(2024) 02 CAT CK 0012

Central Administrative Tribunal - Allahabad Bench, Allahabad

Case No: Original Application No. 325 Of 2018

Alimuddin S/O Salaluddin Presently Working As A Dak Pal (B.P.M.) Kashipur Said Nagar, Rampur & Others		APPELLANT
	Vs	
Union Of India, Through The Secretary, Ministry Of Communication And LT., Dak Bhawan, Sansad Marg, New Delhi. And Others		RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution Of India, 1950 - Article 14

Hon'ble Judges: Dr. Sanjiv Kumar, Member (A)

Bench: Single Bench

Advocate: V P Mishra, S K Kushwaha, Subhash Chandra Mishra

Final Decision: Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. This Original Application is filed under section 19 of the Central Administrative Tribunal Act, 1985 seeking relief to quash the impugned orders

dated 15.01.2018 and 13.02.2018 with direction to the respondents to refund the deducted amount from the T.R.C.A. of the applicants and restore the

pay scales which were granted to the applicants after assessment of work-load and to direct the respondents to reassess the work-load of the

B.P.Ms. of the different Branch Post Offices of the respondent no. 5 as per observation of the respondents themselves in the impugned order dated

13.02.2018. Prayer has also been made to pass any other order which this Tribunal may deem fit and proper and also award cost.

2. There were three applicants out of which the applicant no. 1 has withdrawn his application vide order dated 13.05.2023. So, the OA subsists for

applicant no. 2 Alimuddin S/o Salauddin and applicant no. 3 Surendra Mohan Sharma, son of Late Ram Shankar Sharma.

3. The fact of the applicant is that the applicants were engaged as Extra Departmental Agents (E.D.A.) which is now known as Gramin Dak Sewak

at different Branch Post Offices under Senior Superintendent of Post Offices, Moradabad and they have worked with devotion. Time Related

Continuity Allowance (T.R.C.A.) had been revised on the basis of recommendation of Natarajan Committee for G.D.S. workers in the year 2011 and

the applicants were getting Time Related Continuity Allowance on the basis of enhanced rate as per recommendation of the committee but all of a

sudden the respondents have reduced the pay scales of the applicants without giving any show cause notices before reducing the pay scale w.e.f.

January 2017 and the applicants have represented to Senior Superintendent (Respondent no. 5) of post offices, Moradabad regarding reduction of pay

scales as well as recovery thereof, from the Time Related Continuity Allowances without issuing show cause notices. Thus, the actions of the

respondents are against the law of natural justice. In response to the representation of the applicants, the respondents replied that on the basis of

noting at paragraph 32 made by the Audit Team (Office of Director Postal Accounts Lucknow) on its Audit of November 2016, revised workload of

the applicants since 2010-2011 have been rejected. Hence, the rate of TRCA since 01.02.2006 to 31.12.2016 have been recalculated and thus

overpaid amount has been started to deduct from the T.R.C.A. of the applicants @ Rs. 2000/- per month from December, 2017. Dealing with the

similarly situated cases and decisions of the Honâ€™ble Court/Tribunal and losses being suffered by the Department due to negligence of individuals,

Government of India, Department of Posts has issued instructions vide F.No. 14-01/2012-PAP dated 18.10.2012 which provides that all concerned to

ensure that officer/officials posted to perform various functions are well aware of rules and instructions pertaining to the subject and that they should

perform their duties with due diligence. Responsibility for the lapses should invariably be fixed and the amount of losses recovered from the employees

at fault. And that there has no misrepresentation or fraud been committed by any of the applicants. For revision of Time Related Continuity

Allowances, applicants had no role in the determination of the respondents for the same, as such if there was any over-payment which has been

made, no recovery should be made from T.R.C.A. of the applicants, but the respondents have made effective recovery from the T.R.C.A. of the

applicants, illegally and arbitrarily. On the ground of the applicants being weakest of the weak they agree that the equity and propriety required that

recovery revolved on the action being iniquitous as when the excess unauthorized payment is detected within a short period of time, it would be open

for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make recovery.

The applicants being poor Extra Departmental GDS are put to constraint for even daily necessities of food, clothing and shelter by the recovery order.

The applicants cited the judgment passed by the Honâ€™ble Supreme Court in case of State of Punjab Vs. Rafiq Masih and assert that it

covers their case and hence, recovery was arbitrary and illegal.

