

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

Original Application No.20/174/2017

Date of Order: 25.10.2019

Between:

T. Sesha Rao
S/o Late T. Krishna Murthy
Aged about 62 years
Occ: Retd. D.S.V.Tadepalligudem, H.O.
West Godavari District
R/o Sri Satya Krishna Bhavanam
Ogetivari Veedhi, Ramaraopet
Tadepalligudem – 534 101. Applicant

AND

1. Union of India rep by
The Chief Postmaster General
A.P.Circle, Hyderabad – 500 001.

2. The Postmaster General
Vijayawada Region
VIJAYAWADA – 520 001.

3. The Superintendent of Post Offices
Tadepalligudem Division
TADEPALLIGUDEM – 534101.

4. The Postmaster
Tadepalligudem Head Post Office
TADEPALLIGUDEM – 534 101. ... Respondents

Counsel for the Applicant ... Mr. M. Venkanna
Counsel for the Respondents ...Mrs. Megha Rani Aggarwal, Addl.
CGSC

CORAM:**Hon'ble Mr. B.V. Sudhakar, Member (Admn.)****ORAL ORDER**

2. OA is filed seeking a direction to the respondents to refund an amount of Rs.74,788/- (i.e., Rs.60,200/- voluntarily paid, on an audit objection, by the applicant and Rs.14,588/-, adjusted from the reimbursement of medical bills of the applicant) and also interest on delayed payments of GPF and Pension.

3. Brief facts of the case are that the applicant was promoted as Postman by the respondents after clearing the departmental examination dated 07.01.1999. He was posted as departmental Stamp Vendor which is an analogues post of Postman. Thereafter, applicant retired on 31.07.2014. Applicant had multiple ailments, therefore, he has taken medical leave frequently in order to undergo 15 surgical operations from 2001 onwards. Applicant retired on 31.07.2014, on attaining the age of superannuation, and was paid Gratuity of Rs.1,88,325/-, but other retirement benefits were not released. Applicant represented before his retirement on 04.12.2013 informing that for the period he was on Leave/EOL, on medical grounds, pay and allowances were drawn for which he was not entitled. He made a request to make the corrections accordingly. Applicant followed it up with another

representation dated 01.04.2014 but the said corrections were not made properly resulting, after the audit raised some objections, in recovery from the pay and allowances. The applicant, on retirement, represented for release of pension and pensionary benefits. In response, respondents have released GPF, after a period of 9 months from the date due and that too after deducting a sum of Rs.60,200/-. Besides, another sum of Rs.14,588/- was adjusted from Medical Bill claim towards excess payment made while fixing pay on granting MACP. Thus, a total of Rs.74,588/- was deducted towards excess payment from the applicant. The respondents have claimed that the excess amount had to be deducted for release of wages when the applicant was on leave for certain periods from 2001 to 2010, and for wrong fixation of pay though he is not entitled for the same. Hence, the OA.

4. The contentions of the applicant are that as per Hon'ble Supreme Court direction, no recovery should be made from Group 'C' employees in regard to excess payment made with regard to fixation of pay, on promotion, etc. Applicant claims that there was no excess payment made and if the accounts were to be reconciled, the same would be evident. Retirement benefits are to be paid immediately after retirement. Respondents, as per rules, are expected to process the pension and pensionary benefits two years prior to the date of retirement of the

applicant. Further, no show cause notice was served on the employee before deducing the alleged excess payment. As per Rule 11 of CCS (CCA) Rules, 1965, the respondents have not maintained the leave account and service book of the applicant correctly.

5. Respondents, in their reply, have opposed the contentions of the applicant by stating that the applicant has availed leave beyond eligibility. However, the pay and allowances were drawn in the normal course and paid. This was objected to by the Audit. Consequently, an amount of Rs.60200/- had to be recovered from the applicant. Similarly, while granting MACP, an amount of Rs.14,588/- was paid in excess towards pay and allowances. On being informed the same, applicant voluntarily credited Rs.60200/- under the head UCR (in four receipts). Another sum of Rs.14,588/- was adjusted from the reimbursement of medical bills. Accordingly, a total sum of Rs.74788/- was recovered from the applicant. Aggrieved, applicant has filed OA 1074 of 2016, which was disposed of by this Tribunal on 19.10.2016 by directing the respondents to consider the representation of the applicant in regard to the disputed issue. The respondents disposed of the representation by rejecting the claim for refund of the amount recovered.

