

11

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

Original Application No. 1442 of 1997

New Delhi, this the 24th day of March, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Prakash Kumar Mulwani, aged about 33 years, resident of House No. 1/3, Nirmalpuri, Lajpat Nagar IV, New Delhi-110024 and employed as Inspector of Works (Construction) Under Chief Administrative Officer (Constrn.), Northern Railway,

-APPLICANT

Versus

1. Union of India through the Chairman, Railway Board, Rail Shawari, New Delhi - 110 001
2. The General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi-110001
3. The Chief Administrative Officer (Construction), Northern Railway, Headquarters Office, Kashmere Gate, Delhi - 110006.

-RESPONDENTS

(By Advocate Shri B.S. Jain)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

This Original Application is filed with a prayer to quash the proposed recovery of the 3rd and 4th incentive increments given to the applicant. This recovery was proposed to be effected from his pay for the month of June, 1997 ex parte and without putting the applicant to notice.

2. The applicant joined as Apprentice Inspector of Works as a direct recruit on 4.5.1988 and was regularised after training on 4.7.1988. The applicant qualified Section 'A' of AMIE on 23.3.1987 before joining and Section 'B' of AMIE on 23.7.1988 after joining. Passing of these two parts is equivalent to a degree in Engineering in the Civil

Corrected vide Compt  
order dated 19.7.2000  
n/c A134/98

Engineering discipline. In the normal course he was entitled to a cash reward of six increments. The respondents have given him only 4 advance increments and have not so far granted the remaining two. Besides withholding these two, the respondents are now proposing to recover the third and the fourth increments already given. As the proposed recovery has not been communicated to him by the Railway authorities in advance, the applicant could not make a representation.

3. After notice, the respondents state that under the Scheme dated 14.5.1966 and 19.8.1966 such of those railway employees who have acquired higher technical qualification only after joining Railway service at their own cost, a sum of Rs. 200/- was paid as a cash award and two advance increments for passing Part-I or 'A' / Intermediate/Pre-final examination and Part-II or 'B' or Final examination respectively. This was modified on 29.5.1989 with the change that for the above two qualifications two advance increments for passing Part-I and 4 advance increments for passing Part-II were substituted and the benefit of the incentive would be admissible from the last date of the prescribed examination. However, according to Para "o" this cash award/ two advance increments will not be admissible in the case of persons who have passed the Part-I or "A" or <sup>and</sup> Intermediate ~~or~~ Part-II or "B" or final examination, prior to their appointment to Railway service. It was also clarified by Board's letter dated 4.9.1990 that this came into force from 29.5.1989. and the

⑩ Committed vide Comt's order  
dated 19.7.2000 = LA 134/58

cases occurring between 30.6.1988 and 29.5.1989

would be covered by the earlier incentive schemes.

The applicant appeared in the examination of Section 'A' of AMIE during pre-winter session of 1986, the result of which was declared on 27.3.1987.

He appeared in the examination of Section 'B', AMIE during summer 1988 and he was declared to have passed on 6.10.1988. He was accordingly granted 4 advance increments for passing Section 'B' by an

31.8.1990

order dated 30.8.1990. The audit observed that the higher technical qualification acquired before Board's letter dated 29.5.1989 exceeded the amount payable under the old instruction dated 14.5.1966. On the basis of the audit objection the recovery was ordered. It is also stated that as the applicant passed Section 'A' before he entered into the Railway service such benefit is not admissible to him.

4. The proposed recovery is bad in law because the applicant had not been given an opportunity of being heard. For this the following authorities are cited of Hon'ble Supreme Court in the cases of **Shyam Babu Verma and others Vs. Union of India and others**, (1994) 27 ATC 121 and **Sahib Ram Vs. State of Haryana**, (1994) 28 ATC 747. In the case of Shyam Babu Verma (supra) their Lordships have held that recovery of excess amount paid on account of higher pay scale erroneously given to the petitioners since 1973 would not be just and proper as the petitioners received the higher scale without any fault or without any misrepresentation on their part. In Sahib Ram's case (supra) their Lordships

⑧ Corrected vide Law order  
dated 19-3-2000 is  
RA 134158

have again held that recovery of excess payment of pay is not permissible when an upgraded pay scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee. The Madras Bench of the Tribunal in the case of D.Chandrasekara Rao Vs. Union of India and others, (1994) 27 ATC 343 dealt with a case of wrong pay fixation from a retrospective date. While the Tribunal upheld refixation from a prospective date as correct and valid also for computing pensionary benefits yet the recovery of amounts on account of non-fixation was held to be not permissible.

5. The learned counsel for the applicant cited Railway Board's letter dated 14.2.1990 wherein it is clarified that the technical nongazetted staff who acquire qualification like B.Tech degree directly may be granted six advance increments. As two stages are not involved the only condition laid down is that the higher qualification should be acquired by the employee concerned at his own cost and the Railways have not borne any part of the expenses. According to the learned counsel this latest clarification dated 14.2.1990 does not lay down any condition that this qualification should be acquired after entering into the service. It is further stated that when it comes to a Group 'D' officer, no such conditionality is fixed and six advance increments are given but the discrimination is made with regard to Group 'C' only.

6. The point raised by the respondents have received a judicial interpretation in a decision by the Madras Bench of the Tribunal in the case of P. M. Babu Vs. Union of India, O.A. No. 1013 of 1990 decided on 28.1.1992 wherein it has been held that even though the higher qualification was acquired prior to the issue of the Board's letter dated 29.5.1989 the employee cannot be denied the benefit of higher incentive increment. A gap between the first instruction applicable upto 1988, and the second instruction issued in May 1989 has to be ignored and the later instruction was to apply during the interval period.

7. For the above reasons, the proposed recovery order dated 14th/16th March 1996 ~~P. S. 1995~~ has to be quashed and is accordingly quashed. The respondents may if they intend to withhold the two additional increments issue a show cause notice, hear the applicant's objection and then pass a speaking order. They may state that they propose to withhold on the ground that the applicant had passed the examination before joining the respondents. But with regard to the increments already granted with regard to passing the examination after joining the service, they have no case even on merits. The O.A. is accordingly disposed of. No costs.

  
(N. Sahu)  
Member (Admnv)

rkv

② Corrected vide Court's  
order dated 16.1.2000  
W.R.A 1341/97