4. They further assert that without admitting the fact that the applicants have given any undertaking for recovery, there was no rule for giving any

undertaking before receiving any arrears against extended T.R.C.A. as the respondents are trying to justify their illegality by saying that there are

undertakings available with the respondents. Mere availability of the so called undertaking, respondents could not be allowed to take benefits of the

same and as the action of the respondents are illegal, arbitrary, non-est, violative to Article 14 of the Constitution of India, hence, they seek to allow

their OA and grant them relief.

5. On notice respondents have filed their counter reply wherein they assert that this case relates to the fixation of Time Related Continuity Allowance

(TRCA) revised on the basis of the implementation of the recommendation of Nataraja Murti Committee received vide letter dated 09.10.2009. As

per the order dated 09.10.2009, three new slabs for 87.5 points (more than 3 Hrs. to 3 Hrs. 30 Minutes), 112.5 (More than 4 Hrs. to 4 Hrs. 30

Minutes) & 125 points (more than 4 Hrs. 30 to 5 Hrs) of TRCA for GDS BPM were implemented with existing two slabs 75 points (Up to 3 Hrs.) &

100 points (Up to 4 Hrs.) of TRCA for GDS BPM and the new TRCA slab & TRCA in the new slab in respect of all GDSs including BPMs was to

be fixed with reference to his existing workload & Basic TRCA drawn as on 01.01.2006. As per the order dated 09.10.2009, the revised TRCA for

the GDS BPM working from a date prior to 01.04.2004 was to be fixed as â€œBasic TRCA as on 01.01.2006 + 5% increase as on 01.04.2004

multiplied by a factor of 1.74 and then adding 40% fitment as arrived at 20th stage of pre-revised TRCA and fixation at next above the stage in the

revised slab of TRCAâ€. And as per the instructions contained in Para 2.1 of the Directorate letter No. 4-8/2004-PAP dated 05.09.2005 consequent

upon increase of 5% in TRCA in all categories of GDSs, the increase of TRCA w.e.f. 01.04.2004 by 5% would be only one time benefit and there

would be no periodical revision in the TRCA. But as per the order dated 09.10.2009, the TRCAs of GDSs were fixed and arrears paid to them by Sr.

Postmaster, Moradabad HO, Postmaster, Amroha HO & Postmaster Rampur HO after obtaining undertakings from the GDSs and misinterpreting the

letter, workload for the month of March-2009, June-2009, September-2009 & December 2009 in r/o GDS BPMs & workload of January-2010 were

made and the revision of workload was done with the statistics of the year 2005 and not as per the earlier circular which require it to be static on

01.04.2004 and as it was wrongly fixed and audit has made an objection. Based on the same, the authorities went ahead to direct to revise their

TRCA and emoluments and accordingly, overpayments deducted were directed to be recovered from the respective recipients. Hence, there is no

illegality in the action of the respondents and there is no merit in the case of the applicant as public money cannot be frittered away by wrong

calculation and hence, the OA should be dismissed.

6. Rejoinder has been filed on behalf of the applicants where they reiterate their facts as in the OA and they have also filed a judgment of the

Coordinate Bench dated 24.11.2022 in O.A. No. 187 of 2018 and others which they say is exactly similar and same issue has already been decided.

Hence, this Coordinate Bench shall go according to what the said decision is.

7. The case came up for final hearing on 31.01.2024. Shri S K Kushwaha, learned counsel for the applicant and Shri Subhash Chandra Mishra,

learned counsel for the respondents were present and heard. Counsel for the respondents has also filed written arguments.

8. I have carefully gone through the entire records and considered the rival contentions.

9. From the rival contentions and pleadings, it is evident that before me followings issues came for consideration:-

(i) Do the authorities have inherent power to reduce emoluments and recalculate TRCA and emoluments based on the same if they find that there

was some mistake in that in the earlier calculation and what should be the procedure for the same?

(ii) As a consequence of reduction in the revised emoluments could the authorities recover all the amounts determined so arrived as excess payment

retrospectively? Does any limitation arise for such recovery?

(iii) If the employee who received higher wages wrongly and given an undertaking earlier to the authorities that if it is found later that any excess

payment has been made, can based on the same authority deduct the amount from future emoluments of the employee? Does any limitation apply to

the same?

