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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TXX. No. 555/1996

Decided on: 1-4-97

Shri Hari Singh & OthersApplicant(s)

(By Shri P.M. Ahlawat Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri Rajeev Sharma Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? 75
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 555 of 1996

New Delhi this the 1st day of April, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Hari Singh
S/o Shri Sewa Ram
R/o B-9, Gourav Apartments,
Patpar Ganj (Near DTC Depot),
New Delhi.
2. Shri Mahesh Nand
S/o Shri Ishwari Dutt
R/o H.No. B-75, Sector-12,
Vijay Nagar,
Ghaziabad (U.P.).
3. Shri Tota Singh
S/o Shri Dev Karan,
R/o Village Nangla Banshi
P.O. Chola,
District Buland Shehar (U.P.) ...Applicants

By Advocate Shri P.M. Ahlawat

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad (U.P.).
3. The Senior Divisional Electrical
Engineer (R.S),
Northern Railway,
Ghaziabad (U.P). ...Respondents

By Advocate Shri Rajeev Sharma

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The three applicants who have joined in a single application have a common cause of action against the order of the respondents dated 2.11.1995 directing deduction of Rs.5320/-, Rs.7781/ and Rs.7989/- respectively alleged to have been drawn as excess pay from the retirement gratuity. The directions in respect of the applicant No.1 is impugned in this application and it is stated that similar orders have been passed in respect of the other two applicants also. The applicants retired as Highly Skilled Fitters Grade-I w.e.f. 31.7.1995, 30.11.1995 and 31.1.1996 and they were drawing the basic pay of Rs.1530/-, Rs.1560/- and Rs.1560/- respectively on the dates of their retirement. The applicants represented against the deduction of the said amounts from the gratuity. and as
As no action was taken/ the respondents had gone ahead with the recovery, they have filed this application seeking the refund of the amounts deducted alongwith the interest at 18% per annum on these amounts. The applicants allege that they are not responsible for the non detection of the mistake in the fixation of the pay which had occurred 7 years back and the respondents have detected this error in the fixation and have ordered the recovery without

giving a proper show cause notice to the applicants. They allege that in terms of para 1013 of the of Indian Railway Establishment Manual Volume-I, all personal claims had to be normally checked finally within one year from the date of payment and if only within this period an amount is discovered to have been paid erroneously, it will be recovered ordinarily / without hardship to the party concerned

from the current bill. They, therefore, allege that the respondents cannot recover the alleged excess payments after long delay and that too from their retirement benefits. In support of this, they rely on the decisions in the case of A. Raghavan VS. Union of India & Another (O.A. No. 1078 of 1993), State of Kerala Vs. M. Padmanabhan Nair, AIR 1985 SC 356 and Nilkantha Shah Vs. Union of India, 1987(3) SLJ (CAT) 306 and certain other cases.

2. The respondents have stated that at the time of the retirement of the applicants and on the review of the service record by the personnel branch it was noted that the applicants were drawing one extra increment and their pay has to be revised and refixed accordingly. On account of this refixation of pay, the excess amount of Rs.5320 due to the additional increment which he had drawn, was to be recovered from

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applicant No.1, Rs.7781/- from applicant No.2 and Rs.7989/- from applicant No.3. The applicants were not entitled to the extra increments which were allowed to them due to wrong fixation of pay and, therefore, this excess payments had to be recovered. They have denied that recovery on account of excess drawal of pay could not be considered illegal, arbitrary or discriminatory and any excess amount can be recovered from the gratuity of the employee before his retirement and they have also denied that there can be no objection to the recovery of the overpayment detected after a number of years, without issue of show cause notice and there was nothing violative of rules and principles of natural justice.

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3. The learned counsel for the applicant while arguing on the pleadings referred to certain decisions particularly the decision of the Apex Court in **Bhagwan Shukla Vs. Union of India & Others, (1994) 28 ATC 258**, wherein the order of reduction of pay which was fixed erroneously, without affording an opportunity was held violative of principles of natural justice.

4. I have heard the learned counsel for the parties and have perused the record.

5. It is an admitted position that the respondents have detected the wrong fixation

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of the pay allowed to the applicants only at the time of retirement and the wrong fixation dates back to the date of the promotion of the applicants as Highly Skilled Fitters Grade-II w.e.f. 2.8.1989 and the respondents have consequently worked out the excess payment on account of this wrong fixation of pay which had occurred on 2.8.1989, i.e., almost 7 years back. In terms of para 1013 of the IREM Vol.1 "all personal claims will normally be checked within one year from the date of retirement and if within this period an amount is discovered to have been paid erroneously through an oversight in the Accounts Office and not due to wrong interpretation of a rule or order it will ordinarily be recovered". In the instant case, the overpayment had occurred right from 2.8.1989 as a result of incorrect fixation of pay on promotion and had been drawn by the applicants in a bona fide belief that they were entitled to such fixation. The error was detected after the retirement of the applicants. Para 1016 of the IREM Vol.I provides as follows:-

"Recovery of overpayments made to railway servants by drawing and disbursing officers may be waived only after the strictest possible scrutiny and only if there is fullest justification for such waiver, which should be placed on record. Normally, no recoverable overpayment should be waived. But waiver may be justified if overpayment has occurred over long periods and the amount involved is very large compared, and, where it would require

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many years to recover the amount, it may be held that by crippling the resources of a comparatively lowpaid individual over a large number of years, his efficiency would considerably suffer and thereby indirect loss to the Railway by the loss of his efficiency might be more than the loss of the Railway caused by writing off the recovery of the overpayment. The nature of the irregularity will also be an important consideration. The element of discretion, therefore, should be judiciously exercised and waiver should not be accorded merely on the ground that the overpayments were drawn in good faith and are over one year old".

In this particular case, certain fixation had taken place 7 years ago which was detected after the retirement of the applicants. The amounts overpaid are substantial considering the facts that the applicants were low paid employees. There is no evidence that the respondents had definitely gone into the requirements of the aforesaid provisions before ordering recovery and where circumstances warranted consideration for waiver by the competent authority. The

respondents have also not shown how the overpayment could not have been detected in time by the Divisional Accounts Officer concerned at the time when the wrong fixation of pay was made in 1989. In any case, the applicants have been visited with civil consequences and no opportunity to show cause against the proposed

recovery from the retirement benefits was provided to them. Law is well settled that

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fixation of pay and that too belated recovery on account of wrong / after the retirement of the employee, cannot be sustained.

In this connection decision of their Lordships in Punjab State Electricity Board And Another Vs. V.N. Sharma, 1995 SCC (L&S) 250 and also Bhagwan Shukla Vs. U.O.I. & Others, 1994 SCC (L&S) 1320 and also the decision in Dr. Mihir Banerjee VS. U.O.I. and Others, (1987) 3 ATC 441 CAT (Calcutta) will all be relevant.

6. In the circumstances, the application is allowed and the respondents are directed not to make such a recovery and if the recovery had already been made, the amount recovered may be refunded to the applicants. The prayer for payment of interest is, however, rejected. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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