

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1670/98

New Delhi this the 6th day of April, 1999.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Bhagwan Gehani,
S/o Sh. U.C. Gehani,
R/o D/128, Upkar Society Apartments,
Plot No.18, Mayur Vihar,
Phase-II(Extn),
New Delhi-91. Applicant

(through Sh. M.L. Sharma, advocate)

versus

1. Union of India through
General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

2. Chief Personnel Officer,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi. Respondents

(through Sh. B.S. Jain, advocate)

ORDER

The issues that fall for determination in this O.A. lie in a narrow compass. In terms of law, the question is whether a mistake in fixation of pay that took place in 1986 and was corrected after over a decade in 1997 leading to recoveries of excess payment made from gratuity could be sustained?

2. The applicant retired on 30.5.97 as Office Superintendent Grade-I and was receiving salary @ Rs.2240 P.M. at that time. The applicant's salary as

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on 1.1.1986 was fixed at Rs.1400-2300 as Head Clerk. The applicant got promotions subsequently as O.S. Grade II in the grade of Rs.1600-2660 and finally as OS Grade I in grade of Rs. 2000-3200.

3. As per respondents, the salary of the applicant as Head Clerk should have been fixed at Rs.1600 w.e.f. 1.1.87 whereas it was wrongly fixed at Rs.1600 w.e.f. 1.9.86. The mistake thus which occurred on 1.9.86 continued getting repeated right upto 30.5.97 when the applicant retired. Consequently, a huge amount of over payment has since been recovered from the applicant's gratuity besides less retiral dues on all accounts on the basis of reduced pay at Rs.2180 against Rs.2240. Shri. Jain drew our attention to provisions under para 15(1), (2) and 4(b) of Railway Services (Pension) Rules 1993 which permit such adjustments of Railways dues from gratuity.

4. As per applicant, the reduction took place without any opportunity having been given to him in time. He, therefore, challenges that the reduction of his basic pay with retrospective effect is in flagrant violation of the principles of natural justice. He has been made to suffer avoidable civil consequences for no fault of his. He also challenges the legality of recoveries w.e.f. 1.1.87 to 30.5.97 effected from his gratuity.

5. We find that the said notice refixing the applicant's salary with retrospective effect from 1.1.86 dates back to 20.5.97 (i.e. 10 days before retirement)

but was handed over to the applicant only a day before his retirement. The learned counsel for the applicant drew our attention to the decision of the Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. U.O.I. & Anr. (1994 SCC (L&S) 1320) wherein an attempt to reduce the basic pay, without putting the appellant to notice was held to be unjustified. We find that the legal issue raised herein stands settled by a long line of decisions by the Apex Court. Thus, in the case of G.S. Fernandes & Ors. Vs. State of Karnataka & Ors. (SLJ 1995(1) SC 24 it has been held that:-

"Since the applicants had already been paid the scale of pay of Rs.90-200 while they were in service and are retired now, it would be appropriate that government may not recover from them the salary which had already been received though they are not eligible to the scale of pay of Rs.90-200."

6. On the issue of such belated recoveries for no fault of petitioner or due to wrong construction by the respondents, the Apex Court have held similar views in a series of judgements. Thus, in the case of Shyam Babu Verma Vs. UOI&Ors. (1994 SCC (L&S) 683), it was held that:

"Since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them."

7. Again, in the case of Saheb Ram Vs. State of Haryana & Ors. (1995 SCC (L&S) 248, the principle

laid down was as under:-

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"The principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault."

8. On the basis of the aforementioned judicial pronouncements of the Apex Court, this Tribunal has also decided the following cases touching upon ^{appropriate} reduction of pay without notice and recoveries from [^] ~~leave~~ gratuity. These cases are as under:-

① Budh Singh Vs. UOI & Ors. (OA-483/96 decided on 22.9.96)
② Bhavi Chand Vs. UOI&Ors. (OA-417/96 decided on 6.11.96)
③ S.K. Saxena Vs. UOI&Ors. (OA-2405/95 decided on 4.3.97)
④ Om Prakash Vs. UOI&Ors. (OA-1634/97 decided on 1.1.98)

⑤ We ~~Were~~ told at the Bar that GM/N.Rly. was respondent No.1 in all the four aforementioned cases whereas other respondents were also highly placed Railway officers located on different divisions under Respondent No.1. Decisions in all four cases stand ~~imple~~ implemented. This has not been disputed by the learned counsel for the respondents in the present O.A.

