

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.492/2014

Reserved on :28.01.2021
Pronounced on: 01.02.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Bajrang Lal Sharma Son of Late Shri Govind Prasad Sharma, aged about 62 years, resident of 1108, Gali No.4, Chopra Farm, Dadwara, Kota Junction, Kota and retired on 31/08/2012 from the post of Chief Office Superintendent, Office of Chief Works Manager (Work Shop), West Central Railway, Kota Division, Kota.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur (MP).
2. General Manager (Establishment), Western Railway, Church Gate, Mumbai.
3. Chief Works Manager (Work Shop), West Central Railway, Kota Division, Kota..

...Respondents.

(By Advocate: Shri M.K.Meena for respondents No.1 & 3
Shri Anupam Agarwal for respondent No.2)

ORDER

Per: Dinesh Sharma, Member (A):

Very briefly put, the OA is for directing the respondents not to revise the pay fixation which was allowed way back in the year 1999, and to quash the letters dated 20.05.2013

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and 27.02.2013 (Annexures A/1 and A/20) along with the show cause notice dated 25.11.2010 (Annexure A/10). He has also prayed for allowing retirement benefits on the pay of Rs.22,510/-, instead of Rs.22,100/-, to pay the pay difference of these benefits and to refund Rs.1,03,065/- recovered at the time of retirement. The respondents have replied stating that the earlier pay fixation (of the year 1999) was wrong since Special Pay of Rs.70/- was erroneously taken into consideration while doing fitment at the time of Vth Pay Commission. They have corrected it, after issuing show cause notice, and fixed the pay correctly. The respondents have cited the judgment of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others** [(2012) 8 SCC 417] to support their contention that any amount wrongly paid can always be recovered, even if there was no misrepresentation or fraud by a party.

2. The applicant filed a Miscellaneous Application (483/2020) requesting for early hearing of the matter stating that an OA (OA No.20/2014) with similar facts has been decided by this Tribunal on 06.02.2020, and the decisions in that OA (Annexure MA/1 and MA/2) should be taken on record. The MA was allowed.

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3. The matter was heard through video conference on 28.01.2021. The learned counsel for the applicant argued that the matter decided by this Tribunal in the above mentioned case on 06.02.2020 is exactly the same, and therefore, the same decision should be followed in the present case. The learned counsel for the respondents argued that even though the underlying facts and the issue may be the same, in the present case, the recovery had already been made at the time of the retirement. In the other case (20/2014), the applicants therein had approached this Tribunal *before* their retirement, the recovery was stayed by the interim order of this Tribunal, and eventually not allowed by the aforementioned order dated 06.02.2020.

4. After going through the pleadings and hearing the arguments of the learned counsel of both the parties, it is clear that there is no dispute regarding the facts involved in this case. The issue is whether an erroneously paid amount can be recovered from a low paid employee decade(s) after such erroneous payment. Quoting from Rafiq Masih, we have decided against it (in OA 20/2014), in a matter before us since the same year (2014), related to the same type of erroneous payment, made to same type of employees, by the same respondents, which was sought to be recovered after almost the same length of time. The only difference is

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that the applicant, in the present OA, had already retired and the amount was already recovered when he came before us. The applicants in OA 20/2014, who also approached us around the same time, were still in service and could get a stay against such recovery and escaped it. This Tribunal has to follow its own decisions and cannot take divergent decisions on the same matter unless the facts are materially different. The right to equality enshrined in the Constitution of India mandates treating similarly placed persons in a similar fashion. The principle of *stare decisis* binds us to follow our own rulings, and the rulings of superior courts, unless there are adequate grounds to distinguish. We have, in our decision dated 06.02.2020, found the recovery of exactly similar overpayment, from exactly similar employees, as "impermissible in law". In this situation, taking any other view, only on ground of the amount having been already recovered from the applicant in this case, would not be fair. Hence, we partly allow the OA, following our decision in OA 20/2014, and find that the recovery of the overpaid amount, in this case too, is impermissible in law.

5. In the light of the above discussion, we direct the respondents to refund the amount of money (Rs.1,03,065/-) recovered from the applicant on account of the allegedly

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erroneous overpayment, within a period of six months from the date of receipt of a copy of this order. We find, from the records of these proceedings, that the applicant has also been partly responsible for the delay in adjudication of this case. He has also, undoubtedly, been a beneficiary of the earlier overpayment for a number of years. Hence, no interest need to be paid on this amount, if refunded within the time allowed by us. However, any *further* delay (beyond six months given for compliance of this order) would make the respondents liable to pay interest at the currently prevailing GPF rates, from the date the amount was recovered from the applicant.

6. The OA stands disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/