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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 3290/2002

New Delhi this the 26th day of March, 2004

Hon'ble Shri V.K. Majotra, Vice-Chairman (A).
Hon'ble Shri Bharat Bhushan, Member (J).

Surjit Singh
S/o Shri Tara Singh,
R/o D-74, Nanhey Park,
Uttam Nagar,
New Delhi-110059. ... **Applicant.**

(By Advocate Shri H.P. Chakravarty)

Versus

1. The Union of India through
The Chairman,
Railway Board,
Principal Secretary to Govt. of India,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
3. The Chief Administrative Officer
(Construction),
N. Rly. Headquarters Office,
Kashmere Gate,
Delhi-110006. ... **Respondents.**

(By Advocate Shri R.L. Dhawan)

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Hon'ble Shri Bharat Bhushan, Member (J).

The applicant in this Original Application filed by him has sought the following reliefs:

"8.1 to entertain this application and decide it at its admission stage itself;

8.2 to quash and set aside the impugned orders dated 9.5.2002 and 1.8.2002 and statement of refixation of pay (Ann. A-1 & A-2) reducing applicant's basic pay from Rs.8900/- to Rs.8500/-;

8.3 to direct the respondents to pay all retiral benefits of the applicant i.e. pension, commutation, gratuity and leave encashment, etc.

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on the basis of his last basic pay Rs.8900/- p.m. and to pay difference of arrears with 18% interest;

8.4 to direct the respondents further to pay back the recovered amount of Rs.66844/- with 18% interest from the date of retirement to the date of its actual payment;

8.5 to direct the respondents further to pay penal interest at the rate of 18% p.a. on the delayed payment of gratuity from 1.2.2001 till date of actual payment;

8.6 any other reliefs which are deemed fit and proper in the facts and circumstances of the case may also be granted along with cost of the case in favour of the applicant".

2. The applicant was initially appointed as Tracer on 22.3.1961 in the grade of Rs.110-200 on Eastern Railway and worked there upto 30.6.1977. It was at this stage that the applicant applied for his transfer at his own request as Junior Draftsman in Northern Railway at Delhi. His request was accepted and he was posted in Construction Organisation at Kashmere Gate, Delhi by fixing his lien in Headquarters Office, Baroda House, New Delhi as Junior Draftsman in the grade of Rs.330-560. It is pertinent to mention here that thereafter all throughout he remained posted in Construction Organisation and simultaneously retaining his lien in the parent department. It was during his posting in the Construction Organisation only that he gained certain promotions and ultimately he retired on 31.1.2001 while working as Chief Draftsman in the grade of Rs.6500-10500 on regular basis.

3. It is the case of the respondents that in terms of the Railway Board's instructions dated 7.8.1986 circulated under Northern Railway printed serial No.9036 (Annexure R-3), the posts in the Construction Organisation are to be treated as ex-cadre posts for the

purpose of pay fixation and that the benefits of pay drawn on such posts were held not to be admissible in cadre posts. They detected that in the case of the applicant, there was a wrong fixation of his pay because instead of his pay in the cadre post his pay in the ex-cadre post, i.e. during his period of deputation with the Construction organisation was taken into consideration which resulted in wrong fixation of his pay. So this mistake was rectified by them and his pay was fixed at Rs.8500/- instead of Rs.8900/- which had been previously fixed as the last pay drawn before retirement and consequently recoveries of excess payment of Rs.66,845/- were ordered to be made.

4. The applicant challenged the order of such rectification of wrong fixation of his pay and consequent recovery of over payment. This was challenged by filing O.A. No. 2258/2001. The O.A. was disposed of by the Tribunal vide Order dated 18.4.2002 (Annexure A-8), in which the following order was passed:

"We find it in order, just and fair to direct the respondents to issue a fresh show cause notice to the applicant to state his case in respect of reduction of his pay to Rs.8500/- per month and arrive at a proper decision on the basis of a representation to be filed by the applicant against the said notice and after granting him a personal hearing as well. We also find it proper to direct them to issue a show cause notice as above within 15 days from the date of receipt of a copy of this order providing 15 days thereafter to the applicant to file his representation. Another 15 days will be provided for granting personal hearing to the applicant thereafter. Final orders will be passed by the respondents on the basis of the representation, if any, filed by the applicant and after granting him personal hearing within 15 days after the grant of personal hearing. We also find it proper to direct that in the event of the respondents not being able to decide the matter in accordance with the aforesaid



time-table, the aforesaid amount of Rs.66,844/- already recovered from the applicant will be refunded to him".

5. The respondents in implementation of the said judgment issued a fresh show cause notice to the ^{26/5/2002} ~~applicant~~ ^{to the Applicant} dated 9.5.2002 (Annexure A-1) ^{26/5/2002} with the ~~stipulated period~~ ^{26/5/2002} to submit his representation within 15 days from the date of receipt of the show cause notice.