10. First, taking the 1st issue, do the authorities have inherent power to reduce emoluments and recalculate TRCA and emoluments based on the

same if they find that there was some mistake in their earlier calculation? Definitely any authority has inherent power to make correction and

recalculations but as those will have civil consequences, hence, the procedure for that has to be strictly following the principle of natural justice giving

notices to the affected parties and giving them opportunities to be heard and after considering their plea; taking a considered decision would be the

right process. In the present case, I do not find that the authorities have given any notice and opportunity of being heard to the applicants before

arriving at that they had some excess payment given and ordered for recovery and starting recovering. It is on record that based on certain audit

objections and authority considering that the re-evaluation of TRCA and its recalculation was not based on the workload of 01.01.2004 but it was

based on work load of 01.01.2005 whereas in their opinion based on their earlier circular the workload was frozen on 01.01.2004 and it could not have

been further revised. So, the recalculation was wrong. There cannot be two opinions that authority had inherent power to embark on correcting a

continuing wrong but it has to be through due process of law and procedure which have not been followed in this case. Hence, the whole process of

recovery vitiates and the applicants are justified in contesting the same and asking for refund to that extend. Hence, my answer to the first question is

that the authority has power through due process of law and they can reduce the emoluments through due process; which in the present case they

have not done.

11. Coming to the second question as a consequence of reduction in the revised emoluments could the authorities recover all the amounts so arrived

as excess payment retrospectively? Does any limitation arise for such recovery? For any claim on either side, law of limitation will definitely arise and

any recovery cannot be retrospectively for unspecified period in the past and in the case of low paid employees of Group C & D who are not at fault

for or who have not misrepresented or committed any fraud and where authorities have wrongly calculated their emoluments and the authorities have

resorted to such retrospective recovery becomes iniquitous and certainly would attract the ratio of the Honâ€™ble Apex Court judgment in State of

Punjab vs. Rafiq Masih cited by the applicants. At the most, after due process of law if the authority arrived at a conclusion that there was an excess

payment they could have maximum recovery from 3 years from the date of such notice and not beyond as the lowly paid employees would have

already spent their amount on their basic essentials of food, clothing and shelters, education of children and health services etc. This we will further

examine in succeeding paragraphs but clearly my answer to this question is that excess payments subjected to recovery retrospectively can only be

subject to limitations. Limitations under the law of limitation as well as what is imposed by the ratio of the judgments in the case of Rafiq Masih

(supra).

12. Now coming to the third question, if the employees who received higher wages wrongly had given an undertaking earlier to the authority that if it

is found later that any excess payment has been made, can based on the same authority deduct the amount from future emoluments of the

employees? Answer to this question is Yes, and to some extent, it can be done if an undertaking was given but this is also subject to limitations as an

undertaking given by a Group C & D employees who may not consciously know the consequence of the same as well as in the cases where the

powerful party, the employer and where the Government particularly is the employer is at fault in fixing wrongly their emoluments and making

available higher emoluments in the hands of the employees who would have used them and spent them for their daily needs. Even if an undertaking is

given that is subject to limitation and recovery cannot be for more than 3-5 years in the past. Further, these may be dealt in succeeding paragraphs so

my answer to the 3rd question is that the authority can deduct retrospectively but subject to the limitations applied to such retrospective deductions

also.

13. Now coming to the case cited by the applicants, it is clear that present case is similar in all concerns as it was in OA No. 187/2018 & others

judgment dated 24.11.2022 of this Court as well as in O.A. Nos. 386/2018 dated 21.04.2023 and 440/2018 dated 27.04.2023 etc and in the

said OAs also from the admitted facts that the applicants were granted enhanced TRCA on the recommendation of the committee and when the audit

team had objected to it, recovery was started from the applicants but without issuing the notices and giving opportunity to be heard before issuing the

recovery order. No show cause notice was issued to the applicants. It is also admitted facts that in getting revised TRCA applicants had not

misrepresented or done any fraud. Applicants are poor GDS employees, if deduction is to be made from the salary of the applicants it would be

difficult for the employees to provide basic necessities of their family and the present case also is similar.

14. Further, the said OA notes that it is worthwhile to mention that it is a settled law on the point that firstly no recovery can be made unless any fraud

or misrepresentation is alleged on the part of any person from whom the recovery is being sought to be made and secondly, if at all there is any

justification for making any recovery then also adhering to the principle of natural justice, a show cause notice is a condition for making any such

recovery. The bare reading of the entire counter affidavit there is no whisper about a word on notice, it is really very surprising that as to why without

issuing such show cause notice; the recovery in question was made and the facts of the instant case are also the same.

