

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO.2131/2002

This the 25th day of August, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Virendra Saran S/O R.S.Saxena,  
Retired Section Engineer/Drawing,  
Northern Railways Headquarters  
Office (Const.), Kashmiri Gate, Delhi.  
R/O 51 Inder Enclave, P.O.Sunder Vihar,  
New Delhi.

... Applicant

( By Shri M. L. Sharma, Advocate )

-versus-

1. Union of India through  
Secretary (Estt.), Railway Board,  
Ministry of Railways, Rail Bhawan,  
New Delhi.
2. General Manager, Northern Railway,  
Headquarters Office, Baroda House,  
New Delhi.
3. Chief Administrative Officer (Const.),  
Northern Railway Headquarters Office,  
Kashmiri Gate, Delhi. ... Respondents

( By Shri R. L. Dhawan, Advocate )

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant had been working as Chief Draftsman grade Rs.2000-3200/6500-10500 w.e.f. 5.10.1994. His basic pay as on 1.12.1999 and before his retirement on 31.10.2000 was Rs.8100/- in grade Rs.6500-10500. Applicant has alleged that his basic pay was reduced from Rs.8100/- to Rs.7300/- per month vide impugned letter dated - October, 2000 (Annexure A-2) after his retirement and without putting him on notice. Such reduction in basic pay has adversely affected his retiral benefits. Besides, a huge amount of Rs.55,883.80 has been recovered from his

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gratuity vide impugned impugned letter dated 6.11.2001 (Annexure A-4). Applicant has sought quashing and setting aside of impugned letters dated 16.11.1999, 10/2000, 19.4.2001, 6.11.2001 and PPO dated 8/2001 (Annexures A-1, A-2, A-3, A-4 and A-5). He has also sought a direction to respondents to pay him his retiral benefits on the basis of his actual basic pay of Rs.8100/- per month with interest and also refund of a sum of Rs.55,883/- with interest recovered from his gratuity.

2. The learned counsel of applicant contended that respondents resorted to reducing applicant's pay after retirement without issuing any prior show cause notice. Such reduction has caused a civil consequence, apart from financial loss in violation of the principles of natural justice. He relied on order dated 24.10.2002 in OA No.3188/2002 (CAT, Principal Bench) : Tara Chand v. Union of India & Ors.

3. Respondents have refuted the claims of applicant contending that applicant was promoted as Chief Draftsman in grade Rs.2000-3200 w.e.f. 29.12.1993 in the Construction Organisation. While his pay was required to be fixed with reference to his pay in the cadre post whenever he was promoted on ad hoc basis as Draftsman, Senior Draftsman, Head Draftsman and Chief Draftsman, his pay was fixed erroneously from one ex cadre post to higher ex-cadre post and in this manner his basic pay rose to Rs.8100/- in grade Rs.6500-10500 in the Construction Organisation. The error was corrected and

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applicant was served the notice in October, 1999 (Annexure R-3) before the date of his retirement. He made a representation dated 25.7.2000 (Annexure R-4) and then his pay was re-fixed and over-payment was recovered from his settlement dues. The learned counsel stated that reduction in the basic pay of applicant and consequential recovery made from his gratuity are in order, and principles of natural justice have not been violated.

4. We find that respondents have not enclosed Annexures R-3 and R-4. On being asked to produce Annexures R-3 and R-4, the learned counsel could not do the same and referred to Annexure A-1 dated October, 1999 as the show cause notice. Annexure A-1 reads as follows:

"In terms of Rly. Bd.'s letter No.E(P&A) II-96/Pt.2 dated: 17.8.98 circulated vide Dy.CPO/C-I/K.Gate, D.O. letter No.848-E/O/ Con. dt.3/3/99 the pay of Sh.Virender Sharan, Design. SE (Drg.) is refixed as under :-"

Below the above narration, applicant's pay on different dates in parent cadre, pay drawn on different dates in Construction Organisation and pay to be fixed and drawn in parent cadre, ha been indicated. The language of Annexure A-1 does not indicate that it is a show cause notice regarding reduction of applicant's pay. The learned counsel of respondents also stated that applicant had submitted his representation (Annexure R-4) to this show cause notice. Such representation has also not been shown to us by respondents. Obviously, respondents had not issued any show cause notice to applicant before

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reducing his pay since 1.5.1975 till his retirement, i.e., for a period of about two decades. Such reduction of pay of applicant, even if provided in certain rules or instructions involves civil consequences causing great financial loss to applicant which cannot be resorted to without putting applicant on a prior show cause notice. Such an arbitrary action on the part of respondents is certainly in violation of the principles of natural justice. In a similar case, namely, *Tara Chand (supra)*, this Tribunal relying on *Bhagwan Shukla v. Union of India & Ors.*, 1994 SCC (L&S) 1320; *Shyam Babu v. Union of India & Ors.*, 1994 SCC (L&S) 693; *Sahib Ram v. State of Haryana & Ors.*, 1995 SCC (L&S) 248; and *Hori Lal v. Union of India & Ors.*, OA No.55/1999 decided on 9.4.2001, ~~had~~ held that in absence of the reasonable opportunity to show cause to applicant, action of respondents cannot be held legally sustainable. The following directions were issued in that case :

"9. In the result for the reasons recorded above, we allow this OA and set aside the impugned orders at Annexures A-1 to A-4 and direct the respondents to fix the pay of the applicant in the grade of Rs.7450-11500, i.e., at Rs.10,375/- w.e.f. 4.7.2000. The respondents are further directed to pay the retiral benefits, i.e., pension, commutation, leave encashment and gratuity on the basis of his basic pay at Rs.10,750/- p.m. in the grade of his basic pay at Rs.10,750/- p.m. in the grade of Rs.7500-12000. Moreover, any recovery effected on account of alleged over payment is also directed to be restored to the applicant. These directions shall be complied with by the respondents within a period of three months from the date of receipt of this order failing which applicant shall be entitled to payment of interest at the rate of 12% per annum. No costs."

The ratio of the case of *Tara Chand (supra)* is squarely applicable to the facts of the present case.

Consequently, we allow this OA and set aside the impugned orders Annexures A-1 dated 16.11.1999, A-2 dated October, 2000, A-3 dated 19.4.2001, A-4 dated 6.11.2001 and A-5 dated August, 2001, and direct respondents to restore applicant's pay since 1.5.1975 till the date of his retirement as before. Respondents are further directed to pay the retiral benefits to applicant in terms of restoration of his pay as directed above. The sum of Rs.55,883.88 recovered from applicant on re-fixation of his pay vide the impugned orders be also refunded to him. These directions shall be complied with by respondents within a period of three months from the date of receipt of this order failing which applicant shall be entitled to payment of interest at the rate of 12 percent per annum. No costs.

V. Majotra  
( V. K. Majotra )  
Member (A)

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

/as/