

CAT/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1176/1997
T.A. No.

199

DATE OF DECISION

Shri Bachan Singh

Petitioner

Shri M.L. Sharma

Advocate for the Petitioner(s)

Versus

Respondent

UOI & Ors.

Shri P.S. Mahandru

Advocate for the Respondent(s)

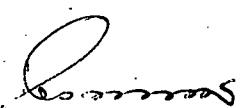
CORAM

The Hon'ble Mr. S.P. Biswas, Member(A)

The Hon'ble Mr.

1. To be referred to the Reporter or not? Yes.

2. Whether it needs to be circulated to other Benches of the Tribunal?


(S.P. Biswas)
Member (A)

5.12.97

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1176/96

New Delhi, 5th day of November, 1997

Hon'ble Shri S.P. Biswas, Member (A)

Shri Bachan Singh
s/o Shri Raje Singh
B-344, Ashok Nagar, Madouli Road
Near Puja Public School, Shahdara
Delhi

.. Applicant

(By Advocate Shri M.L. Sharma)

verus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Dy. Controller of Stores
Northern Railway
Shakurbasti, Delhi
3. FA & CAO, Northern Railway
Baroda House, New Delhi
4. Chief Admin. Officer (Const.)
Northern Railway, Kashmeri Gate
New Delhi

.. Respondents

(By Advocate Shri P.S. Mehandru)

ORDER (ORAL)

Sir Edward Coke described requirement of natural justice as the duty "to vocate, interrogate and adjudicate". It has been held that:

"Even God did not pass a sentence upon Adam before he was called upon to make his defence". (Cooper Vs. Wandsworth Board of Works) 1863(14) ER 414.

2. We are confronted with a similar situation in this application wherein the applicant has been forced to face civil consequences without any opportunity to defend his case.

3. The applicant, while working as Store Keeper (Grade I) in the scale of Rs.2000-3200, retired from services of the Railways with effect from 30.6.1996. After he had superannuated, the respondents suddenly came up with Annexure A-1 to A-4 orders revising his basic pay (A-1), calculating commutation of pension at a lower rate (A-2), fixing monthly pension below the amount due to him (A-3) and effecting recovery against excess pay allegedly received by him (A-4). Learned counsel for the applicant submitted that the adverse consequences, as in A-2 to A-4, are in pursuance of his basic pay having been wrongly reduced with retrospective effect and that too after his retirement. By A-1 order dated 4.7.96, applicant's basic pay has been reduced from Rs.2300 to Rs.2240, and by A-4 order dated 8.2.97, recovery of Rs.7710 has been effected on account of the aforesaid excess payment of salary made to him.

3. Drawing support from the decision of the Hon'ble Supreme Court in the case of **Bhagwan Shukla Vs. UOI and another** 1994 SCC (L&S) 1320, learned counsel for the applicant argued that reduction in basic pay, without putting the applicant to notice, was in flagrant violation of principles of natural justice. This should not have been done at the back of the applicant in terms of the law laid down by the Apex Court in the above case.

4. In the case of G.S. Fernandes & Ors. Vs. State of Karnataka & Ors., SC SLJ 1995(1) 24 it has been held that:

"since the applicants had already been paid the scale of pay of Rs.90-200 while they were in service and are retired now, it would be appropriate that government may not recover from them the salary which had already ~~been~~ received, though they are not eligible to the scale of pay of Rs.90-2000".

5. On the issue of such belated recoveries for no fault of petitioner or due to wrong construction by the respondents, the Apex Court have held a similar view in a series of judgements. Thus, in the case of Shyam Babu Verma Vs. UOI & Ors. 1994 SCC (L&S) 683, it was held that:

"Since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them".

6. Again, in the case of Saheb Ram Vs. State of Haryana & Ors. 1995 SCC (L&S) 248, the principle laid down was as under:

"The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault".

7. In counter, learned counsel for respondents submits that the applicant herein was in Construction department and had obtained several promotions on ad hoc basis. He

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also submits that the applicant's pay has been fixed at the stage in pay scale admissible to him in the parent cadre post i.e. equivalent to the emoluments drawn in cadre post by his immediate junior. This has been done in consonance with Railway Board's letters dated 17.2.89 and 5.12.84 as circulated by General Manager (P), Northern Railway, New Delhi vide his letter dated 28.2.89/12.3.89 and 7.4.95.

8. I find none of the aforesaid impugned orders have been preceded by any notice. Nor the applicant has been offered any opportunity to represent his case before issuing the series of orders having adverse civil consequences. Neither the submissions made by the respondents touch upon the grievances of the applicant herein. Nor did the respondents gave any reply to applicant's representation made in December, 1996.

9. In the case of **State of Orissa Vs. (Miss) Binapami Dei** AIR 1967 SC 1269, it has been held that if there is any power to decide and determine to the prejudice of a person the duty to act judiciously is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is the basic concept of the rule of law and the importance thereof transcends the significance of a decision in any particular case. In the instant case, the applicant was never asked to show cause why his pay should not be reduced or payment made in excess be recovered. The series of orders

afffecting the applicant adversely are in contravention of the principles of natural justice and cannot, therefore, stand in the eyes of law.

10. I find paragraph 1014(b) of Indian Railway Establishment Manual (IREM for short) (revised Edition-1989) requires erroneous payments passed through oversight in the accounts office less than 12 months earlier should be recovered and orders of competent authority obtained with regard to overpayments made. Paras 1016 and 1017 deal with recovery of payments. Waiver of overpayments is suggested if the overpayment had occurred over long periods and the amount involved was very large and would require many years to recover the amount. The nature of the irregularity is also required to be considered. Even in the case of Gazetted railway servants the General Manager is given the discretion and the power to waive recovery of amounts overdrawn, if the erroneous payment is discovered by accounts or audit more than one year after the date on which it was made. There is no indication, not even a whisper, that the above provisions under the Manual were taken into considered before the recovery was ordered in February, 1997.

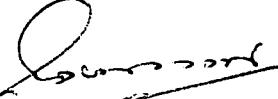
11. A system governed by the rule of law reckons no decision, without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves

ordinances. This is a basic requirement of natural justice which has always been part of adjudicatory process.

12. I find the present case merits consideration of waiver of such recoveries under Sections 1014 and 1016 of the IREM and a fit case where provisions of waiver should have been appropriately invoked. It is also seen the applicant had made a representation dated 4.12.96 against the recovery and though there are enabling provisions in IREM for excusing discretion to consider waiver of overpayment, respondents decided to remain silent. From pleadings and submissions made it is more than evident that decision in the instant case has been taken in controvension of the principles of natural justice and cannot stand in the eyes of law. I find the above views find support in principle, in the judgement by Constitutionn Bench of the ApexCourt in the case of Chairman, Railway Board & Ors. Vs. C.R.Rangadhamaiyah & Ors. etc. etc. JT 1997(7) SC 180. It was held in this case that "Pensionary benefits which have already accrued cannot be taken away by amending the rules with retrospective effect". The only **difference** is that in the present case the retiral benefits have been taken away by altering the payment schedule after superannuation with retrospective effect. Interest of justice would be served by directing the respondents to fully waive the alleged overpayment.

13. In the result:-

- (i) The OA is allowed.
- (ii) The impugned orders at A-1 to A-4 shall stand quashed;
- (iii) Respondents shall repay to the applicant the amount recovered (Rs. 7710/-) alongwith 12% interest from the date it was recovered till the date refund is made;
- (iv) This shall be done within a period of three months from the date of receipt of a certified copy of this order;
- (v) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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