

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1886/1996

New Delhi, this 20th January, 1997

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

Shri Lallu Mal  
s/o late Shri Babu Ram  
Gali No.8, House No.8, Chander Nagar(East)  
Delhi-110 052 .. Applicant

(By Shri V.P.Kohli, Advocate)

versus

Union of India, through

1. General Manager  
Northern Railway  
Baroda House, New Delhi
2. The Divisional Railway Manager  
Northern Railway, Moradabad .. Respondents

(By Shri P.S. Mehandru, Advocate)

ORDER (oral)

The applicant, a retired Grade "B" Driver of Laksar/Moradabad Division of Northern Railway, is aggrieved by Annexure A-1 order dated 19.8.96 by which he has been intimated of recovery of Rs.43,449/- from Death-cum-Retirement Gratuity (DCRG for short). The said order also has directed the applicant to desposit a further sum of Rs.27,481/- with the Divisional Cashier/Northern Railway, Moradabad on account of alleged overpayment of average mileage allowances. Consequently, the applicant has prayed for quashing the Annexure A-1 order issued by Respondent No.2 and an issuance of a direction to the respondents to redetermine his settlement dues alongwith arrears taking into account the pay-and running allowance actually paid to him during the last 10 months of service.

(9)

**2. Applicant's case is that while working as Driver**

Grade B in Moradabad Division, he was posted as Fireman Instructor at Laksar vide order on 21.6.85 at on purely officiating basis on the same pay with mileage @ 12 month's average. Office order at Annexure A-2 refers in this connection. The applicant continued to work as Fireman Instructor and also drew his pay as Driver Grade B with annual increments as well as average mileage allowances from 21.6.85 to 19.4.91, when he was posted again as Driver(Goods). The applicant superannuated from the railway service on 31.7.91. He was, however, shocked to receive a letter dated 19.8.96—five years after his retirement to deposit a sum of Rs.27,481/- on account of alleged overpayment of average mileage allowances. He has also been threatened that the entire amount would be recovered from pensionary benefits in case of his failure to deposit the same with the concerned Divisional Cashier. The order of recovery has not been preceded by any show cause notice or an offer of opportunity to the applicant to defend his case. The applicant has assailed the order on the basis that the same has been issued without according an opportunity of being heard and hence it is in violation of principles of natural justice. To buttress his contention, the applicant has relied on the decisions of this Tribunal in the following cases:

1. Pravin Kumar Bachubhan Patel Vs. UOI & Ors. 1992(1) ATJ-173 (Ahmedabad Bench)
2. Bhagwan Shukla Vs. UOI & Ors. 1994(28)ATC 258
3. Smt. Narinder Narwash Vs. UOI 1994(26) ATC 179
3. Learned counsel for applicant also brought to my notice various provisions of Indian Railway Establishment Manual wherein it has been laid down that

(10)

if overpayment is due to misinterpretation of the rules made in the office of accounts or by the administration and if the recovery will have a crippling effect on the employee, the railways can consider waiving of such recovery. Attention of the Tribunal has also been drawn to the decision of the Hon'ble Supreme Court in the case of Sahib Ram Vs. State of Haryana & Ors. 1995(1)SC SLJ 8, wherein it has been laid down that no recovery can be made from an employee if the overpayment was due to wrong construction on the part of the administration and not because of any misrepresentation on the part of the employee concerned.

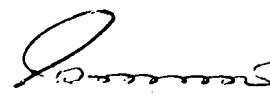
4. Shri P.S. Mehandru, learned counsel for respondents made feeble attempts and argued that at the time of settlement of applicant's retiral benefits, it was noticed that the applicant had drawn mileage on 12 monthly average basis wrongly. He also submitted that the applicant was entitled to the benefit of 30% of the basic pay as running allowance for the purpose of fixing pay as Fireman Instructor. Apparently, applicant's pay was revised and fixed by additing 30% of the basic pay as running allowance and the excess amount was paid to the applicant erroneously by calculating the allowances on the basis of 12 months average mileage (instead of 30% of the basic as average running allowance). As soon as the mistake was noticed, an order for recovering the excess payment from the retirement benefits was accordingly issued.

(11)

5. ~~It finds some~~ force in the contention of the counsel for the applicant. If it is assumed that the pay of the applicant was wrongly fixed, the same could not have been recovered with retrospective effect five years after the retirement of the applicant and that too without any notice. The applicant was given the benefit of salary as per Annexure A-2 order and the applicant was not responsible for wrong fixation. The delay in the detection was apparently on the part of the respondents. In fact, respondents are themselves to be blamed for wrong fixation of pay of the applicant while issuing the order at Annexure A-2. Respondents have taken more than 11 years for detecting their mistake regarding wrong fixation of mileage allowance. It is on account of this that the alleged wrong payment has taken place. When the benefit of fixation of pay was offered to the applicant as at Annexure A-2, the applicant was not aware of the fact that he will have to return the amount drawn by him after retirement. When the respondents detected the mistake after the lapse of so many years, order for recovery of overpayment was made without affording an opportunity to the applicant. A system governed by rule of law reckons no decision without adjudication particularly when the employee has to face civil consequences. In the instant case, decision to effect recovery from the retired pensioner has been taken unilaterally without a pre-decisional hearing. The age old principle that administrative orders having civil consequences should abide by the principles of natural justice in this case appears not to have been complied with while issuing the Annexure A-1 order. This order, therefore, cannot be sustained in the eyes of law.

(19)

6. In view of the above, the application is allowed and the Annexure A-1 order intimating recoveries of alleged over payment is hereby quashed. Respondents are directed not to adjust the alleged amount of over against DCRG admissible to the applicant without giving an opportunity to the applicant to represent his side of the case. It will, however, be open to the respondents to pass a fresh order as regards redetermination of the applicant's allowances and retiral benefits after giving him a show cause about the proposed recovery and refixation of his terminal benefits including adjustment of dues payable by the applicant. Respondents shall complete all these formalities within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.

  
(S.P. Biswas)  
Member (A)

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