

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 291/621/2019
with
MISC. APPLICATION NO. 291/219/2020**

Order reserved on 17.08.2020

DATE OF ORDER: 21.08.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Donald Anil Kumar son of Late Shri Barkat Salim Rao, aged about 59 years, Resident of House No. 632/50, Behind Revenue Board, Civil Lines, Ajmer – 305001 and presently working as Senior Technician Fitter (MCF) (Ticket No. 57680), Shop No. 31, under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.

....Applicant

(Group-C, Mob.: 94136-93556)

Shri C.B. Sharma, counsel for applicant (through Video Conference).

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer – 305001.
3. Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.

4. Senior Divisional Finance Advisor & Accounts Officer, Carriage Work Shop & Store, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri M.K. Meena, counsel for respondents (through Video Conference).

ORDER

Per: Hina P. Shah, Judicial Member

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

- “(i) That the respondents may be directed to hold good pay & allowances at the stage of Rs. 43600 (level-5 or 6) as on 30/06/2019 with the benefits of annual increment as on 01/07/2019 by quashing order dated 24/08/2019 (Annexure- A/1) and letter dated 20/09/2019 (Annexure- A/2) with all consequential benefits.
- (ii) That respondents be further directed not to recover any amount from pay & allowances and further retirement benefits of the applicant and to hold good the pay fixation allowed time to time prior to passing order dated 24/08/2019 (Annexure-A/1) by quashing any order passed by the respondents showing recovery which nowhere served upon the applicant with all consequential benefits.
- (iii) That respondents be further directed to reconsider the re-fixation of the applicant for allowing one additional increment as per order dated 23/03/2012 (Annexure A/10) with all consequential benefits.

- (iv) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (v) That the costs of this application may be awarded."

2. The brief facts of the case as stated by the applicant are that he was initially appointed as a Helper/Khallasi on 06.09.1986. After working on several posts, finally he was working as Senior Technician Fitter (MCF). He was allowed pay and allowances after due fixation since 1986 and time to time his service records were verified by the Accounts Department. His pay was re-fixed in 2001 at Rs. 3500/- and, thereafter, he was continuously drawing pay and allowances. The applicant was allowed the benefits of MACP-II w.e.f. 01.09.2008 vide order dated 17.11.2009. He was allowed Grade Pay Rs. 2400/- after passing Trade Test vide order dated 04.09.2010 and his pay was fixed at Rs. 8840/- with Grade Pay Rs. 2400/-. Thereafter, he was allowed Grade Pay Rs. 2800/- after passing Trade Test for grade first vide order dated 04.12.2014 and his pay was fixed at Rs. 10860/- plus Grade Pay Rs. 2800/-. He was further given promotion to the post of Senior Technician Fitter

(MCF) vide order dated 08.07.2019 and his pay was fixed to Level-6 in the pay scale Rs. 35400-112400 at the stage of Rs. 43600/- w.e.f. 01.07.2019. Since his date of birth was 27.06.1960, he retired on 30.06.2020 and just prior to his retirement, the respondents re-fixed his pay vide order dated 24.08.2019 since 2001 i.e. for last 19 years and recovery was ordered. In this regard, the respondents only stated that benefits of Rs. 100/- were allowed to him, whereas Rs. 75/- has been shown towards reduction in the year 2001. The applicant represented against the order dated 24.08.2019 before the respondent No. 3 but he was informed vide letter dated 20.09.2019 that wrong fixation has been done in his service book, which has been corrected and, therefore, fixation has been correctly done. It is the grievance of the applicant that his pay has been reduced from Rs. 43600/- to Rs. 42300/- and that re-fixation of his pay has been done without hearing him and without considering his representation. Pertaining to his grievance of increments, it is stated that the month of increment remained June since 1997 and in 2005 also allowed increment on 01.06.2005 and further due on 01.06.2006. As per Railway Board's order No. 40/2012 dated 23.03.2012, one additional increment was

allowed to those employees, whose annual increment fell between February to June 2006 but the respondents nowhere considered the same in fixation of pay by which he was put to financial loss. The applicant has also relied on the OM issued by the DOPT as well as on the Circular/OM issued by Railway Board on the issue of wrongful recovery of excess payments made. Therefore, the action of the respondents is arbitrary, illegal and unjustified. Hence, the applicant has approached this Tribunal for quashing the order dated 24.08.2019 (Annexure A/1) and letter dated 20.09.2019 (Annexure A/2) with all consequential benefits.

