

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1117/2002

New Delhi, this the 27th day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri C.S. Chadha, Member(A)

Om Prakash Shami
187, Railway Enclave/Sect.12
Pratap Vihar, Ghaziabad

Applicant

(Shri M.L. Sharma, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Administrative Officer (Const.)
Northern Railway Construction
Headquarters Office
Kashmiri Gate, Delhi

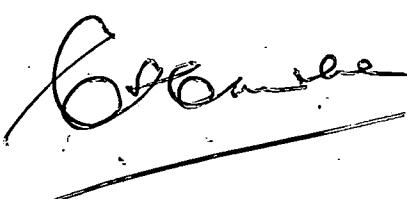
Respondents

(Shri R.L. Dhawan, Advocate)- not present)

ORDER

Shri C.S. Chadha

The applicant retired from the office of the Chief Engineer (Construction), Northern Railway on 31.7.2001. Just before retirement he was receiving pay @ Rs.8700/- p.m., in the scale of pay of Rs.6500-10500, which scale became effective vis-a-vis the applicant from 1.1.1996. However, shortly before his retirement, he received a show cause notice dated 27.4.2001 (Annexure A/1) on 10.5.2001 directing him to show cause why his pay, which was wrongly fixed, may not be reduced in accordance with PS No.9824 and refixed in accordance with the pay fixation sheet attached to the notice. Applicant filed a written representation vide Annexure A/14 on 11.5.2001 but apparently no speaking written order was passed in pursuance of the representation and not only was his pay refixed in accordance with the pay fixation sheet but was


C.S. Chadha

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also given effect to and recoveries were also made from his retirement benefits amounting to Rs.83,291/- on the ground that this was the amount of excess payment made to him due to wrong fixation of pay. He has filed this OA as a consequence of the recoveries and the pay fixation without any written order.

2. Respondents have in their written reply stated that the OA is premature inasmuch as available departmental remedies have not been exhausted. In accordance with the relevant Rules, applicant could have filed an appeal against the recoveries ordered as laid down in Rule 18(iv) of the Railway Servants (Disciplinary & Appeal) Rules, 1968. As opposed to this, the learned counsel for the applicant vehemently argued that reply to the show cause notice was not even decided upon, yet recoveries have been made "behind his back" without considering applicant's case, and he did not receive any reply on his representation.

3. The learned counsel for the applicant also argued at length on the facts, trying to prove why recoveries should not have been made from the applicant. However, we feel that for the present we need not go into the facts of the case and the matter can be disposed on the legal issue i.e., whether the OA lies without exhausting departmental remedies. We are firmly of the opinion that this OA is premature because the statutory appeal has not been resorted to. The learned counsel for the applicant argued that the department has not even bothered to consider the applicant's representation vide Annexure A/14. Be that as it may, we feel that interests of

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justice would be served if Respondent No.1 - General Manager, Northern Railway - is directed to consider applicant's representation (A/14) or any other representation that the applicant may now file, as a statutory appeal under the Rules, against the recoveries made from the applicant's salary as well as retirement benefits. The counsel for the applicant pointed out that even the Department had recommended, vide Annexure A/11, that recoveries may not be made from the applicant as the Railway Board had felt that such cases amount to hardship.

4. Therefore, we dispose of the present OA with the direction to Respondent No.1 that, as mentioned above, applicant's representation dated 11.5.2001 (A/14) and any fresh representation that he may file within one month of receipt of a copy of this order may be disposed of as a statutory appeal by Respondent No.1, keeping in mind the recommendations made by the Chief Administrative Officer to him vide Annexure A/11, within a period of one month from the date of receipt of the appeal to be filed by him. While making the order, Respondent No.1 may keep in mind the law on the subject including Supreme Court's direction in similar cases. Recoveries already made from the applicant, without passing any order, may be adjusted against the final order that Respondent No.1 may pass as an appellate order. No order as to costs.

C.S. Chadha
(C.S. Chadha)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

/gtv/