

(16)

Central Administrative Tribunal, Principal Bench

Original Application No. 837 of 1999

New Delhi, this the 13th day of September, 2000

Hon'ble Mrs. Shanta Shastri, Member (Admn)

G.S.Chattree, Senior Civil Engineer
(Const.)/ Retd. Chief Administrative
Officer/ Const. 's office, Northern Railway,
Kashmiri Gate, Delhi-6. R/o 1926, Gali
Majestic Cinema, Chandni Chowk, Delhi-6. - Applicant

(By Advocate Shri M.L.Sharma)

Versus

Union of India through

1. General Manager, Northern Railway,
Headquarters Office, Baroda House, New
Delhi.
2. The Chief Administrative Officer/ Const.
Northern Railway Headquarters Office,
Kashmiri Gate, Delhi.
3. General Manager, Central Organisation,
Railway Electrification, Nawab Usuf Road,
(Civil Lines), Allahabad.
4. FA & CAO, Northern Railway, Headquarters
Office, Baroda House, New Delhi. - Respondents

(By Advocate Shri D.S.Jagota)

ORDER

In this case the applicant's pay was refixed at reduced rate retrospectively after his retirement without giving him any notice vide order dated 5.9.1997 and a further recovery of Rs.35,883/- was made from his gratuity towards excess payment and an amount of Rs.20,000/- from his gratuity was withheld towards electricity bills of the Railway accommodation occupied by him after his retirement.

2. Aggrieved by the impugned order dated 5.9.1997 the applicant has approached this Court to quash and set aside the impugned letters dated 5.9.1997, 14.7.1998, 31.8.1998, 1.10.1997, 1.7.1998 and to direct the respondents to calculate and to pay him pension on the average actual pay received from 1.8.1996 of Rs.3850/-

per month and on Rs.4000/- per month received from 30.6.1997 and pay him the difference of arrears with 18% interest thereon and also to refund the amount of Rs.35,880/- recovered from his gratuity along with interest of 18% and to pay withheld amount of Rs.20,000/- adjusted towards electricity charges. He has also sought interest on the delayed payment of gratuity due on 31.7.1997 but paid on 3.8.1998.

3. On 17.5.1989 the applicant was empanelled as AEN on Northern Railway, which is a regular cadre. At that time he was working in the Railway Electrification Organisation (for short 'REO') as AEN/RE/ELM on adhoc basis. His services were regularised by letter dated 12.6.1989. He repatriated from the REO to the Northern Railway and was posted as AEN/ Const/CS/Kashmiri Gate/ Delhi where he assumed the charge of the post on 26.9.1991. It so happened that on his posting in the Northern Railway his pay was fixed erroneously on the basis of the basic pay he was drawing as AEN on adhoc basis in the REO and the error was detected in 1997. The respondents reduced his salary with retrospective effect from 1982 and recovered an amount of Rs.35,883/- from the gratuity of the applicant. The applicant retired on 31.7.1997. Similarly, an amount of Rs.20,000/- was withheld for recovery of electric charges.

4. It is the contention of the applicant that his pay was reduced without issuing him a notice and without giving an opportunity of being heard. This is against the principle of natural justice. He has further contended that he had regularly paid the electricity

bills at the rate of Rs.40/- per month and the maximum amount that would have been due from him towards the electricity bill was Rs.320/- for a period of 8 months when he had been granted extension to retain Railway accommodation.

5. His average pay had been Rs.3850/- from 1.8.1996 and, therefore, his pension should have been fixed on that basis. Instead, the pay was reduced by Rs.40/- and his pension was also fixed on the basis of a lower basic pay. The applicant claims that whatever pay fixation was granted to him while in service was due to him under the rules. His pay was not fixed at any higher rate due to his misrepresentation or fraud or fault on his part. Reducing the basic pay retrospectively after retirement is not at all proper. It is a flagrant violation of the principles of natural justice on the part of the respondents as was held by the Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. Union of India & others, 1994 SCC (L&S) 1320. The applicant states that he had made representations. However, they did not yield any result. The applicant is relying further on the judgments of the Hon'ble Supreme Court in the following cases - Shyam Babu Verma Vs. Union of India & others, 1994 SCC (L&S) 683; Sahib Ram Vs. State of Haryana & others, 1995 SCC (L&S) 248. He has also cited the judgments of this Tribunal in the cases of Om Prakash Vs. Union of India & others, OA 1634/1997 decided on 1.1.1998; Bachan Singh Vs. Union of India & others, OA No.1176/96 decided on 5.11.1997 and some others.

