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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A. NO:573 OF 1998.

New Delhi this the 16th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri V.K. Majotra, Member(A)

Chandra Saha
Senior Auditor
Northern Railway
Baroda House,
New Delhi.

-Applicant.

(By Advocate: Shri C.S.S. Rao)

Versus

Union of India, through:

1. Principal Director of Audit
Northern Railway Baroda House
New Delhi.
2. Comptroller & Auditor General of
India, 10-Bahadur Shah Zafar Marg,
New Delhi.

-Respondents.

(By Advocate: Shri M.K. Gupta)

O R D E R

Hon'ble Shri V.K. Majotra, Member(A)

The applicant joined as an Auditor in the Indian Audit Department at Vishakapatnam in the South Eastern Railway in the pay scale of Rs.1400-2600. His last pay drawn in South Eastern Railway was Rs.1600/-. On seeking unilateral transfer to the Northern Railway, he was transferred and joined Northern Railway on his basic pay of Rs.1600/- from 10.6.91. The terms of unilateral transfer required that the applicant, a Senior Auditor, would be considered as a fresh appointee and rank a junior-most in the lower auditor cadre in the office of Principal Director(Audit), Northern Railway and that he would forgo benefit that had accrued to him on account of passing any department examination and for the purpose of advancement and training in his new office, he

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would be treated purely as a direct recruit. However, the applicant continued to earn his increments in the new office and was also promoted as Senior Auditor from the basic pay of Rs.1600/- onward. On 17.1.1995, a show cause notice was served on the applicant that due to wrong fixation of pay, he is liable for the recovery of a sum of Rs.20,792/-paid as excess amount. His reply to the show cause notice went unresponded. Aggrieved by this, he filed OA No.1430/95 which was dismissed vide order dated 29.1.96 with a direction to the respondents that they were at liberty to make the recoveries after considering the reply to the show cause notice. According to applicant, the respondents did not comply with the said direction of the Tribunal. The applicant filed a Special Leave Petition before the Hon'ble Supreme Court which was dismissed in limine on 25.4.1996.

2. The applicant has claimed that a fresh cause of action had arisen on 2.12.96 when the Railway Board issued a circular (P.S. No.110305/97) (Annexure A-8) clarifying that:

" Pay drawn by a substantive holder of a higher post on voluntary transfer to a lower post when the pay drawn in the higher post is less than or equal to maximum of the scale of the pay of the lower post, his substantive pay is to be protected".

3.. The applicant has sought a direction to respondent no.1 not to deduct or recover any amount from his monthly pay till the disposal of this application alongwith OA No.398/96 (page 8 of OA).



4. In their counter, the respondents have stated that the applicant after dismissal on 5.2.96 of his OA No.1430/95 (Annexure R-10) made representation on 30.9.96 (Annexure R-11) which was rejected vide letter dated 5.11.96 (Annexure R-12). His further representation dated 16.9.97 claiming fresh cause of action having arisen, was also rejected on the ground that SLP in the matter of C.A.G. & Anr. Vs. Farid Sattar is pending adjudication in the Apex Court. The respondents have raised a plea that the question of relief in the OA does not arise as the earlier OA No.1430/95 has already been dismissed.

5. We have heard the respective counsel of the parties and carefully considered the material available on record.

6. Shri C.S.S. Rao, learned counsel appearing on behalf of the applicant relying on the case in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. Bharat Barrel Employees Union reported as 1987 (2) SLR 721 in which it has been held that in service matter, the principle of res judicata is not applicable and, therefore, it should be accepted that a fresh cause of action had arisen in the matter from 1.12.96 with the issuance of the Railway Board Circular. He also maintained that the ratio of JT 2000 (4) SC 374- C.A.G. of India & Others Vs. Farid Sattar is not applicable to the facts and circumstances of the present case.

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7. The learned counsel for the respondents informed that the other OA 398/96, on the basis of which the applicant had sought relief in the present OA, has already been dismissed by this Tribunal in the light of the ratio in case of Farid Sattar's case (supra) and that the applicant can not escape the application of res judicata his earlier OA 1430/95 having already been dismissed.

8. In his earlier OA 1430/95, the applicant had assailed the show cause notice for recovery of Rs.20,792/- on account of wrong fixation of pay on joining the Northern Railway by way of unilateral transfer. The same was dismissed on 29.1.1996. In the matter of Farid Sattar (Supra) wherein it has been held as under:-

"Here, the respondent on his own volition sought transfer on certain terms and conditions accepted by him. The terms and conditions of unilateral transfer are very clear and there is no ambiguity in it. If a transfer is not contemplated under the Fundamental Rule, it is not necessarily to be governed by the Fundamental Rule, but by the terms and conditions of such unilateral transfer. The pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be

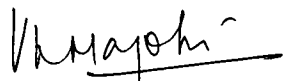
considered as a direct recruit in the lower post. Under the terms and conditions of the transfer, the pay which the respondent was drawing on higher post was not required to be protected when he joined the lower post of Accountant".

9. The plea of the applicant for reagitating his case for the same relief, can not be granted as it has now been settled by the Apex Court and has become res judicata. The ratio of Bharat B & D Manufacturing Company Pvt. Ltd. (supra) is not applicable to the present case as in that case labour dispute regarding wage structure, service conditions etc. arising on account of changed circumstances and new situation, were considered in that case and no such question have been raked-up in the instant case.

10. In addition to what has been stated above, the applicant has sought only this much that no recovery should be made by the respondents till the disposal of the present OA-398/96 (Annexure-D). OA-398/96 having already been dismissed, nothing should survive ordinarily.

11. However, the learned counsel of the applicant has also drawn our attention to three Judges Bench Judgement dt. 8.2.94 in the matter of Shyam Babu Verma and Ors Vs Union of India & Ors. (1994) 2 SCC 521. It was held therein that since the 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.

12. Although in the light of the findings and reasons described above, we would not be able to accord any relief to the applicant but nothing would prevent the respondents to consider the claim of the applicant not to recover the excess amount already paid to him in view of the ratio in the case of Shyam Babu Verma & Ors (Supra) and Railway Board's Circular, dt. 2.12.96 (Ann. E). The OA is disposed of in the above terms without any order as to costs. MA-2392/2000 is also deemed to have been disposed of.



(V.K. Majotra)
Member (A)

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(Smt. Lakshmi Swaminathan)
Member (J)