In response, the applicant submitted a representation and he was also granted personal hearing. Thereafter, the General Manager passed a detailed reasoned order dated 1.8.2002 (Annexure A-2) whereby it had been held that it was an inadvertent mistake on the part of the Construction organisation in not fixing his pay as per the Rules on the subject and now that that mistake had been rectified and his pay had been correctly fixed as Rs.8500/- as the last pay drawn.

6. So the impugned before us in this application are both the show cause notice (Annexure A-1) and the orders passed by the General Manager (Annexure A-2).

7. We have heard the learned counsel for the parties and have perused the records. The learned counsel for the applicant has simply argued that throughout he was serving in the Railways only and that during that period he had earned various promotions and it was on account of such promotions that his pay had earlier rightly been fixed as Rs.8900/- per month which now without any justification has since been reduced by them to Rs.8500/-. He has further contended that whether the applicant was working in open line construction or project, there were no separate set of

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rules in so far as the fixation of pay on promotion was concerned. His further submission is that the petitioner had secured promotions as per his seniority and merit only and that too after due process of selection, fitness and suitability and under such circumstances, the action of the respondents in not giving legitimacy to his promotions while working in the construction organisation was grossly illegal. He has further contended that his posting in the construction organisation cannot be termed as a deputation post because he was never in receipt of any deputation allowance or such like facilities whatsoever.

8. On the other hand, the contention of the learned counsel for the respondents is that the posts in the Construction Organisation are to be treated as ex-cadre posts for the purpose of pay fixation and that the benefits of pay drawn in such posts are not admissible in cadre post. In this regard, we have been taken through Railway Board's instructions dated 7.8.1986 circulated under Northern Railway Printed Serial No. 9036 (Annexure R-3). He has vehemently contended that the pay of the applicant had inadvertently been wrongly fixed taking into consideration his pay in the ex-cadre post instead of his pay in the cadre post. Hence, his submission is, that this grave error on the part of the respondents had been discovered only at the time of his retirement, so it was only thereafter that they proceeded to rectify their mistake and thus have now correctly ordered the fixation of pay at Rs.8500/- instead of Rs.8900/- as the

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last pay drawn before retirement. Thus he has justified the recoveries of the wrong over payment earlier made to the applicant.

9. We have considered the rival contentions. So far as the law for rectification of any administrative error is concerned, it is well settled that the administrative error coming to notice has to be rectified and cannot be allowed to perpetuate. Reliance is placed on the judgments of the Hon'ble Supreme Court in case of State of Maharashtra Vs. Admani Anita Moti (SCC 1994 (6) 109) and State of Haryana Vs. Ram Kumar Mann (SC SCL 1997 (2) SC 257).

10. The next question for determination before us as to in what manner the posts in the Construction Department as in the case of the applicant are to be treated. In this regard, we find it useful to reproduce the relevant portion of P.S. No. 9036 of the Railway Board as is appearing in Annexure R-3:

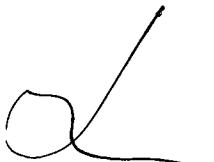
"The Board's have clarified that posts in construction department are to be treated as ex-cadre posts for the purpose of pay fixation and the benefit of pay drawn in such posts would not be admissible in cadre posts.

Copy of Rly. Board's letter No. E(P&A)II/85/pp/13. dated 7-8-1986.

Sub:- Benefit of fixation of pay in a Cadre post with reference to pay drawn in an ex-cadre post.

Reference your letter No.831/E/123/(V) dated 24-12-1986 on the subject mentioned above.

2. The Board have considered the point raised in your letter dated 21.12.1985 and desire to clarify that posts in your Construction Department are to be treated as ex-cadre posts for the purpose of pay fixation and the benefit of pay drawn in such posts would not be admissible in cadre posts....".

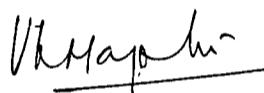




11. The perusal of the aforesaid leaves no room of doubt that the posts held by the applicant while serving in Construction Department were only ex-cadre posts. And though he had drawn higher pay on such posts yet as per ~~this letter~~ ^{Annexure 3} ~~26/3~~ such benefits of pay drawn during such period of his posting on ex-cadre posts were not admissible in the cadre posts for the purpose of pay fixation.

12. Consequently, we do not find any infirmity either in the show cause notice dated 9.5.2002 (Annexure A-1) nor in the order dated 01.8.2002 (Annexure A-2) vide which the issue of erroneous pay fixation on examination was merely corrected/rectified. This being so we do not find any merit in the O.A. Hence, the same is hereby dismissed. No order as to costs.


(Bharat Bhushan)
Member (J)


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

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