3. This Tribunal issued notices to the respondents and vide its order dated 11.10.2019, as an interim measure, granted stay towards order dated 24.08.2019 (Annexure A/1) on recovery till the next date of hearing.

4. The respondents, after issue of notices, have filed their reply. The respondents, besides denying the contention of the applicant, further stated that as per the office order dated 24.08.2019, employee's pay was

re-fixed due to anomaly in pay fixation in the year 2001 as the same was wrongly done. So proper re-fixation was done and orders were issued accordingly. As per the respondents, the applicant was duly informed about wrong fixation vide its order dated 24.08.2019 that if any irregularity is found later, the same will be corrected. Accordingly, applicant was informed vide letter dated 20.09.2019 and it was categorically mentioned that after re-examining his service book, the pay of the applicant has been re-fixed inadvertently and the same has been corrected subsequently. They have further reiterated that it is well settled principle that mistake is required to be rectified at any point of time as and when it comes to the knowledge and, therefore, letter dated 20.09.2019 is correctly issued and proper re-fixation has been done. With regard to the justification on increments, it has been submitted by the respondents that the benefit of RBE 40/2012 are given to the applicant vide No. CE.765/1/ (Pay fixation in VIth PC) dated 28.07.2012. Pertaining to justification on recovery, it has been stated that as per Para 1327 (FR 31A) of the Indian Railway Establishment Code, it is clear that the pay of a railway servant who promotion or appointment to a post is found to be or to have been

erroneous shall be regulated in accordance with any general or special orders issued by the competent authority in this behalf. Therefore, the respondents stated that as there were inadvertent mistakes in re-fixation of pay of the applicant, the same were rectified and proper re-fixation has been done as per rules.

5. It is brought to our knowledge that the applicant has also filed C.P. No. 291/39/2020 in this matter and the respondents have also filed an M.A No. 291/219/2020 for vacation of interim order dated 11.10.2019.

6. Heard learned counsels for the parties through Video Conference and perused the material available on record and also the judgments produced by the parties.

7. Learned counsel for the applicant submitted that the applicant was allowed due fixation of pay as per the orders issued by the respondents from time to time, which was checked by the Accounts Department regularly for promotions, etc. The action of the

respondents to reduce the pay of the applicant at the verge of his retirement and that too after 19 years is not justified and as such the action of the respondents is liable to be quashed and set aside. The respondents have not followed principles of natural justice and did not disclose the facts under which adverse action of recovery was taken by them. The respondents are recovering the amount for no fault of the applicant and that he has never misrepresented while benefits and pay and allowances were granted to him. The applicant relied on the following judgments:-

- i) Bhagwan Shukla Vs. Union of India & Ors., 1994 SCC (L&S) 1320.
- ii) Sahib Ram Vs. State of Haryana & Ors., 1995 (1) SLJ (SC) 151.
- iii) State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors., 2015 (2) SCC (L&S) 33.
- iv) Norat Mal Vs. Union of India & Ors. (OA No. 269/2019) decided by this Bench of the Tribunal on 16.12.2019 and confirmed by the Hon'ble High Court of Rajasthan, Jaipur Bench in D.B. Civil Writ Petition No. 1774/2020 vide judgment/order dated 19.02.2020.

8. On the other hand, learned counsel for the respondents argued that it was brought to the notice of the applicant by the order dated 24.08.2019 that irregularity pertaining to pay has been found on his

promotion to the tune of Rs. 100/- while going through the service book for which he was not entitled and, therefore, recovery of excess payments will be carried out. He was also given a chance to put his say/represent on the same within 5 days of the receipt of the said letter. Thereafter, vide letter dated 20.09.2019, it was brought to the notice of the applicant that after re-verifying his records, it was found that there were irregularities in payments made to the applicant and, therefore, the discrepancies are required to be corrected. Thus, the respondents state that there is no illegality in their orders and the present Original Application deserves to be dismissed. The respondents relied on the order dated 20.09.2019 passed by Chandigarh Bench of this Tribunal in the case of Jagir Ram Vs. Union of India & Ors. (OA No. 060/1262/2017).

