

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 257/1996

New Delhi, this 28th day of October, 1999

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.P. Biswas, Member(A)

Jag Mohan
House No.285/B, Punjab Lane
Railway Colony, Ghaziabad

.. Applicant

(By Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
New Delhi
3. Station Superintendent
Northern Railway
Ghaziabad

.. Respondents

(By Shri O.P.Kshatriya, Advocate)

ORDER(oral)

Hon'ble Mr. S.P. Biswas

The legal issue that falls for determination in this OA is whether the impugned order dated 10.1.96 as at Annexure A-1 could be issued without offering an opportunity of hearing to the applicant.

2. By the aforesaid order, applicant's salary which was at Rs.1720 as on 1.8.95 has been brought down to Rs.1680 with effect from the same date. The manner as to how applicant's pay has been revised downwards are shown in the impugned order. It also contains a direction that necessary overpayment already made may be recovered under advice to the Divisional Personnel Officer/New Delhi.

3. The fact of the case is that the applicant was appointed on 1.8.84 as Guard Grade "C" under the respondent-Railways in the scale of Rs.330-560. This scale was revised to Rs.1200-2040 pursuant to the Fourth Pay Commission's recommendations with effect from 1.1.86. Applicant continued to get usual annual increments from 1.1.86 (Rs.1290) to 1.8.93 (Rs.1560) and then to Rs.1720 from 1.8.95. However, this was reduced to Rs.1680 by the impugned order. 9

4. Applicant challenges the validity of the order both in terms of legal as also factual malafides on the part of respondents. Applicant would cite the decision of the apex court in the case of Bhagvan Shukla Vs. UOI SLJ 1995(2) SC 30 to indicate that "pay of an employee cannot be revised without giving an opportunity of hearing".

5. The facts of the case are not in dispute. However, the presednt controversy surfaced since applicant in 1985 was awarded minor penalty of reduction of increment for six months in February, 1985. Counsel for the applicant would submit that the said punishment was without any cumulative effect. But counsel for the respondents would submit that it was with cumulative effect and was effected from 6.8.85 to 31.1.86. Counsel for the respondents admits that the punishment which was to be effected from February, 1985 could not be imposed upon the applicant due to an administrative error. In other words, applicant's pay was fixed on 1.1.86 by ignoring the punishment which was made operative from August, 1985. Due to this error, applicant continued

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getting usual increments every year right upto 1995. Having realised the mistake pursuant to a complaint from one Shri M.P.Sharma, Goods Clerk, respondents were alerted and took initiative to reduce applicant's salary as stated above through the impugned order at A-1.

6. We shall now examine the legal issues involved. It is not in dispute that law does not permit issue of an order of recovery, as stipulated in Annexure A-1, without a show cause notice. Law is well settled that administrative orders, having adverse civil consequences cannot be issued without any prior notice. If any authority is needed for this proposition, it is available in the case of State of Orissa Vs. Dr. (Ms.) Binapani Dei AIR 1967 SC 1260). Learned counsel for the respondents would submit that if the applicant is prepared to make a comprehensive representation setting out the details of his case, respondents would consider applicant's plea and issue appropriate orders.

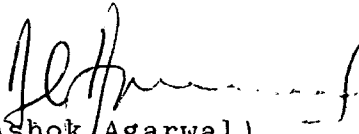
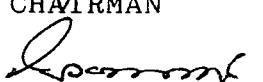
7. We are inclined to agree with the contention of the respondents' counsel. This is because the applicant was required to exhaust alternative remedies available for the purpose of redressal of his grievances under section 20 of AT Act, 1985.

8. In the context of aforesaid details, we allow this OA with the following directions:

(i) Annexure A-1 order dated 10.1.96 shall stand set aside. Respondents are at liberty to issue show cause notice to the applicant seeking explanation of the applicant why the recovery should not be effected;

(ii) Applicant shall make a representation within 15 days from the date of receipt of notice and respondents shall consider the same within 3 months from the date of receipt of applicant's representation and communicate their decision to the applicant.

6. OA is disposed of as aforesaid. No costs.


(Ashok Agarwal)
CHAIRMAN

(S.P. Biswas)
MEMBER(A)

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