

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-921/96

New Delhi this the 25th day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Shri Kishan Lal Bathla,
S/o Shri Pokhar Das,
R/o Old Quarters, Lajpat Nagar,
New Delhi-110 024. ...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Rly. Manager,
Northern Railway,
Amballa Cantt.
3. The Loco Foreman,
Northern Railway,
Locoshed, Saharanpur. ...Respondents

(By Advocate Mrs. Meera Chhibber)

ORDER

By Reddy, J.-

The applicant was a Head Clerk in the grade of Rs.1400-2300, under Loco Foreman, Saharanpur. He was promoted as Assistant Superintendent on ad hoc basis in the grade of Rs.1600-2660 by the order dated 31.3.89 and thereafter his pay was fixed at Rs.1700/- in the said grade. He retired from service on 31.3.92 and he continued to work in the post of Assistant Superintendent till his retirement. The grievance of the applicant is that the respondents recovered, illegally, certain amounts said to be paid to the applicant in excess on the ground that though he was reverted to his substantive post in October, 1989 itself by mistake he was being paid salary in the grade of

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Rs.1600-2660. After the recoveries the applicant's salary was reduced from Rs.1800/- to 1760/- with retrospective effect and an amount of Rs.2681/- was recovered. The applicant challenges the action of the respondents in recovering the said amount of Rs.2681/- from him.

2. It is the contention of the learned counsel for the applicant that the applicant was never reverted hence the recovery is illegal. He has also not been issued any notice before the said recovery. It is further contended that in pursuance of the reduced pay the amount of DCRG and leave encashment and pension have been reduced.

3. A preliminary objection was taken by the learned counsel for the respondents that the OA is barred by constructive res judicata as the applicant had already filed an application for the same relief under the Payment of Wages Act in the year 1993 and after hearing the applicant and the respondents the suit was dismissed.

4. On merits, the respondents state that the applicant was put to work on ad hoc basis as Office Superintendent Grade II pending selection of Office Superintendent on regular basis. After the Office Superintendents were empanelled by way of regular selection, the applicant was sent back to his substantive post, i.e., Head Clerk on 13.7.90 and thereafter his pay was fixed at Rs.1680/-. But, due to administrative mistake the applicant was drawing at Rs.1800/-. Hence the recovery of the excess amount paid to him.

5. We have heard the learned counsel for the applicant and the respondents.



6. Regarding the preliminary objection raised by the respondents as to the maintainability of the OA on the ground of constructive res judicata, it has to be noted that the applicant himself states in his OA that he filed an application in the year 1993 as case No.15/93 under the Payment of Wages Act before the City Magistrate, Saharanpur, which after notice has been dismissed as not pressed in the year 1995. The applicant also states that the application was dismissed on technical ground that he has submitted another representation to Respondents 1 and 2 in 1995 to consider his case on equitable grounds. In the reply it is, however, stated that the above case has been dismissed by an order dated 22.9.94. But neither the applicant nor the respondents filed the order of dismissal passed by the authority. We are, therefore, faced with the admitted situation that the case filed by the applicant with regard to the same subject matter of recovery of the excess amount stood dismissed by the authority under the Payment of Wages Act. In the absence of any order shown to us giving liberty to agitate the matter in any other appropriate forum, we will have to hold that the case of the applicant has been dismissed on merits. Hence, the said order of dismissal operates as res judicata against the applicant to file the present OA on the same subject matter. The OA is, therefore, liable to be dismissed on this ground alone.

7. It is the common ground that the applicant has been promoted as Assistant Superintendent only on ad hoc basis in 1989 till the regularly empanelled candidates were posted. As is evident from the reply, that the Office Superintendents were thereafter empanelled and posted in 1990 resulting in the applicant's reversion to his

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substantive post by an order dated 13.7.90. Thereafter the pay of the applicant has been refixed at Rs.1680/- but the applicant appears to have continued to draw the pay of the Office Superintendent till he retired in 1992. In the order dated 13.7.90 shown to us (but not filed) it is clear that the applicant has been reverted to his substantive post. However, by an inadvertent mistake the applicant seems to have been drawing the same pay of Assistant Superintendent till he retired. The learned counsel for the respondents also shown the concerned register where the pay of the applicant has been shown as the pay of the Head Clerk w.e.f. 3.7.90. The applicant has been drawing the salary of Rs.1800/- on the date of his retirement in 1992, though he has to draw the salary of the Head Clerk at Rs.1760/- It appears to be purely administrative mistake which is sought to be corrected by the impugned recovery. We do not, therefore, find any illegality in the recovery.

8. As to the contention regarding want of notice we are not satisfied that this is a case where notice has to be issued before the recovery. The applicant cannot draw more than the pay ~~to~~ which he is entitled to. The learned counsel, however, asserts that the applicant was not reverted. In view of the order of reversion dated 3.9.90 this assertion is wholly unacceptable. The learned counsel places strong reliance upon U.P. State Electricity Board & Anr. v. Sri Radhey Mohan Verma, 1995 (2) SLJ, SC 31. In that case the basic pay of the appellant was fixed at Rs.190/- w.e.f. 18.12.70 in a running pay scale. Subsequently, however, the pay scale of the appellant was sought to be refixed and during refixation his pay was reduced to Rs.181/- w.e.f. 18.12.70. Thus, it is evident that what is sought to be refixed was the pay scale itself.



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On this ground the Supreme Court held that the principles of natural justice would require issue of notice of hearing in the matter. In the instant case, there is no re-fixation of the pay scale. The applicant was wrongly being paid the higher pay though he has been reverted. In the circumstances, we are of the view that this case will be of no assistance to the applicant.

9. In view of the aforesaid discussion the O.A. is dismissed. No costs.

Shanta S
(Smt. Shanta Shastri)
Member (Admnv)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

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