9. It is clear that the facts are not in dispute with regard to the applicant's appointment as well as his several promotions and that he stood retired on 30.06.2020. It is also clear from the service book entries that the applicant has been promoted on several occasions and the same has been entered in his service records regularly. On several promotions,

his pay was fixed accordingly. Time and again on several occasions, his service book must have been verified by the concerned authorities for making the said entries as well as by the applicant, who has got the pay benefits. It is noted that the applicant was appointed initially on 06.09.1986 as Helper/Khallasi. He has got promotions/fixation of pay in 2008, 2009, 2010, 2014 and lastly w.e.f. 01.07.2019 his pay was fixed at Rs. 43600/-. Now the respondents, all of a sudden, by their order dated 24.08.2019 (Annexure A/1) state that on verification of service book of the applicant, it is noticed that on promotion he has been granted the benefit of Rs. 100/- for which he was not entitled and, therefore, his pay will be fixed accordingly. The respondents have shown re-fixation since 2001 and have observed in its order dated 24.08.2019 that the applicant should be ready for the recovery. It is seen that the applicant's salary has been reduced from Rs. 43,600/- to Rs. 42300/-. He was given 05 days' time to submit if he had any grievance on the said order. The applicant has made a representation immediately before the authorities on 04.09.2019 (Annexure A/9) stating that no recovery should be carried out as he is retiring on 30.06.2020 and that he is informed about wrong fixation only 9

months prior to his retirement along with other submissions. To this, the respondents vide their letter dated 20.09.2019 (Annexure A/2) stated that his service records have been re-checked and verified and it is found that in service records there are several discrepancies, which are rectified and, therefore, the pay fixation done as per order dated 24.08.2019 is just and proper. It is clear that the pay fixation in the case of the applicant has been verified time and again, but still just before his retirement, respondents inform the applicant that his pay fixation is not proper and that he has been wrongly given Rs. 100/- on promotion so re-fixation was carried out since 2001. Though, the respondents have informed the applicant but it was mere formality as re-fixation was done sometime just before his retirement. The respondents should have checked the incorrect fixation at the relevant time of recording entries in his service book. It cannot be said that just when the applicant is about to retire the respondents come out with a plea that since 2001 the applicant is drawing Rs. 100/- more and, therefore, if there is any discrepancy, the same should be allowed to be rectified. It is clear that the applicant neither was at any fault nor he has misrepresented. Also the respondents came out with wrong fixation only during

his retirement. The case of the applicant is squarely covered by judgment passed by the Hon'ble Apex Court in the case of Rafiq Masih (supra) and it is clear that no recovery shall be made from either retired employees, or the employees who are due to retire within one year, of the order of recovery. Also in the present matter, no recovery can be made from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. Also no recovery can be made from a Class III or Class IV employee. The case of Jagir Ram (supra) relied by the respondents will not come to their shelter as facts of the said case and the present one are different. The question in dispute in Jagir Ram's case was with reference to mistake in considering the period as qualifying service, which was arbitrarily reduced and in violation of principles of natural justice of which the applicant was also aware from the entries made in his service book and, therefore, it was held that recovery was justified, whereas, in the present case, the situation is completely different. The Hon'ble Apex Court's judgment in the case of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, (2016) 14 SCC 267 will also not come to the rescue of the respondents as in that case, recovery was permitted on

the basis of the undertaking given by the employee. Therefore, it is clear that the recovery with regard to pay fixation carried out in the case of the applicant vide order dated 24.08.2019 is highly unjust and improper. It was the duty of the concerned officers to take adequate steps of proper fixation of pay at the appropriate time and not when the applicant is about to retire. Therefore, the question of recovery pursuant to re-fixation of his pay will be harsh and, therefore, impermissible. The respondents will be required to stop the recovery and consider his pay as was existing prior to the passing of the impugned order. As far as the question of increment is concerned, as applicant was aware about the same from the records/ entries made in his service book carried out at that relevant time, it is, therefore, highly unjust for him to demand the same in 2019 at the time of filing of the present Original Application. Therefore, the applicant should have no grudge with regard to his increment as the same was rightly done by the respondents.

10. In view of the observations made above, the present Original Application is allowed and the impugned order dated 24.08.2019 (Annexure A/1) and

letter dated 20.09.2019 (Annexure A/2) are quashed and set aside with all consequential benefits. No costs.

11. In view of the order passed in the Original Application, Misc. Application No. 291/219/2020 for vacation of interim order dated 11.10.2019 is hereby dismissed.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat