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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 483/96

New Delhi this the day of 2nd September 1996

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

Budh Singh,
S/O Shri Moolchand,
Highly Skilled Gr.I Machinist/Turner (Retd)
N.Railway Signal Works Shop,
Ghaziabad

R/O C/O Asha Marbal Craft,
Rattan Lal Building,
Ram Nagar, Paharganj,
New Delhi

.....Applicant

(By Advocate: Shri M.L.Sharma)

Versus

1. Union of India through:

General Manager,
N.Railway Headquarters Office,
Baroda House, New Delhi.

2. The Chief Personnel Officer,
N.Railway, HQrs. Office,
Baroda House, New Delhi.

3. Chief Works Shop Manager,
N.Railway Signal Works Shop,
Ghaziabad

.....Respondents

(By Advocate: Shri M.Joseph Asstt. by
Shri P.I.Oomen)

ORDER (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

The grievance of the applicant, who retired while working as Turner (Highly Skilled Grade-I) in the pay scale of Rs. 1320-2040 and was drawing a pay of Rs. 1760/- u.s.f. 1-11-94, is that the respondents have unjustifiably and illegally made deduction from his gratuity and have also reduced his pension, treating his pay as 1720/- instead of 1760/-. His representations against the alleged illegal

recovery and reduction of his pension, made on 7-8-95, 15-10-95 and 18-1-96 (Annexure A-5, 6 & 7) remain unresponded to and, therefore, the applicant has filed this application under Section-19 of the Administrative Tribunals Act 1985 praying that the impugned PPO dated 5-9-95 may be set aside and respondents be directed to re-fix his pay and retiral benefits on treating his basic pay as Rs. 1760, and also to pay the amount of difference as arrears on account of revised retiral benefits, with interest @ 18% per annum, thereon.

2. The respondents admit that the applicant's pay was fixed @ Rs. 1760/- w.e.f. 1-11-94 and that ascertain amounts have been recovered from his gratuity, but they seek to justify the impugned against on the ground that the fixation of pay of the applicant was done after his retirement but certain deductions were to be effected by the Accounts Department which resulted recovery from the gratuity, as it was found that the fixation of the applicant's pay @ Rs. 1760 w.e.f. 1-11-94 was done erroneously. His pension was fixed reckoning his pay @ Rs. 1720/- correctly according to him.

3. We have heard Shri M.L.Sharma, Learned Counsel for the applicant and Mr. P.I.Oomen learned counsel for the respondents alongwith Shri M.Joseph. A careful scrutiny of the materials placed on record leaves us with no doubt that the action of the respondents in unilaterally making recovery from the gratuity of the applicant on the ground that there has been some over payments the details of which have not given or made known to either the applicant or the Tribunal by making it clear in the reply statement filed is arbitrary. The respondents admit that the

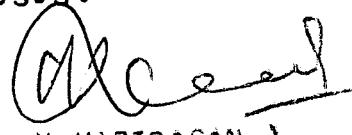
applicant's pay was fixed at Rs. 1760 w.e.f. 1-11-94 and that he was receiving the said pay while his pension was fixed. The applicant's pension was fixed reckoning his pay at 1720/- p.m. without explaining what was the mistake in fixing his pay earlier. Even in the reply statement it has not been made clear what was the mistakes and when was the mistakes committed.

4. It is permissible and is also necessary to rectify mistakes committed, but before such rectification it should be made clear what is the exact mistake to be rectified. No such attempt towards this has been made by the respondents before reducing the applicant's pension and making recovery of alleged over payment. This action of the respondent is not justified and is, therefore, not sustainable. In a series of decisions the Hon'ble Supreme Court has held that if an employee while in service is paid salary and allowances at a particular rate recovery should not be made from his retiral benefits, later finding out that the pay ^{was} ~~was~~ fixed if the employee was not in any way responsible for such wrong fixation. In the following decision the Supreme Court has held so, in the case of Grabrial Saver Fernandies & Ors Vs. State of Karnataka 1995 (1) SC SLJ/SC 24, Shyam Babu Verma & Ors Vs. Union of India and Ors, Sahib Ram Verma Vs State of Haryana and Ors 1995 SCC (L&S) 148 and Bhagwan Shukla Vs Union of India & Ors 1994 SCC (L&S) 1320.

5. In the light of what is stated above, the application is allowed and the respondents are directed to issue revised pension payment order to the applicant calculating his pension on the basis of his pay at Rs. 1760/-

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and to pay him the resultant arrears. The respondents are also directed to calculate the remaining retiral benefits of the applicant accordingly and pay him the balance as also the amount, if any, which they have recovered from the gratuity of applicant on the basis of the alleged over payments ^{made} before his retirement. The above direction shall be complied with by the respondents as expeditiously as possible but at any rate within a period of two months from the date of communication of this order. No costs.


(A.V. HARIDASAN)
Vice-Chairman (J)

cc.