6. The contention of the respondents is that the applicant all along knew that his pay had been fixed

wrongly and the applicant had made a request to refix his pay and then it was found that the applicant's pay on repatriation to the Northern Railway had been fixed on the basis of the pay which he was drawing in the REO on adhoc basis. According to the respondents there was no need to give any notice to the applicant because the applicant all along knew that his pay had been fixed wrongly and he was aware of the recovery of Rs.35,883/- from his gratuity prior to his revised pay fixation done vide letter dated 5.9.1997. It is further argued that it was the applicant's duty to get his own pay fixed correctly. The respondents have only rectified the mistake and there is nothing wrong in making the recovery from the gratuity.

7. The learned counsel of the applicant has drawn my attention to a letter dated 24.9.1999 from the Head Office of the Central REO, Allahabad wherein the recovery of Rs.28,742/- towards excess payment made between 16.8.1982 to 31.8.1991 on account of wrong pay fixation has been waived. I had requested the learned counsel of the respondents to confirm the same. The learned counsel for the respondents has now produced a letter dated 8.9.2000 from the Head Office of Northern Railway at Baroda House, New Delhi that finally a total amount of Rs.48,108/- (Rs.19420 against electricity bill and Rs.28,688 towards recovery of amount of excess payment) has now been waived and refunded to the applicant. With this the relief sought for by the applicant has been granted. In view of this position, as the major portion of the relief sought by the applicant has been granted, there is nothing surviving in this OA. I, however, find that another amount of

Rs.7,141/- has still not been refunded. This is for the period after the applicant had been repatriated to the Northern Railway. Further, the reduced pay has also not been restored so far.

8. I have perused the relevant material and find that the respondents were wrong in recovering the excess payments made to the applicant due to wrong pay fixation with retrospective effect from 1982 to 1991 and thereafter. It is the settled position of law that if pay has been wrongly fixed of an employee on account of administrative mistake and is in no way attributable to him, the over payments made cannot be recovered once he has enjoyed such a higher pay for several years. Similar matter was considered in the case of Chamel Singh Vs. Union of India, 1992(1)SLJ(CAT)315 wherein the Bombay Bench after referring to decisions by various Benches in a number of cases held that recovery due to wrong fixation of pay after long years of payment cannot be made, as such recovery would cause hardship. I find that though the respondents are attributing the wrong pay fixation to the applicant, there is nothing on record to show that the applicant had really misrepresented or hidden the facts from the respondents. In fact, the respondents themselves repatriated him. The respondents were aware that he was on adhoc appointment in the REO. Nothing prevented them from verifying the facts themselves at the time of repatriation of the applicant. The respondents themselves should have been vigilant enough in this matter. Moreover, this would have gone un-detected if the applicant himself would not have approached the respondents to re-fix his pay. This being so, I do not

held the applicant guilty of concealing the wrong pay fixation. The respondents have also accepted this by waiving the recovery and refunding the amounts recovered.

9. According to me since the applicant was unnecessarily put to hardship by recovering a huge amount from his gratuity and by withholding another large amount from his gratuity, interest deserves to be paid on the refunded amount from the date the recovery was made or the payment was withheld.

10. The present case is also squarely covered by a decision of this Tribunal in the case of L.C.Chawla Vs. Union of India and others, OA No.143 of 1999 decided on 17.12.1999 and deserves to be allowed on the same lines.

11. In the result, the OA is allowed. The order of reduction in pay is quashed. Accordingly, the applicant is entitled to all consequential reliefs of payment of withheld dues on the basis of his last pay drawn. The difference should be paid to him within a period of three months from the date of receipt of a copy of this order on the respondents. Similarly, now that the respondents have refunded the amount recovered/withheld from the gratuity of the applicant, the respondents are directed to pay interest at the rate of 12% per annum from the date of recovery/withholding of the amounts till the date of refund. The balance amount of Rs.7141/- which has not yet been refunded shall also be refunded along with interest at the rate of 12% per annum. I do not, however, award any costs.

Shanta J
(Mrs. Shanta Shastry)
Member (Admnv)