

(10)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A.1035/90

Date of decision:

Rabindra Nath Sehgal .. Applicant
Union of India & ors. .. Respondents.
Sh.B.S.Mainee .. Counsel for the applicant.
Sh.P.S.Mahendru .. Counsel for the respondents

J U D G E M E N T (ORAL)

The applicant, by this O.A., prays for quashing Annexure A-1 dated 8.5.90, by which the respondents have directed the recovery @ 200 P.M. to be made for a period between 4.7.78 to 30.11.86. The respondents, on notice, appeared and opposed the prayer, in their counter and inter alia raised several points contending that the applicant is not entitled to get any relief. The pay of the applicant was fixed in the year 1978 and he continued receiving the pay as fixed by the respondents till the date of his retirement. The applicant retired from service in January, 1992. The applicant filed this O.A. on 21st May, 1990 praying for an interim relief. On 29.5.90 this Tribunal admitted the O.A. for final hearing and by ex-parte ad interim order stayed the operation of the impugned order, Annexure A-1. Hence, the recovery @ Rs.200/- P.M. from the salary of the applicant could not be carried out. The only contention of the Sh.B.S.Mainee is that before the impugned order was passed the applicant was not served with any notice. Had he received notice, he would have shown cause to it and justify his pay fixation. Sh.B.S.Mainee also contended that Annexure A-1 contravenes the principles of natural justice. Sh.P.S.Mahendru

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learned counsel for the respondents controverted the arguments of Sh.B.S.Mainee.

2. In the case of K.S.Sridharan and other of Madras Bench of the Tribunal (1991(2) page 229A.I.S.L.J. held that over payment made to the employee due to wrong fixation, cannot be recovered after a long period. In another case of K.L.Mamurthy, Madras Bench (1991(1) A.T.J. page 459), the same view was taken. I place reliance on these two judgements and I am of the view that when the respondents fixed the pay of the applicant and remained making the payment at the rate fixed to the applicant, they should have followed the principles of natural justice and should have issued a notice to the applicant as to why due to wrong fixation of the pay the recovery should not be made from his salary. It is also observed that the pay was fixed in 1978 and the applicant remained getting the salary at the rate fixed by the respondents from 1978 till 1986 and then later on till the date of retirement. A long period has lapsed since then and hence, the principles of K.S.Sridharan (Supra) shall be applicable in this case. Furthermore I have also perused Annexure A-12 which is a Schedule to the Railway Code. According to item 20 under heading 'write off'

"To sanction write off the recovery of amounts overdrawn by non-gazetted Rly. servants or otherwise due from them if the erroneous payment or the amount due is discovered by Account or Audit beyond one year"

Full powers were vested in Dy.C.P.O. According to this schedule also if the period of one year has

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been lapsed then the Dy.C.P.O. has power to write off and the recovery should be awarded. Sh.P.S.Mahendru has brought to our notice Annexure 9, a letter of Railway Board dated 18.9.86 in which it is mentioned " it is, therefore, advised that the pay of Sh.Sehgal may be refixed under the rules, however, the excess payment made so far may be waived off, if found feasible under your own powers in consultation with your FA & CAO". This Railway Board letter also refers annexure A-12.

3. In consequence, we allow this O.A. and quash annexure A-1 and direct that the respondents shall not make any recovery from the salary and retirement of the applicant benefits, / according to the principles laid down in the case of K.S.Sridharan (supra). If any amount has been recovered from the salary or from the retirement benefits in pursuance of annexure A-1, then such recovery shall be refunded to the applicant as soon as possible preferably within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)