

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

OA/021/419/2018

Date of Order: 02.04.2019

Between:

G. Balram,
S/o. Late Topanna,
Aged about 55 years,
Occ: Sub Postmaster,
Karwansahu Sub Post Office,
Hyderabad.

... Applicant

And

1. Union of India rep. by its
Director General,
M/o. Communications and
Information Technology,
Department of Posts, Dak Bhavan,
New Delhi.
2. The Chief Postmaster General,
Telangana Circle, Dak Sadan,
Hyderabad – 1.
3. The Postmaster General,
Hyderabad Headquarters Region,
Hyderabad – 1.
4. The Senior Superintendent of Post Offices,
Hyderabad City Division,
Hyderabad – 1.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. K. Venkateswarlu, Addl. 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 is filed against the order of recovery of transport allowance granted to the applicant.

3. The brief facts of the case are that the applicant, while working for the respondents organisation as Postal Assistant (PA), met with an accident on 8.8.2004 and had to undergo two hip surgeries. Consequent to the accident, the District Medical Board of District Hospital, Nizamabad certified him as 40% disabled. Based on the medical certificate issued by the said hospital, respondents granted transport allowance as per 6th CPC recommendations, at double the rate from 13.12.2011. Later when the applicant was transferred from A.G office Post office to Caravan Sahu Post office, he represented to reconsider the transfer in accordance with the provisions of PWD Act. In response, respondents directed the applicant to obtain a fresh certificate of disability, as it was mentioned in the original certificate that there was a clause to get the certificate renewed. Accordingly the applicant got himself medically checked at NIMS, Hyderabad, who have certified him as 30% disabled on 7.8.2017. Applicant represented to stop the payment of transport allowance from 7.8.2017 since the eligibility percentage of disability was 40%. However, on submission of the fresh certificate, respondents ordered recovery of the transport allowance paid to him from 13.12.2011 @ Rs 10,000 per month. Aggrieved over the same the present OA has been filed.

4. The contentions of the applicant are that he did not produce any wrong certificate to gain the benefit. As per the medical certificate issued by the medical authorities he was granted the transport allowance by the respondents on their own. Hence the respondents can stop payment of transport allowance only from the date of issue of fresh certificate.

5. Respondent state in their counter affidavit that as per the certificate issued by NIMS, Hyderabad, the applicant had 30 % disability and hence he is not eligible for transport allowance as per FRSR Part II Appendix 5, at double the rate. Hence, the excess transport allowance paid to the applicant from 13.12.2011 was ordered to be recovered from the pay in maximum permissible instalments. Therefore, the claim of the respondents is that they have acted as per rules.

6. Heard both the counsel and perused the documents as well as the material papers submitted.

7. The applicant met with an accident and the Govt. Medical Hospital at Nizamabad gave a medical certificate declaring him as 40% disabled. Based on the certificate issued, respondents granted him transport allowance at double the rate as per rules. It was mentioned in the medical certificate that the applicant had temporary disability of 40 % which has to be reviewed later. The same certificate was submitted to the respondents and they granted the transport allowance at the double the rate, though FRSR provides for granting transport allowance at double the normal rate, if there is permanent disability. It is not explained as to why respondents have paid without verifying the rule. Only when the applicant sought for relaxation in matter of transfer, the disability was got

reviewed in NIMS Hyderabad, wherein on examination it was revealed on 7.8.2017 that the applicant is having 30 % disability. The applicant represented that the transport allowance be discontinued from the date of issue of the fresh certificate. However, respondents went ahead with the recovery of Rs 10,000 per month as stated by the applicant. At this juncture, it needs necessarily to be pointed out that the certificate was issued by the competent medical authorities and based on the same respondents allowed the transport allowance at double the rate without verifying the rule from 2011 till 2017. Therefore, it was a mistake of the respondents. For the mistake of the respondents penalising the applicant is unfair. The mistake of the respondents should not recoil on the applicant. The action of the respondents is against the observation of the Hon'ble Supreme Court as reproduced hereunder:

(i) The Apex Court in a case decided on 14.12.2007 (***Union of India vs. Sadhana Khanna***, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another case of ***M.V. Thimmaiah vs. UPSC***, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that "if there is a failure on the part of the officers to discharge their duties, the incumbent should not be allowed to suffer."

(ii) It has been held in the case of ***Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363*** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

Therefore, the action of the respondents is against the well laid down legal principle enunciated by the Hon'ble Supreme Court. The respondents need to act as a model employer as observed by the Hon'ble Supreme Court in **Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors** on 30 November, 2012 in CA Nos 8514-8515 of 2012, while withdrawing any benefit already extended to an

employee and particularly in respect of a physically handicapped employee who has to struggle to deliver on par with the normal employees despite being physically challenged. Special provision as contained in the PWD Act needs to be borne in mind while dealing with issues pertaining to physically challenged employees. Such sensitivity appears to have not been shown by ordering recovery on a monthly basis. A balanced decision based on the circumstances of the case was the need of the hour. However, it was not to be. Therefore, the action of the respondents is unreasonable, arbitrary and illegal. Hence the impugned order dated 2.2.2018 is quashed. Consequently, respondents are directed as under:

- i) There shall be no further recovery from the pay of the applicant towards excess payment made towards transport allowance.
- ii) To refund the amount recovered till date from the applicant as per impugned order.
- iii) Stop paying the transport allowance from the date of issue of the fresh medical certificate dated 7.8.2017.
- iv) Time calendared to implement the order is 3 months from the date of receipt of this order.
- v) No order as to costs.

With the above directions, OA is allowed.

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

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