15. Further, in the said OA it is noted that State of Punjab and others. Vs. Rafiq Masih and others reported in (2015) 2 Supreme Court

Cases (L&S) 33 is applicable to the case, wherein the Honâ€™ble Court has been pleased to observe as under:-

â€œIt is not possible to postulate all situations of It is hip, 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.

(υ) 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.â€

Not only this, the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and others Vs. State of Uttrakhand and others reported in

(2012) 8 Supreme Court Cases 417, has been pleased to observe as under:-

8. We are of the considered view, after going through the â€œvarious judgments cited at the Bar, that this Court has not laid down any

principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the

amount paid due to irregular/wrong fixation of pay be recovered.

16. The court further observed that undoubtedly, the amount can be recovered if it is a wrong calculation on the part of the respondents and any

amount excess paid to the applicant but the applicant is entitled to have an opportunity of hearing and the principles of natural justice cannot be

violated. Further the court observed that in the case of Davinder Singh and others vs. State of Punjab and others reported in (2010) 13

Supreme Court Cases, 88, the Honâ€™ble Apex Court has also been pleased to observe that â€œopportunity of hearing is to be given to the

delinquent before passing an orderâ€. And they further find that admittedly, in the instant case, applicants are Group D employees and have not

committed any fraud or misrepresentation in getting the TRCA reducing his pay and recovering an amount without issuing a show cause notice to

them, is not justifiable which is also same in the facts of the present case. The court further observed that as far as case law relied upon by the

respondents is concerned, in that case the applicant was posted as Civil Judge and have given an undertaking that any payment to have been made in

excess would be required to be refunded. Whereas in the present case, the applicant is a Group D employee and as the the case of State of Punjab

and others vs. Rafiq Masih (supra), no recovery can be made from any Group D employee. And if the undertaking have been given by the

applicants are taken into consideration, then also it is based on a proforma with mention for refund of overpayment, if any made on account of

incorrect fixation. The undertaking is a part of proforma and it is well known that the person belonging to lower post, put signature on such undertaking

without application of mind. Similar views have been propounded in the case of Mohammed Yosuf vs. Maharana Pratap Agriculture &

Techology University, Udaipur (supra), Prakash Chandra Bothra vs. UOI (supra), Ms. Mridula Saxena vs. State of M.A. (supra) and in

K.L.Makashre vs. Sanchalnalaya Udhyaniki Evan (supra.) Hence, the case law relied upon by the learned counsel for respondents will not be

applicable in the present case. And the case of the present applicants has also similarity but as they have given undertaking so with the limitation on

past recovery based on the undertaking if at all any past recovery has to be there from the date of due notice when they give 3 years back excess so

paid may be recovered based on their undertaking.

17. Further, in the said OA, the court observed that since there was no fault on the part of the applicants, the fixation was made by the department

itself, recovery if any should have been made from the officer, who has made wrong fixation. Applicants, who are not at fault, cannot be fastened

with the liability of wrong fixation. Since no exception has been carved out by the Honâ€™ble Supreme Court in the case of State of Punjab vs.

Rafiq Masih (supra), as has been argued by the learned counsel for the respondents, therefore, recovery process started for the overpayment from

Group D employees are not sustainable and I agree with the same which will be applicable in this case also.

18. Considering the facts and circumstances of the case and in the light of the observations made by the Honâ€™ble Apex Court and in the

coordinate Bench Judgment cited, the present Original Application is allowed with following directions:-

i) As far as reducing the pay of the applicants are concerned, impugned orders dated 15.01.2018 & 13.02.2018 are set aside. If there is a need for

review of salary of the applicants, a show cause notice be issued to them and after affording opportunity of hearing to them, respondents may refix the

salary/ wages by passing a reasoned and speaking order afresh with prospective effect only from the date of their notice.

ii) Since the applicants were GDS employees, in view of law laid down in the case of State of Punjab and others vs. Rafiq Masih (supra),

recovery process started from the applicants are hereby quashed. If any amount has already been recovered, the same shall be refunded to the

applicants within a period of three months with simple interest @ 6% per annum. If any amount is still to be recovered, same shall not be recovered.

19. All associated MAs stand disposed of accordingly. There shall be no order as to costs.