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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1896 of 1995

New Delhi, this the 19th day of January, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Hansraj, S/o Shri Brijban Lal, Aged 58 years, Retd. Sr.Loco Inspector, Jhansi Division, Central Railway, R/o C-11A, Ram Dutt Enclave, Uttam Nagar, New Delhi -APPLICANT

(By Advocate -Shri K.N.R.Pillai)

Versus

1. Union of India through the Secretary, Ministry of Railways (Railway Board) New Delhi.
2. The General Manager, Central Railway, Bombay V.T.
3. The Divisional Railway Manager, Central Railway, Jhansi. - RESPONDENTS

(By Advocate - Shri P.S.Mahendru)

O R D E R (Oral)

By Mr. N. Sahu, Member (Admnv) -

This Original Application is directed against the reducing of the basic pay of the applicant at Rs. 2925/- in the place of Rs.3,300/- drawn by him up to 31.12.1994 and Rs.3,400/- from January, 1995 till his retirement on 31.7.1995. It is also directed against an arbitrary cut of Rs.51,285/- as per the order dated 28.7.1995 (Annexure-A-I) on the ground of alleged over payment. This cut, it is contended was effected without issuing a show cause notice.

2. After notice, the respondents submit that the running staff are entitled to an allowance called "running allowance" in recognition of performance of

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duties involving moving trains. This running allowance is considered to notionally contain a component of pay of the running staff. The pay of the running staff on promotion to loco running supervisory post is fixed under Rule 1315 of the Indian Railway Establishment Code (Sixth Edition, 1987) Volume II after taking into account an additional component of 30 per cent of basic pay element in the 'running allowance. The result was that the pay of the running staff appointed as Loco Running Supervisors after 1.1.1986 was fixed at a higher stage and to set right this anomaly instructions dated 16.9.1988 were issued by the Railway Board. It is unnecessary to go into the entire history as to how the anomaly had arisen. The matter is simply resolved by making a reference to the disposal of the representation pending before the respondents. The learned counsel for the respondents has taken time to have the representation disposed of. This was done on 20.8.1997. A translated copy of the order dated 20.8.97 passed in Hindi is filed by the respondents, paras 2 & 4 of which are relevant for our purposes and the said two paras are extracted hereunder -

" It is correct that your pay was raised to Rs.3300/- w.e.f. 22.12.93 and to Rs.3400/- w.e.f. 1.12.94 in Gr. Rs.2375-3500. The averment that in the service certificate dt. 31.7.95 your pay was shown as Rs.2975/- is also correct. So far as your statement that there was no order to reduce your pay is concerned, the same is denied. Your attention is drawn to the annexure -A-IX (This office letter No. P/110 /5/I/LS dt. 30.11.90) filed by you with the O.A.No.1846/95. In this letter there are clear orders to step down the pay of 40 employees including you. Therefore, you

contention that there are no clear orders to step down the pay are incorrect baseless and misleading. Besides, the annexure A-X dt. 7.12.90 filed by you also clarifies that you had full knowledge about the orders dt. 30.11.1990 regarding stepping down of the pay. Therefore your contention that there were no orders to step down the pay is completely wrong. In fact in your capacity as a responsible senior supervisor, you were duty bound to get your pay reduced your self in compliance to order dt. 30.11.90, but you have not done so and drew excess pay. Therefore at the time of your retirement as per extant rules your pay fixation was corrected at the stage for which you were entitled i.e. @ Rs.2975/- and you were settled up and the recovery of over payment to the tune of Rs.51,285/- made. Therefore, the reduction in pay and deduction of over payment is neither illegal nor arbitrary.

4. As already stated in para 2 above that the amount of Rs.51,285/- was an over payment which you received on account of inadvertent stepped up of pay for which you were never entitled, therefore, its deduction was correct. You are advised that the work of Personnel Branch is to arrange correct pay and settlement dues to the employees. So the Administration is fully competent to correct the pay and pay arrears if he is drawing less pay, and reduce the pay and deduct over payment if he is drawing pay more than the due. Therefore, in these circumstances your demand to increase your pay and refund the deducted amount is not acceptable and denied."

3. At Annexure -A to the rejoinder dated 15.1.1997 there is an order dated 2.12.1996 disposing of O.As 1123/1994 and 934/1993 by this Court. In these two O.As the applicant was not a party but Annexure-A-1 revising the pay of 40 employees was the subject matter of this O.A. This Annexure-A-1 was quashed leaving it for the respondents to proceed in accordance with the law. It is now settled from the pleadings as well as from the averments made at the bar that the applicant has not been given a chance

cause notice before reducing his pay from Rs.3420/- which he was drawing at the time of retirement to Rs.2925/-, on the basis of which the retirement benefits were fixed and there is a reduction of the aggregate retiral benefits to the extent of Rs.51,285/-. There are a long line of Hon'ble Supreme Court's decisions which disapproves such a procedure - Bhagwan Shukla Vs. Union of India, JT 1994 (5) 253 and H.L.Trehan Vs. Union of India, JT 1988(4) 464. In view of the settled law on the subject the impugned Annexures A-1 and A-2 are hereby quashed. Within 8 weeks from the receipt of a copy of this order the applicant's retirement benefit shall be calculated on the basis of the pay he was drawing at the time of his retirement or as on 31.12.1994 whichever has to be taken as the basis for the purposes of retirement in accordance with law. This Court, however, gives complete liberty to the respondents to proceed afresh after affording to the applicant a proper opportunity of being heard and in accordance with law if they think that there is an ~~particularly viewing Orders dated 30.11.90 (infra) or~~ error committed, subject to such other safeguards as are applicable to the applicant in law. The O.A. is allowed. No costs.

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(N. Sahu)
Member (Admnv)

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