⑥ 9. Thus, the orders in the aforesaid cases decided by various Benches of this Tribunal have since attained finality. In the instant case besides handing over a notice on the last day of the retirement the applicant appears to have been informed about the manner

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of refixations by subsequent corrigendums issued on 28.8.97, 19.9.97 and 13.2.98, all issued at the level of Asstt. Personnel Officer, Northern Railway, Baroda House. As per procedures laid down in such cases, the retirement papers are all supposed to be scrutinized and the dues settled/paid on the last date of the service of the retiree official. Apparently, the respondents had failed to initiate appropriate action to process the case of retiral dues of the applicant as per the instructions available on the subject. We find that all the benefits at the reduced level were paid to the applicant on the date of his retirement but the gratuity was paid on 30.9.97 (i.e. 4 months after retirement) after effecting the over payments made. The respondents answer that there has been no reduction in pay and it is only refixation of pay cannot, therefore, be accepted as a legal valid contention.

10. We find none of the impugned orders after the applicant's retirement have been preceded by any notice. Nor the applicant has been offered any opportunity to represent his case before issuing the series of post-retirement orders having adverse civil consequences. None of the representations of the applicant have been replied nor the subsequent corrigendum issued by the respondents touched upon the grievance of the applicant herein.

11. It is also seen that provisions under paragraph 1014(b) of Indian Railway Establishment Manual (IREM for short) require that erroneous payment passed through over sight in the accounts office for less than

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12 months be recovered and orders of competent authority obtained with regard to over payments made. Paras 1016 and 1017 of IREM (Revised Edition 1989) deal with recovery of over payments. However, waiver of over payments has been suggested if the said over payment had occurred over a long period and the amounts involved were very large and would require many years to recover. The nature of irregularity is also required to be considered. Even in the case of Gazetted Railway Servants, the General Manager has been given powers to waive recovery of amounts over paid when the said erroneous payment is discovered by Accounts or Audit more than one year after the date on which it is made. There is no indication, not even a whisper that the above principles under the Manual were taken into consideration before recoveries were ordered vide the impugned orders. We find that the present case deserved consideration under Sections 1014-1016 of the IREM and a fit case where principles of waiver should have been legally invoked. Though there are enabling provisions in IREM in exercising discretion to consider waiver of such over payments made, the respondents decided to remain silent regarding the application of the procedures that could have possibly solved the problem. From the pleadings and submissions made, it is more than evident that the decision in the instant case has been taken after the passage of more than a decade and in contravention of the principles of natural justice. Such a step cannot be supported in the eyes of law. The above views find support, in principle, in the judgement of the Constitution Bench of the Apex Court in the case of Chairman, Railway Board & Ors. Vs. C.R.

Rangadhamaiyah & Ors. etc. etc. (JT 1997(7) SC 180).

It was held in this case that "Pensionary benefits which have already accrued cannot be taken away by amending the rules with retrospective effect". The only difference is that in the present case the retiral benefits have been taken away by altering the payment schedule after superannuation with retrospective effect.

12. In the result, the O.A. is allowed with the following directions:-

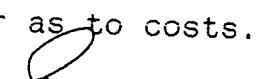
- (a) Impugned orders at A-1 to A-5 shall stand quashed.
- (b) Respondents shall recalculate and pay pension, commutation, leave encashment and gratuity on the basis of pay of Rs.2240 P.M. which the applicant has been receiving immediately before his retirement.
- (c) Respondents shall also pay the differences of arrears of pension, commutation, leave encashment and gratuity thus becoming due on the basis of basic pay of Rs.2240 P.M. alongwith 12% interest from the date which fell due till the date of actual payment.
- (d) Our orders, as aforesaid, shall be complied with within a period of 3 months from the date of receipt of a certified copy of this order.

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(e) In case of any failure to comply with our orders as aforesaid, the respondents shall pay interest @ 18% due on the entire amount from the date this O.A. was filed till the date of actual payment. Payment of penalty in such cases has been allowed by the Apex Court in the case of R.Kapoor Vs. U.O.I. (1995 SCC (L&S) 18).

(f) We leave it to respondents to identify the officials/officers responsible for such a belated action, initiate disciplinary actions against them and even recover the 'over paid' amount from the pockets of those individuals held responsible. Such a step will be in confirmity with the law laid down by the Hon'ble Supreme Court in the case of Central Co-operative Consumer Store Ltd. Vs. Labour Court, HP/Simla & Ors. (1993(3) SCC 214) wherein it has been held that public exchequer cannot be burdened for lapses of erring officials/officers.

(g) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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