

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No. 2429/96

New Delhi this the 3rd day of April 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. V.K. Majotra, Member (A)

Narbada Prasad Dubey  
S/o Late Shri Laxmi Prasad Dubey  
R/o C/o Manish Kumar Dubey (son),  
Qe. No. R.B.II, Railway Colony,  
Ballabgarh, Central Railway,  
Distt. Faridabad, Haryana.

..Applicant

None Present.

Versus

1. The Union of India through  
The Chairman, Railway Board, Principal  
Secretary to Govt. of India, Ministry of  
Railways, Rail Bhawan, New Delhi.
2. The Financial Advisor & Chief Accounts Officer,  
(FA&CAO), Central Railway, GM's Office,  
Mumbai, CST. (Mumbai)
3. The Senior Divisional Accounts Officer,  
Central Railway, DRM's Office,  
Jhansi.
4. The Manager,  
Punjab National Bank,  
Manik Chowk/Sipri Bazar,  
Jhansi.

...Respondents

None Present.

ORDER (Oral)

By Mr. Justice Ashok Agarwal, Chairman

By the present OA, petitioner impugns the orders dated 5.7.95, 21.7.95, 30.8.95, 6.11.95 and 17.6.96 which are annexed as Annexure A-1 to Annexure A-5 to the present OA. By the aforesaid orders pay of the petitioner has been re-fixed and his pension has been revised. Facts leading to the filing of the OA are few. They are as under:

2. Petitioner joined the Railways as Assistant Catering Manager on 1.10.1959. He thereafter got himself switched over to Accounts department and joined as Clerk Grade-II on 2.10.1964. He was promoted as Clerk Grade-I on 13.1.1970. His scale of pay in the promotional post of Clerk Grade-I was Rs. 330-560 (RS).

3. Petitioner was not promoted to the further promotional post for over a decade. He was, therefore, by an order passed on 1.4.1985 granted special pay of Rs. 35/- in terms of the Railway Board's scheme which was introduced in 1979. A copy of the order granting him special pay is annexed as Annexure A-6.

4. Aforesaid special pay of Rs. 35/-, it is the case of the applicant, was required to be absorbed and merged for the purpose of fixation in higher pay scale of Rs. 1400-2300 on the promotion of the petitioner to the higher post. This was required to be done in compliance of the instructions contained in the Railway Board's Orders No. PC/III/79/SP/1/LDC dated 27.11.1987, which benefit was to be given w.e.f. 1.9.1985. As already stated, petitioner was in fact granted special pay of Rs. 35/- w.e.f. 1.4.1985. The said special pay was taken into account when the applicant was promoted and his pay was fixed in the promotional post. Petitioner continued to receive his pay in the promotional post in the grade of Rs. 1400-2300. The said special pay was taken into

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account while fixing his pay in the promotional post till 30.9.1994 when he retired on superannuation. Petitioner's pension, gratuity and other benefits were also fixed and granted w.e.f. 1.10.94.

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5. All of a sudden by an order dated 5.7.95 aforesaid pay of the applicant which he was receiving w.e.f. 1985 has been stepped down and alleged over payment which has been paid over to the petitioner during the aforesaid period of 1985 to 1994 to the tune of Rs. 10,136/- has been directed to be recovered from him. Similarly his pensionary benefits have also been sought to be stepped down. Similarly, the claim of the petitioner towards Transfer & Packing Allowance Rs. 2025/- + Rs. 384/- = Rs. 24,909/- have been adjusted against the over payment. All this has been done ~~even~~ without issuing any notice. Aforesaid orders, as already stated are impugned in the present OA.

6. That the aforesaid orders, visit the petitioner with civil consequences cannot be disputed. ~~These~~ orders stepping down of petitioner's pay and his pensionary benefits have been passed without issuing a show cause notice and without affording the petitioner of being heard <sup>and this</sup> is not even disputed on behalf of the respondents. ~~To our~~ surprise, a contention is raised that it is not necessary to issue a show cause notice if a benefit which the applicant was enjoying for a decade, to which he is not entitled under the

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In our view

rules, is sought to be withdrawn. Respondents are required to issue a show cause notice and give the applicant an opportunity of being heard before he is visited with such serious civil consequences.

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7. In the present OA, orders granting the aforesaid benefit to the applicant are sought to be justified <sup>by him by</sup> ~~on~~ placing reliance on Railway Board's orders No. PC/III/79/SP/1/LDC dated 27.11.1987. It is, however, in our view not necessary to go into the aforesaid controversy. The impugned orders are liable to be quashed and set aside on the short ground that they suffer from the vice of non-observance of the principles of natural justice. In the case of Bhagwan Shukla Vs. Union of India & Others (1994) 28 ATC 258 the Supreme Court has observed as under:-

"That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employees) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned

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before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs. 190 to Rs. 181 w.e.f. 18.12.1970".

8. It is not necessary to multiply decision which have been rendered and have taken a view similar to one contained in the aforesaid case. An opportunity to show cause was required to be given to the applicant. Aforesaid orders at Annexure A-1 to A-5 are accordingly quashed on this short ground alone. Present OA succeeds. There will, however, be in the facts and circumstances of the case no order as to costs.

(Ashok Agarwal)  
Chairman

(V.K. Majotra)  
Member (A)

cc.