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) The applicant admittedly went on Leave/EOL in order to take medical treatment. Respondents disbursed full pay and allowances even for certain periods of EOL, for which he is not eligible. Applicant had stated that he had informed the respondents about the excess payment made and requested to make the corrections in the appropriate records, like service book, leave account, etc., maintained by the respondents, in respect of the applicant. Despite such representations, the corrections were not properly made, resulting in the order of recovery.

(II) The details of the case reveal that the mistake was committed by the respondents in disbursing pay and allowances during certain spells of EOL period availed by the applicant, albeit, he was not eligible to the extent of a sum of Rs.60,200/-. Similarly, while fixing MACP, respondents have made another error resulting in excess payment of Rs.14,588/-. When the Audit objected to the same, applicant credited a sum of Rs.60,200 voluntarily and a sum of Rs.14,588/- was adjusted from the reimbursement of medical bills submitted by the applicant.

(III) As the applicant is a Group 'C' employee, any excess payment made to him has to be regulated as per the observations of the Hon'ble Supreme Court in State of Punjab & Ors. v. Rafiq Masih (White Washer), (Civil Appeal No.11527 of 2014, decided on 18.12.2014). The relevant observations are extracted hereunder:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.”

The case of the applicant is covered by Clause (i) above. In regard to MACP, the applicant has not misrepresented or misguided the respondents, in order to earn the benefit of excess payment. Further, the respondents have not fixed responsibility as observed by Hon'ble Supreme Court Judgement in Chandi Prasad Uniyal and Others v.

State of Uttarkhand & Ors. (Civil Appeal No.5899 of 2012 (SLP (C) No.30858/2011), which was cited by the respondents to buttress their case. Such an action would usher in financial discipline and utmost care in managing finances of the respondents organization. Besides, as per DoPT OM dated 06.02.2014 directions were issued to deal with wrongful or excess payments. In the said OM it was also stated as under:

“(iii) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or carelessness, etc., roles of those responsible for overpayments in such cases and the employees who benefitted from such actions should be identified and departmental/criminal action should be considered in appropriate cases.”

In the present case, the excess payment obviously was paid due to negligence of the respondents. As per the OM, it was open to the respondents to recover from those responsible for the excess payment, but the reply statement is silent in this regard. Respondents even now can examine considering this aspect in order to avoid any loss to the public exchequer. However, they are penalizing the applicant by ordering recovery of Rs.60,200/-. The applicant has also affirmed in his OA that he has requested the respondents to reconcile the accounts since he believes that on reconciliation it would be evident that no excess payment was made out. The reply statement of the respondents is silent in this regard.

(IV) Further, as per Hon'ble Supreme Court observations in a catena of Judgements, referred to hereinafter, the mistake committed by the respondents should not recoil on to the applicant. The relevant Judgements are extracted hereunder:

(a) **A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) **Rekha Mukherjee v. Ashis Kumar Das**, (2005) 3 SCC 427 :

“36. The respondents herein cannot take advantage of their own mistake.”

(c) The Apex Court in a recent 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.

(d) In yet another recent 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.

(e) 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, based on the observations of the Hon’ble Supreme Court cited above, the recovery ordered from the applicants is arbitrary and illegal. Respondents thrusting this mistake on to the applicant and penalizing him is unreasonable.

(V) It is also observed that there is a delay in release of pensionary benefits in respect of GPF, pension, etc. for no fault on the applicant. The respondents knew the date of retirement of the applicant. They should have acted to take necessary steps for reconciling any inaccuracies in regard to the financial aspects pertaining to the applicant before his retirement. They have failed to do so in time. Respondents admitted that there was some delay in processing of the pension and terminal benefits of the applicant. However, for such delays the applicant is not responsible. Hence, as per the Judgements of the Hon’ble Supreme Court observations in Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240 applicant is eligible for interest on the delayed payments of pensionary benefits. The relevant observations are extracted hereunder:

“Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.”

(VI) Thus, based on the above facts and discussion, the OA fully succeeds. Consequently, respondents are directed to refund the excess amount of Rs.74288/- recovered from the applicant and also pay interest at the rate of 8% for the delayed period, in releasing GPF and pension from the date due till the date of payment. Respondents are given a period of 3 months from the date of receipt of a copy of this order to implement the judgement.

With the above directions, the OA is allowed. No costs.

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

Dated, the 25th day of October, 2019

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