

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2258/2001

New Delhi this the 18th day of April, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

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

(By Advocate Shri M.L.Sharma)

-versus-

Union of India through

1. General Manager
Northern Railway
Headquarters Office
Baroda House, New Delhi.
2. Chief Personnel Officer
Northern Railway
Headquarters Office
Baroda House
New Delhi.
3. Chief Administrative Officer (Const.)
Northern Railway Headquarters Office
Kashmere Gate
Delhi. Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (ORAL)

S.A.T.Rizvi:-

While working as Section Engineer (Drawing) in the Railways, the applicant retired from service on 31.1.2001. At the time of his retirement, he was drawing the Basic Pay of Rs.8900/- per month. Vide Notice dated 12.12.2001 placed at Annexure A-1, the applicant's pay has been recomputed and fixed at

d

Rs.8500/- per month with effect from 1.7.2000, while at the time of his retirement, he was, as already stated, getting the Basic Pay of Rs.8900/- per month. This has been done in accordance with Railway Board's letter dated 17.8.1998. Retirement benefits have been paid to the applicant not on the basis of his Basic Pay of Rs.8900/- per month which he was in fact drawing at the time of his retirement but on the basis of Rs.8500/- per month arrived at after recomputing his salary in accordance with the aforesaid letter of the Railway Board. Consequent upon the re-fixation of his pay at the lower level of Rs.8500/- per month, respondents have recovered an amount of Rs.66,844 from his gratuity on the ground that the same had been paid to him in excess of what was found due to him. The applicant's case is that the aforesaid orders reducing his Basic Pay to Rs.8500/- per month have been issued without putting him to notice and, therefore, stand vitiated in view of the law laid down by the Supreme Court in the case of Bhagwan Shukla vs. Union of India & Ors., (1994) SCC (L&S) 1320. In the aforesaid case, the Supreme Court has laid down as under:-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to

2

law. Thus there has been flagrant violation of the principles of 'NATURAL JUSTICE' and the applicant has been made to suffer huge financial loss without being heard. Therefore the impugned order by which the pay of the applicant fixed on his promotion as Guard 'C' from the post of Trains Clerk was sought to be reduced is not sustainable."

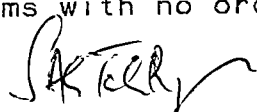
2. The learned counsel appearing on behalf of the respondents submits that it would be incorrect to say that the applicant was not put to notice before orders were passed reducing his Basic Pay from Rs.8900/- per month to Rs.8500/- per month. In this connection, he has drawn our attention to the notice dated 6.7.2001 placed at Annexure -3 and also to the detailed representation filed by the applicant on 13.7.2001 (Annexure A-10). We have perused the aforesaid notice (Annexure A-3) and find that the same deals with the recovery of the aforesaid amount of Rs.66,844/- arising from the refixation of his pay. It is clear from the language of this notice that it has been issued after a decision to reduce his pay as above had already been taken. In view of this, the aforesaid notice cannot be said to be the kind of notice required to be issued in accordance with the law laid down by the Supreme Court in the case of Bhagwan Shukla vs. Union of India & Ors.(supra). Following the aforesaid judgement of the Supreme Court, such a notice ought to have been issued before arriving at the decision to reduce his pay to Rs.8500/- per month. This has clearly not been done. The law laid down by the Supreme Court in

the aforesaid case, therefore, finds application in the present situation. We accordingly proceed to set aside refixation of his pay vide notice at Annexure A-1 dated 12.12.2001.

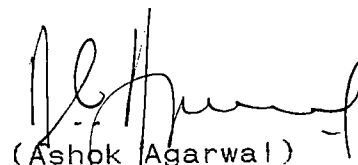
3. The learned counsel appearing on behalf of the applicant submits that the aforesaid amount of Rs.66,844/- has already been recovered from the applicant on 23.7.2001. ~~It~~ is his plea that the aforesaid amount already recovered should be refunded to the applicant. We do not agree. Instead, we find it in order, just and fair to direct the respondents to issue a fresh show cause 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 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, ~~and~~ [✓] 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 ² 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. OA is disposed of in the aforestated terms with no order as to costs.



(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/sns/