

49
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2505/1999

New Delhi this the 29th day of July, 2004

Hon'ble Shri Sarweshwar Jha, Member (A)

Shri M.P.Singh,
S/O Shri K.P.Singh,
Resident of H.No.WZ-92,
Sri Nagar, Shakurbasti,
Delhi-110034

..Applicant

(By Advocate Shri B.B.Raval)

VERSUS

1. Union of India through:
The Chairman,
Railway Board, Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway Headquarters,
Baroda House, New Delhi.
3. The Financial Advisor and
Chief Administrative Officer,
Northern Railway, Baroda House,
New Delhi.

..Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R

Heard.

2. This OA has been filed by the applicant against order No.752E/82-XVI/Eia dated 24.6.1999 as issued for General Manager (P), Northern Railway, New Delhi whereby some amounts have been recovered from him on account of items like arrears of rent, electric charges, excess payment of pay, DA/IR + CCA due to wrong fixation of pay etc. from his DCRG. He has prayed that the said impugned order be quashed and that the respondents be directed to release the balance amount of DCRG. The applicant has also prayed for payment of

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502

interest at the rate of 18% per annum on the dalyed payment of the said amounts.

3. The facts of the case, briefly, are that the applicant who had initially joined the Indian Railways as a Clerk on 28.9.1955 under Deputy Controller of Stores, Northern Railway, Shakurbasti, Delhi, and was promoted in due course to the post of Senior Depot Store Keeper (Construction), has been awaiting his promotion as Assistant Controller of Stores. According to the Recruitment Rules for the said post, 75 % of these posts are to be filled by promotion from amongst the Senior Depot Store Keepers/ Superintendents in the grade of Rs. 2000-3200 (pre-revised) and the remaining 25 % are to be filled through the Limited Departmental Competitive Examination. For both the methods of recruitment, the respondents have held written tests followed by viva voce. Written test was held by the respondents on 24.12.1988 and also on 4.12.1989 for filling the 75 % of the posts of Assistant Controller of Stores. In all, 38 persons were declared successful in the writtten test and were called for viva voce test. They, including the applicant, were interviewed on 24.2.1989. An interim panel of 21 persons was published on 21.3.1989, but this panel did not include the name of the applicant. He was hopeful that his name would be included in the 2nd list for the remaining 9 posts, as the respondents had notified 30 vacancies. However, the 2nd list never came and, in the meantime, the respondents held LDCE for filling the remaining 25 % of the posts of Assistant

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Controller of Stores. The applicant has alleged that this has resulted in a big anomaly inasmuch as the candidates who had been declared successful in the written test and were called for Viva Voce test on 24.2.1989 are not aware of their performance/ marks till date. The consequential grievance of the applicant is that he could have appeared in the LDCE for filling up of 25 % of the posts of Assistant Controller of Stores if he had knowledge that the same was going to be held by the respondents, particularly in view of the fact that his name was not included in the first list of 21 persons published by the respondents. According to him, as the facts of the matter have not been circulated by the respondents, the whole LDCE becomes discriminatory vis-a-vis the applicant. The Railways authorities have further complicated the matter by publishing the complete panel of 30 names on 12.3.1991 when six persons figuring in the said panel had already superannuated.

4. The applicant submitted a representation to the General Manager (P), Northern Railway, Headquarters Office, Baroda House, New Delhi through proper channel when two of his juniors were promoted to the said posts. The Deputy Controller of Stores, Northern Railway, however, informed the General Manager (P) that he has not received any representation from the applicant, as claimed by him. While confirming that the applicant was working on a regular basis in the grade of Rs. 2000-3200 w.e.f. 12.7.1988, another representation was submitted by the applicant in the month of August, 1992 to the General

