03.2009, 23.03.2010, 03.06.2011 and 22.04.2013. Audit while inspecting the respondent organization has raised objection that CEA cannot be granted to the third child of the applicant. Therefore, the applicant was asked to

repay the amount of Rs.1,00,930/- released as CEA to him. Incidentally, the applicant was under suspension from 14.11.2013 for shortage of office cash. He was reinstated on 18.01.2017 and on his joining, he agreed vide his letter dt. 16.02.2017 for recovery of Rs.3,000/- per month. However, after examining his request, an order was passed by the respondents for recovery at the rate of Rs.5,000 for three months and thereafter, at the rate of Rs.10,000 per month till the entire amount is recovered. Therefore, based on the audit objection raised, the amount paid towards CEA had to be recovered.

6. Heard learned counsel for both sides and perused the documents and material papers submitted.

7. I. As seen from the records, the respondents have granted CEA only for two of the three wards of the applicant. Though the applicant applied for more than two wards, over the years, the respondents have regulated it by passing bill in respect of only two of his children. This is in accordance with the DOPT OM dt. 02.09.2008, which reads as under:

“(b) Under the Scheme of Children Education Allowance reimbursement can be availed by Government Servants upto to a maximum of 2 children.”

Respondents adhering to this OM have allowed the CEA. The applicant has not misrepresented or concealed any facts to seek the benefit. Besides, the OM does not specify as to which child excepting to state two children. The applicant claimed for the 3rd child. Definitely, the claim was within the permitted limit of two children. There was truthiness in the claim of the applicant. Nevertheless, audit team has raised objection on 20.04.2015 stating that the applicant has claimed for the third child Kum. B. Mamatha and it was irregularly allowed, citing clarification given by DOPT in Memo. dt. 25.03.2013

wherein it has been categorically stated that CEA for the third child shall not normally be allowed except in case where twins, multiple births occur. It is seen that the audit objection is based on the DOPT OM dt. 25.03.2013, whereas CEA has been released to the applicant as per the OM dt. 02.09.2008 over the years up to 2011-2012 circumscribing it to two or less children. Therefore, question arises as to whether the respondents are competent enough to recover the amount, which has already been paid, by retrospectively operating the clarification of the DOPT dt. 25.03.2013. In this regard, Hon'ble Supreme Court in High Court of Delhi & anr v A.K. Mahajan & ors in CAs No.6397-6398 of 2001, observed that:

23. The law regarding the retrospectivity or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone such rules would not be permissible to the extent of retrospectivity”

Hon'ble Supreme Court has also observed in Union of India v. V.D. Dubey, (2010) 2 SCC 225 as under:

13. The scope of the proviso to Rule 2423-A of Railway Establishment Manual, Vol. II came up for consideration before this Court in Railway Board v. D. Francis Paul (1996) 10 SCC 134 and this Court held that amendment cannot have retrospective effect in respect of a person already in service but would be prospective; it would be applicable only to those candidates appointed after the date of the amendment introducing the proviso. Therefore the provision which states that the concession be admissible only if the recruitment rule provides so, would operate only prospectively

Although the subject referred to is selection, but the principle laid has to be taken. Based on the judgment of the Hon'ble Supreme Court supra, the respondents should not deny the benefit already granted based on the clarification subsequently issued.

II. It is also stated by the learned counsel for the respondents that the applicant has agreed for the recovery and he has given it in writing to recover the amount in monthly instalments. Employees usually follow the precept laid down by their superiors without going into import of the order, due to fear/ ignorance of rules. Learned counsel for the applicant has informed that the applicant has given consent when being forced by the respondents to do so. Representation made by the applicant requesting not to recover from subsistence allowance and when insisted, he consented @ Rs.3000/ month but the respondents proceeding with a recovery of Rs.5,000/10,000 does indicate an element of compulsion and has thus catastrophized the circumstances. The applicant has also admitted that he was not aware of rules. Even the respondents were sailing in the same boat till the clarification was given by DOPT in 2013. Therefore, one cannot find fault with the applicant. It is also seen that the applicant was granted CEA only for two of his wards in the past too. The clarification that has been given by the DOPT vide Memo dt. 25.03.2013 is that third child is ineligible. The respondents on their own volition, granted CEA to the third child of the applicant as per the then prevailing guidelines. Essentially, applicant did not misguide the respondents for grant of CEA. It is only a question of interpretation of the rule and the interpretation shall be prospective effect but not retrospective effect as was pointed out by the Hon'ble Supreme Court in the judgment cited above. Hon'ble Chandigarh Bench of this Tribunal, vide order in OA No.941/CH/2012 dt. 17.01.2014, while dealing with CEA claim has emphasized as under:

“Concededly, while claiming the benefit of Children Education Allowance for a third child, the applicant has not concealed any fact from the Competent Authority which approved the claim and reimbursed the amount. After issuance of the clarification by the subsequent O.M where only benefit in respect of eldest two children is to be allowed, the applicant cannot be made to suffer as he was allowed the benefits on the basis of the interpretation of the existing instructions in a particular manner. If there is change in the interpretation, the same cannot be used

to reopen the old cases more so when the applicant has not been found to be guilty of suppressing of information or misrepresentation. Therefore, recovery so ordered cannot be sustained. Our view finds support from the Full Bench judgment of jurisdictional Hon ble High Court in CWP No. 2799 of 2008 titled Budh Ram and Others Vs. State of Haryana and others decided on 22.05.2009 wherein it is stated that if there is no misrepresentation on the part of the concerned employee then recovery cannot be made. Accordingly, the impugned recovery order for Children Education Allowance is not tenable. Hence, same is quashed and set aside.”

III. In view of the above, the OA succeeds. The impugned order dt. 19.12.2014 issued by the 4th respondent is quashed to provide an analgesic relief of the applicant. Interim order dt. 04.07.2017, extended from time to time, is made absolute. The respondents are therefore directed to consider as under:

- a) To refund the amount already recovered pursuant to the impugned order dt. 19.12.2014 to the applicant, within a period of three months from the date of receipt of this order.
- b) OA is allowed as above. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 6th day of March, 2019

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