

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.206/2019

Dated this the 17th day of December, 2019

CORAM:

Hon'ble SH.M.C.Verma, Member (J)

1. Prakash Chandrakant Patel,
Age 60 years (DOB being 22.10.1958)
Son of Shri Chandrakantbhai Patel,
Retired as Senior Section Engineer (SSE) under the DCE (Const) -III,
Ahmedabad of Western Railway Zone,
& Presently residing at No.A-401, Ratnam Garnet,
Behind Akshar Kutir Bungalows, Kiran Motor's Land Road,
Motera, Sabarmati,
Ahmedabad – 380 005.

2. Arunkumar Laxmishanker Bhatt,
Age:60 years (DOB being 18.01.1959)
Son of Shri Laxmishankar Harishankar Bhatt,
Retired as Senior Section Engineer (SSE) in
Ahmedabad Railway Division of Western Railway Zone,
& presently residing at No.23, Vaibhav Tenament,
Opp.Ramdevji Temple,
Pij Road,
Nadiad – 387 002.
Gujarat.

Applicants

Shri M.S.Rao, Advocate

Vs.

1. Union of India,
(to be represented through the Special Secretary to the Govt. of India)
& the Ex Officio Chairman, Railway Board,
Ministry of Railways, Rail Bhavan,
New Delhi 110 001.
2. Western Railway,
(to be represented through its General Manager (E), W.Rly.Zone,
Office of the General Manager (E), W.Rly.Hqrs.Office,
Church Gate,
Mumbai - 400 020.
3. The Divisional Railway Mnager,
Ahmedabad Railway Division,
Western Railway Zone,
O/o.DRM(E). ADI,
Near Chamunda Mata Bridge, Naroda Road,
Ahmedabad – 380 025.
4. The Secretary to the Government of India,
Department of Personnel, Training & Pensioners' Welfare,
Government of India,
North Block,
New Delhi 110 001.
5. The Branch Manager,
State Bank of India,
UT, Gandhinagar,
Opp. Engg. College,
Sabarmati To Gandhinagar Highway
Chandkheda, Ahmedabad 382 424.
6. The Branch Manager,
State Bank of India,
Railwaypura,
Railwaypura P.O.,
Amar Chamber, Reid Road,
Panchkuva, Ahmedabad – 380 002.

Respondents.....

Shri A.L.Sharma, Advocate.

O R D E R (Oral)**Per: M.C.Verma, Member (Judicial)**

1. Pleadings are complete and matter needs further hearing on MA No. 344/19 and admission hearing of OA, however learned counsel for respondents suggest that rather to admit the OA it would be appropriate to dispose of the same with direction. Ld counsel explained that after issuance of notice of OA the respondents have issued notice dated 23.09.2019, that relating to said notice MA No.344/2019 has been preferred by applicant and on 14/10/19 after hearing in part this Tribunal did pass the order. He referred the order dated 14/10/19 and added that applicant has filed reply of show-cause notice dated 23.09.2019 and matter is under consideration of respondents.
2. Learned counsel for applicant, Shri M. S. Rao urged that even if representation to respondent, given against order dated 23.09.2019 is decided in favour of the applicant despite that grievances raised in OA against Order dated 09.05.2019, whereby financial up gradation granted to applicants and some other has been withdrawn may remain there, so it would be appropriate to direct the respondents to decide about case of withdrawal of MACP/financial up gradation granted to applicants also. He urged further that either this OA may

be treated as representation against order of withdrawal of financial up gradation/MACP or the applicant may be granted liberty to file representation afresh against Order dated 09.05.2019 and respondents may be directed to decide both representations simultaneously.

3. Learned counsel for respondents, at this stage submits that respondents are having no objection, if liberty is granted to the applicant to prefer the representation against order dated 09.05.2019 and he assures that respondents would decide both the representations.
4. Considered the submissions. Order dated 09.05.2019 whereby financial up gradation granted to applicants and some other has been withdrawn, has been impugned and after issuance of notice of OA the respondents has passed order dated 23.09.2019. The operative portion of order dated 23.09.2019 reads:

"DRM(E), ADI, vide above referred Memo, has withdrawn benefit of MACPs granted in the past, revising your last pay. Due to withdrawal of MACP's your last basic pay is revised and reduced. As per Railway Board's RBE No., All settlement dues are paid to retiring employees on the bases of pay last drawn by the employee therefore your Settlement due will also be revised in terms of Para 90 of Railway Services (Pension) Rules, 1993 and there will be recovery of overpayment of DCRG/Commt/Leave Salary and monthly pension will be as under:-

Overpayment of DCRG .. Rs.151834/-

<i>Overpayment of Commutation</i>	<i>Rs.171044/-</i>
<i>Overpayment of Leave Salary</i>	<i>Rs. 92020/-</i>
<i>Total:</i>	<i>Rs.414898/-</i>

Recovery of overpayment of Pension of Rs.4300/- +DA admissible from the next date of your retirement to till date is finally revised will also be recovered.

Under the circumstances, a show cause notice is hereby given to you as to why above amount should not be recovered from you. Please submit your reply within 15 days to this office and arrange to deposit excess amount paid to you towards DCRG/Commutation/Leave Salary and Pension failing which case will be moved for recovery of excess payment of DCRG/Commutation/Leave Salary/Pension and Revision of Pension".

5. MA No.344/2019 has been preferred by applicants of OA having prayer to restrain the respondents of OA from proceeding further pursuant to order dated 09.05.2019 and 23.09.2019 and was listed for hearing 14/10/19. Operative portion of order dated 14.10.2019 passed on said MA reads :- *"--- Heard in Part. OA is listed for hearing on 22.10.2019. Let the MA be also fixed for hearing on that date and meanwhile, no recovery pursuant to above said order dated 23.09.2019 shall be affected. It is for the applicant to take decision, at his own risk and cost to reply or not to reply this notice dated 23.09.2019. Matter is adjourned to 22.10.2019."* After this order no further hearing could be possible and today aforesaid submission for disposal of OA, with direction has been made.

6. Taking note of entirety, it appears appropriate to dispose of OA with liberty to applicant to file representation afresh against order dated 09.05.2019, within four weeks and with direction to the respondents to dispose of representation, already preferred against order dated 23.09.2019 as well representation , if is preferred against order dated 09.05.2019, within four weeks from date of receiving the representation by passing a reasoned and speaking order and would communicate its copy to the applicant. Ordered accordingly. If the decision passed yielded into withdrawal of financial up-gradation and consequence recovery, representation shall keep the recovery in abeyance for two weeks from date of communication of copy of decision to the applicant.
7. With aforesaid directions OA stands disposed of. Pending MA also stand disposed of.

(M.C.VERMA)
MEMBER (J)