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4

Manager (P), Northern Railway, Headquarters Office, Baroda House, New Delhi requesting him to grant him the benefit of proforma promotion with effect from the date the same had been granted to two of his juniors, namely, Shri Onkar Singh and Jai Singh. Incidentally, both the persons having since retired after reaching the age of superannuation. In the meantime, the applicant followed up his representation with subsequent representations and reminders; but these produced no result., as explained by him in para 4.8 of his OA. He also represented to the Secretary, Railway Board, New Delhi, but he is not aware of the outcome of the said representation. Finally, he filed OA 2226/93 in this Tribunal which was decided on 18.5.1994 with direction to the respondents to include him in the first panel of 1989 containing 21 names below Shri V.K.Berry and above Shri Gandhi Ram Bhardwaj and to promote him as Assistant Controller of Stores from the date Shri Gandhi, his immediate junior, was promoted. His notional seniority in the grade was to have been fixed from that date and he was to have drawn pay and other allowances as admissible to his immediate junior Shri Gandhi Ram Bhardwaj from the date he joined as Assistant Controller of Stores. The respondents had been given three months' time to comply with the said orders.

5. The applicant filed representation on 2.6.1994 forwarding a copy of the said order of the Tribunal in which he also mentioned that he was due to superannuate on 31.7.1994 and accordingly necessary action/steps be taken by the respondents on priority basis so as to grant

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him the benefit of promotion sufficiently before the date of retirement. The respondents, however, issued a letter on 17.5.95 on the subject of interpolation of the name of the applicant and two other persons in the panel of Assistant Controller of Stores finalised in the year 1988-89 in which the name of the applicant figured at Serial No.10. His request for extending the benefit of promotion as Assistant Controller of Accounts from the date his junior was promoted to the said post, however, received response from the respondents vide their letter dated September, 1995 in which it was mentioned that he (the applicant) was granted proforma fixation of pay with no arrears with reference to his immediate junior Shri Gandhi Ram Bhardwaj who was promoted as Assistant Controller of Accounts w.e.f. 1.4.1989. His service records were called for to do the needful. However, the applicant submitted a representation on 28.10.1995 requesting the General Manager, Baroda House, New Delhi that the position taken by the respondents that he is to be granted proforma fixation of pay with no arrears with reference to his immediate juniors is contrary to the order and directions of the Hon'ble Tribunal (supra). However, the applicant has not received any order sanctioning payment of arrears accruing to him till date. This has also led to non-implementation of the orders of the Tribunal (supra). Accordingly, he filed MA 809/1996 on 8.4.1996 under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for getting the orders implemented. The Tribunal disposed of the MA with a direction to the respondents to implement the orders

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54

within two months from the date of receipt of a copy of the order. While the respondents again showed poor response to the need to implement the order of the Tribunal within the time frame as stipulated (supra), it was followed up by the applicant by filing a Contempt Petition (Civil) 23/1997 in MA 809/1996 in O.A.223/1993 and further followed up with a representation, and the respondents having offered a cheque for Rs. 6904 as difference between the amounts paid to the applicant and that paid to his immediate junior Shri Gandhi Ram Bhardwaj from 1989 to 31.7.1994 and another cheque for a sum of Rs.26,673 towards gratuity. The applicant has grievance that the respondents have released only a part of DCRG amount and they are yet to pay nearly Rs.30,000 towards gratuity.

6. Having received no response from the respondents on this aspect of the matter, the applicant filed another OA 2341/97 in this Tribunal praying for a direction to the respondents to release the amount of DCRG with interest @ 18 % per annum. Disposing of the said OA on 28.1.1999, the Tribunal directed the respondents to inform the applicant by means of a detailed, speaking and reasoned order within two months from the date of receipt of a copy of the said order of the manner and basis of calculations for ascertaining and assessing the dues amounting to Rs. 35697/- against him, which the respondents had adjusted from his DCRG. The respondents were also directed to intimate the applicant reasons as to why and on whose responsibility over

