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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 283/2003

New Delhi this the 13th day of September, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Hon'ble Shri Shanker Raju, Member (J)

1. All India Postal Emp. Union,
Postman & Group-D,
Rep. By its General Secretary,
Mr. Des Raj Sharma,
17/3-D, Type-III, P & T Quarters,
Kali Bari Marg, New Delhi.
2. Chandra Pal Singh,
Postman, Dehradun Cantt. H.O.,
Dehradun-248 001.
3. S.K. Humayun,
S/o Late S. Khader Mohiddin,
Sorting Postman, Nellore H.P.O.-524 001.

-Applicants

(By Advocate: Shri R. Satish)

Versus

1. Union of India,
Rep. By the Secretary,
Department of Post,
Ministry of Communication ,
New Delhi.
2. The Director General of Posts
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-1.

-Respondents

(By Advocate: Shri B.K. Berera)

O R D E R(Oral)

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Applicants have assailed order dated 13.8.1989 (Annexure-I)
stating that the pay in respect of Postmen/ Mail Guards have been
wrongly fixed on 1.1.1996 by some Circles resulting in overpayment. It
has been decided that recovery of overpayment in such cases should be
made with immediate effect.

2. Learned counsel of the applicants stated that in respect of other categories of employees in the Department of Posts, namely, ASPO/ASRM, Inspector of Post Offices/ Inspector of Railway Mail Service and members of the Postal Services Board have been granted the upgraded pay scale with effect from 1.1.1996. As such, there is no justification for implementing the upgraded pay scale in respect of Postmen/mail guards alone from 10.10.1997 and action on the part of the respondents is, therefore, discriminatory, arbitrary and unjust. He further maintained that there has been a long standing parity of the Postmen with Constables of CPO. In the case of CPOs, Delhi High Court vide its judgment and order dated 26.5.2000 in C.W.P. 4060 of 1998 held that CPOs are entitled to the revised pay scale w.e.f. 1.1.1996. Applicants have sought the following reliefs:-

- “a) to restrain the respondents from effecting any recovery as proposed in the Annexure-I from the pay and allowances of the applicants No.2 and 3 and other postmen/mail guards who are members of the 1st applicant union, till the orders in pursuance of the Annexure-H are issued by the 1st respondent.
- b) to call for the records and set aside the Annexure-I, Annexure-K and Annexure-L orders.
- c) direct the respondents to fix the pay scale of Postmen and Mail Guards working in the Department of Posts at Rs.3050-75-3950-80-4590 w.e.f. 1.1.1996 after quashing paragraph 2 of Annexure-C order dated 3.7.1998 with all consequential benefits thereon;
- d) to direct the respondents to pay back the entire amount recovered by the respondents pursuant to Annexure-I order from the pay and perks of the applicants 2 and 3 and the other postmen/mail guards who are members of the 1st applicant Union;
- e) pass an interim order staying all further proceedings of the respondents pursuant to Annexure-I order, pending disposal of the Original Applicant.
- f) To allow the application with costs; and

g) Pass such other order or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".

3. On the other hand, learned counsel of respondents has drawn our attention to Ministry of Finance, Department of Expenditure Office Memorandum F.No.50(2)97/ IC-I dated 14.10.1997 relating to implementation of Fifth Central Pay Commission Recommendations-Fixation of Pay and payment of arrears. These instructions laid down that Government servants are required to exercise their option for drawl of their pay in the revised scales of pay in the format prescribed in the second schedule to the Rules. Paragraph-5 of these instructions reads as follows:-

"The requirement of pre-check of pay fixation having been dispensed with, it is not unlikely that the arrears due in some as may be computed incorrectly leading to overpayments that might have to be recovered subsequently. The Drawing and disbursing officers should, therefore, make it clear to the employees under their administrative control, while disbursing the arrears that the payments are being made subject to adjustment from amounts that may be due to them subsequently should any discrepancies be noticed later. For this purpose, an undertaking may also be obtained in writing from every employee at the time disbursement of the arrears/pay and allowances from October 1997 to the effect that any excess payment that may be formed to has been made as a result of incorrect fixation of pay in the revised scales will be refunded by him to Government either by adjustment against future payments or otherwise. A specimen form of the undertaking is also enclosed (Annexure-II)".

Annexure-II is the format for undertaking which reads as follows:-

UNDERTAKING

"I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise".

Signature: _____

Name: _____

Date: _____

Station: _____

Designation: _____

4. Learned counsel of respondents stated that once the applicants have submitted undertaking to the respondents, respondents are within the rights to effect recovery of overpayments while implementing the decisions taken in regard to the recommendations of the 5th Central Pay Commission. Learned counsel relied upon order dated 22.3.2001 in OA-817/88/CAT, Ernakulam Bench, to the effect that respondents have not issued any instructions which are inconsistent with the rules and directed re-fixing the pay of Postmen ordering to recover the alleged overpayments. Writ Petition against these orders was dismissed lacking merit by the Hon'ble High Court of Kerala. Learned counsel of respondents stated that having submitted the undertaking as per the aforesaid instructions and in the light of the decisions of the Tribunal upheld by the High Court of Kerala, applicants are not entitled to any relief. However, learned counsel of applicants stated that respondents in their counter affidavit have only pointed out that "officials had given undertaking for refund of overpayment." He stated that it has not been specified that the applicants too had furnished their undertaking. He stated that applicants had not submitted any such undertaking. On the basis of the arguments of the parties as discussed above, the controversy boils down to the issue whether the applicants had submitted undertaking for refund of overpayment. If they had, respondents were entitled to effect recoveries of overpayments. If not, recoveries could not be effected. Learned counsel of applicants agreed that if the applicants had submitted such undertakings, there would be no objection to the recoveries.

5. In the light of the above discussion, we are of the considered view that relying on the aforesaid judgments of CAT Ernakulam Bench and the High Court of Kerala, respondents would be within their rights to

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effect recovery from the applicants in case they had submitted their undertaking in terms of OM dated 14.10.1997. Thus, OA is disposed of with a direction to the respondents to verify from their records whether the applicants had submitted undertaking in terms of OM dated 14.10.1997, if so they would be entitled to effect recoveries of excess payments. If not, respondents would not be entitled to effect any recoveries and in case they have made any recoveries so far, the same shall be refunded to the applicants. It is further directed that requisite action may be taken by the respondents as per above directions expeditiously and preferably within a period of two months from the date of communication of these orders. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice Chairman (A)

cc.