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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 624/1997

New Delhi this the 17th day of December, 1999.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

Amar Nath Mishra S/O B.N. Mishra,
Retd. Guard 'A' Special,
R/O 128/708, K-Block,
Kidwai Nagar, Kanpur.

... Applicant

(By Shri B. S. Mainee, Advocate)

-Versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. Chief Personnel Officer,
Northern Railway,
Baroda House, New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Allahabad.

... Respondents

(By Shri B. S. Jain, Advocate)

O R D E R (ORAL)

Applicant ^{at} the time of his retirement on 31.7.1993 was drawing basic salary of Rs.2480 per month. After retirement, the aforesaid salary was reduced to Rs.2420 per month and the retirement benefits were paid over to the applicant on the basis of his reduced pay. The salary of the applicant was fixed at Rs.2360 per month w.e.f. 1.9.1990. Based on the salary so fixed, applicant was drawing a salary of Rs.2480 w.e.f. 1.9.1992 at the time of his retirement in July, 1993. Though it has been sought to be contended on behalf of the respondents that the applicant had been given an opportunity to appear before the appropriate authorities to show cause

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against the issue of the order reducing his pay, no material is placed on record to substantiate the aforesaid allegation. This Tribunal passed an order on 19.5.1999 which recites as under :

"Replying to para 4.5 of the OA Shri Jaian submits that the decision was not taken behind the back of the applicant but he was clearly given an opportunity which he refused to avail. As this is very material for the decision in this case, Shri Jain is asked to produce the record which shows that an opportunity has been given to the applicant."

Though the matter was adjourned on several occasions thereafter, no material has been placed on record to substantiate the aforesaid contention. It, therefore, follows that aforesaid decision to reduce the pay of the applicant was taken without issuing notice and without affording the applicant an opportunity of being heard. The said decision, therefore, has been taken in flagrant abuse of the principles of natural justice. The said order, in the circumstances, is liable to be quashed and set aside. In my view, the present case is on all fours with the decision of the Supreme Court in the case of **Bhagwan Shukla v. Union of India**, 1994 SCC (L&S) 1320 wherein it has been observed as follows :

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"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not

even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18-12-1970."


2. In my view, the present case is fully covered by the aforesaid decision of the Apex Court. The present case cannot be said to be covered by the decision of the Supreme Court in Punjab State Electricity Board v. Baldev Singh, 1998 SCC (L&S) 1369 which has been relied upon by Shri Jain appearing on behalf of the respondents. Aforesaid decision pertained to an employee who had been reverted to his substantive post from the post to which he was promoted on ad hoc basis. It is well settled that when an employee is promoted on ad hoc basis, the employee does not get a vested right on the promotional post which is purely on ad hoc basis. Hence, no hearing is contemplated for the purpose of reverting him back to his substantive post. Aforesaid decision, in my view, has no application to the facts

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of the present case. Present O.A., in the circumstances, deserves to be allowed and the impugned order of reduction of applicant's salary is liable to be quashed and set aside.

3. Present O.A., in the circumstances, is allowed. The impugned order of reduction of applicant's pay is quashed and set aside. Applicant, it goes without saying, will be entitled to the consequential reliefs of payment of his retiral dues on the basis of his last pay drawn, namely, Rs.2480 per month. The difference, which the applicant will be entitled to on the basis of this order, should be paid to him within a period of three months from the date of the service of this order on the respondents. The amount payable to the applicant will carry interest at the rate of 12 percent per annum from the date of retirement of the applicant till payment. Applicant will also be entitled to costs of the present application, which I quantify at Rs.2,500/- (Rupees two thousand five hundred).


(Ashok Agarwal)
Chairman

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