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payments had been made to the applicant **and were allowed** to **accumulate**. The applicant received a reply from the respondents in the matter but he was not satisfied. A copy of the reply received from the respondents in the matter on 24.6.1989 is placed at Ann.A (impugned letter). He pleaded that his pay could not have been reduced as he held a cadre post and not an ex cadre post and, therefore, the Railway Board's letter dated 17.2.1989 as referred to in the impugned order is not applicable in his case. He has argued that the alleged over payment made to him pertains to over a period of 10 years and, therefore, no recovery can be effected from a retrospective date. In this connection, he has relied on the decision of this Tribunal in OA 1176/1996 in the case of **Shri Bachan Singh Vs. UOI and Ors** as decided on 5.11.1997 (Ann.A.12). He has also relied on the decision of the Tribunal in OA 2329/1996 in **Shri J.P.Sharma Vs. UOI and Ors.** which was decided on 5.8.1997. The relevant portion of the orders of the Tribunal in the said OAs have been extracted in Paragraphs 4.36 of the OA in which reference has been made to the decisions of the Hon'ble Supreme Court in **Shayam Babu Vs. UOI & Ors.** 1994 (SCC(L&S) 683) wherein it has been held that when a higher scale due to the petitioner was paid in accordance with appropriate order and such payment has been received, it would not be proper to recover any excess amount already paid on account of error. The decision of the Hon'ble Supreme Court in the case of **Gabriel Saver Fernandes and Ors Vs. The State of Karnataka and Ors** was also cited in the said decision in which it has been held

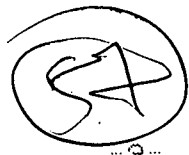
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that it would be appropriate that the Govt. may not recover from them the salary which they had already received though they are not eligible to the scale of pay of Rs. 90-200. It has also been held that over payment was not on account of misrepresentation. Reference to the decision of the Hon'ble Supreme Court in the case of **Sahib Ram Vs. State of Haryana and Ors 1993 (SCC(L&S) 248** was also made in the said decision.

7. Respondents, however, at the very outset have taken the position that the application is barred under the doctrine of res judicata, as earlier the applicant had filed OA 2341/97 as decided by the Tribunal on 28.1.1999 in which the Hon'ble Tribunal had observed that the OA could have been dismissed straightway for wilful non-production of material documents. They have further maintained that the Govt. dues have correctly been recovered from the gratuity admissible to the applicant in terms of Rule 15 of the Railway Services (Pension) Rules, 1993 and further that the applicant has been informed of the calculations made on the subject in compliance with the order of the Tribunal dated 28.1.1999 in OA 2341/97 by means of a detailed speaking and reasoned order. The calculation as made by the respondents in the impugned order have also been given by them in paragraph 1 of their parawise replies in their counter. They have also/^{stated} that the facts which have been submitted in paras 4.1 to 4.12 have already been adjudicated upon in OA 2226/93 by the Hon'ble Tribunal vide their order dated 18.5.1994 (Ann.R.1). The

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applicant was paid Rs.6904 being the correct difference of pay and allowances from 1.4.89 to 31.7.1994 and also that the amount of Rs.26673/- has been correctly paid towards gratuity. No doubt, the applicant being not satisfied with the amount of Rs.6904 being the correct amount of his salary for the period from 1989 to 31.7.1994, this Tribunal granted him liberty to approach them in the matter in accordance with law. The details of gratuity worked out for him are given in Paragraphs 4.28 to 4.29 of their counter reply. I do not see any reason to find fault with these calculations as details have also been given in paras 4.31 to 4.35. According to them, reliance placed by the applicant on the decisions of the Hon'ble Tribunal (supra) is not relevant in the present case, as the facts and circumstances of the present case are entirely different. They have referred to the decisions of this Tribunal in OA No. 2109/1997 in **D.K.Sahni Vs. UOI & Ors.** as passed on 24.12.1998 in which it has been held that the pay for the purpose of pensionary benefits would mean pay to which a Railway Servant is entitled by reasons of his posting in his own cadre in terms of Rule 49 of Railway Service (Pension) Rules, 1993.

8. The applicant has, however, disputed the claim of the respondents as made in the counter reply that his OA is barred by doctrine of res judicata. He has submitted that the Tribunal had disposed of the said OA with a clear direction to the respondents to inform the applicant by means of a detailed and reasoned order in

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accordance with rules and regulations within two months from the date of receipt of a copy of this order in the manner and basis of ascertaining and assessing of Rs. 35,697/- as dues against him which they have adjusted from his DCRG. The reasons were also required to be given by the respondents. The Tribunal also held that it would be open to the applicant to challenge the order in accordance with law if so advised. The other averments made by the respondents in the counter reply have also been disputed by the applicant.

9. The applicant, during the course of his arguments, has placed reliance on the decision of the Hon'ble Supreme Court in the matter of **Bhagwan Shukla Vs. UOI & Ors** (1994 SCC(L&S) 1320) and has argued that the principle of natural justice has not been followed in his case. He has also referred to the decision of the Hon'ble Apex Court in **Shayam Babu Verma Vs. UOI & Ors.** (1994 SCC(L&S) 683 as well as in the matter of **Gabriel Saver Fernandes and Ors. Vs. the State of Karnataka and Ors** (SC SLJ 1995 page 24) to support his contention that recovery from his gratuity cannot be effected. The decision of the Principal Bench of the Tribunal in the matter of **Hori Lal Vs. UOI** in OA 55/1999 as passed on 9.4.2001 has also been referred to, in which the respondents had been directed to refund the amount which had been recovered from gratuity of the applicant in the said OA along with the amount due on leave encashment of his earned leave for 262 days. The applicant had claimed that his case is fully covered under Rule 49 of the

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(59)

Railway Services (Pension) Rules, 1993 and all the retirement benefits due to him on the basis of pay actually received by him be paid to him and that no recovery can be made after three months from his retirement as per Rule 50 (1) (iv) (b) of Railway Service (Pension) Rules, 1993. Reference in this regard has also been made to the fact that the applicant, having joined the Construction Division in 1959, retired from the said division on 31.7.1994 without repatriation after rendering more than 38 years of service and also after having got three promotions in the cadre and after being regularised in the open line. He has accordingly submitted that the relief as prayed for by him in this OA may be allowed keeping in view the decision of the Hon'ble Apex Court as also the Tribunal as referred to hereinabove.

10. The respondents have cited the decisions of this Tribunal in OA 356/1995 decided on 13.12.1996 in which the question of adjustment towards other payments made to the applicant in the said OA for various periods when he was absent from duty and had no leave to his credit had been dealt with and the OA had been dismissed. The said case does not, however, appear to be relevant in the present case.

11. On perusal of the facts of the case, it is observed that the respondents have recovered certain amounts from the gratuity due to the applicant and the same has been contested by the applicant by citing the

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decisions of the Hon'ble Apex Court as also of this Tribunal and the relevant rules of the Railways. While recovery of an amount of Rs.1,754 towards arrears of rent w.e.f. 1.7.90 to 31.3.1995 and Rs.1,228/- as electric charges appear to be based on figures of consumption and cannot be disputed nor have these been disputed by the applicant, recovery of Rs.32,715/- due to over payment made on account of excess payment of pay DA/IR + CCA due to wrong fixation of pay which has been correctly refixed in terms of Railway Board's letter dated 17.2.1989 appears to be not supported by the decisions of the Hon'ble Supreme Court and those of this Tribunal and also the relevant rules of the Railway Service (Pension) Rules, 1993. It is quite obvious from the submission of both the parties that the applicant had no hand in his pay fixation nor was it based on any misrepresentation of facts on his part. As a result, recovery of excess payment due to wrong fixation of pay does not appear to be in order, and is, therefore, not sustainable.

12. Having regard to the facts and circumstances of the case and after hearing the learned counsel for the parties, I am inclined to partly allow this OA with a direction that the amount of Rs.32,715 recovered from his gratuity due to over payment made on account of excess payment of pay, DA/IR + CCA due to wrong fixation of pay be refunded to the applicant within a period of two

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16

months from the date of receipt of a copy of this order.
The other recoveries directed to be made from the
applicant's DCRG vide the impugned letter dated 24.6.1999
would remain unaffected by this order. Ordered
accordingly. No costs.


(Sarweshwar Jha)
Member (A)

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