

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Allahabad : Dated this 10 th day of September, 1998

Original Application No.1032/1996

District : Jhansi

CORAM: -

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

1. Prakash Goyal S/o Late Shri P.N. Goyal,  
R/o Gusainpura, Jhans.
2. Ram Charan S/o Shri Babu Lal  
R/o 263, Talpura, Jhansi.
3. Jata Shanker S/o Shri Ram Narain  
R/o B-236, Leendayal Nagar, Jhansi.
4. D.S. Verma S/o Shri Jawahar Lal  
R/o 530/2, Bhyanchand Colony, Sipri Bazar,  
Jhansi.
5. K.K. Chokra S/o Shri Shyam Dass,  
R/o Matra Smittri Bhawan, Khati Baba,  
Jhansi.
6. G.D. Ahirwar S/o Shri Hardas  
R/o 286/5-A,  
Khushipura, Jhansi.
7. Manchar Lal S/o Shri Baij Nath  
R/o 670, Nai Basit, Jhansi.
8. K.C. Shukla S/o Shri R.S. Shukla,  
92, Prem Ganj, Sipri Bazar, Jhansi.
9. R.P. Kotnala S/o Shri Balig Ram  
R/o 669, Awas Vikas Colony,  
Jhansi.
10. R.S. Tiwari,  
S/o Shri Shyam Lal  
R/o 153, Tanki Wala Hata,  
Masiha Ganj, Jhansi.
11. Mohd. Salim S/o Mohd Ibrahim  
R/o RB-III, Rani Laxmi Nagar,  
Jhansi.
12. S.K. verma, S/o Shri Tundi Singh,  
R/o 410/14, Prem Ganj, Sipri Bazar,  
Jhansi.
13. B.P. Kanojia  
R/o 4/419, Balu Bang,  
Agra.
14. V.P.S. Sandhu S/o Shri Bhagat Singh  
R/o RB-III, 609/B, Rani Laxmi Nagar, Jhansi.
15. G.N. Tiwari S/o Shri M.L. Tiwari R/o 554/8  
Adarsh Nagar, Sipri, Bazar, Jhansi.

16. R.K. Agrawal S/o Shri G.L. Agrawal,  
R/o 280/4, Murad Ali Compound, Sipri Bazar,  
Jhansi.
17. R.S. Pachauri S/o Shri P.C. Vidhyarthi,  
R/o 236, Deen Dayal Nagar, Jhansi.
18. L.D. Sagar, S/o Shri Haribilash  
R/o 330/2, Sipri Bazar, Jhansi.
19. K.D. Pathak, S/o Shri Durga prasad  
R/o 244, Deen Dayal Nagar, Jhansi.
20. Pratap Singh, S/o Shri Tota Ram,  
R/o 61, Behind Khati Baba, Jhansi.

(Sri R.K. Nigam, Advocate)

. . . . . Applicant

Versus

1. Union of India through the Secretary  
Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Mumbai CST.
3. Financial Adviser and Chief Accounts Officer,  
Central Railway, Mumbai CST.
4. The Executive Director,  
Pay Commission, Railway Board,  
Rail Bhawan, New Delhi-110001.
5. Workshop Accounts Officer, Central Railway  
Workshop, Jhansi.

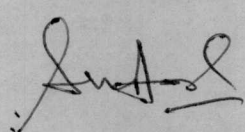
(Sri V.K. Goel, Sri GP Agrawal, Advocates)

. . . . . Respondents

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M.

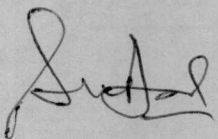
In this OA the applicants make a prayer to quash the impugned order dated 8-5-1996 and to direct the respondents to not to reduce the pay of the applicant or to make any recoveries under the garb of the impugned order.



2. In brief, the facts of the case as stated by the applicants are that the applicants are permanent employees and have been working as Accounts Stock Verifiers in the pay scale of Rs. 1400-2600(RPS) in Jhansi Division. The Railways have a system of granting incentives by way of additional increments to the Accounts Staff in the category of Stock Verifiers who



pass Appendix 'IV' Examination. The Railway Board has issued a letter dated 5-11-1974 addressed to all the General Managers which provides that Accounts Stock Verifiers of Railways will be given two additional increments in addition to the normal increments in confirmation on passing of Appendix IV Examinations. It is submitted that respondent no.4 has issued a letter dated 25-7-1995 that three advance increments granted to the Stock Verifiers on passing of Appendix IV Examination may be treated as additional increments. It is further submitted that respondent no.4 has wrongly clarified that the said additional increment will not be treated as part of pay and, therefore, is not to be reckoned for calculating dearness allowance. It is submitted that by not treating advance increments as part of basic pay the very purpose of granting incentive is defeated and by the said clarification Rs.220/- per month should be less/deducted from the salary of the applicants being a portion of the dearness allowance. It is further submitted that the impugned order is quite arbitrary and against the principles of natural justice and reduction in pay would ultimately attracts the provisions of Article 311 of the Constitution of India. Therefore, the order is liable to be quashed. Therefore, on the basis of averments made in this original application, the applicants make a prayer to quash the impugned order dated 8-5-1996 and to direct the respondents to not to reduce the pay of the applicant and to not to make recovery in the garb of the impugned order.



3. The counter was filed by the respondents. In the counter it was stated that a policy decision was taken by the Railway Ministry by letter dated 25-7-1995 which is not challengeable by the applicants. It is

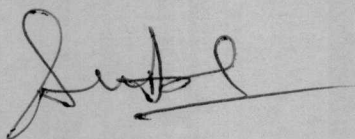
also submitted that this joint application by 20 applicants is not maintainable in law. The definition of pay was rightly appreciated by the respondents as a policy decision and in pursuance to that any incentive granted on passing these examinations is not treated as part of pay but a separate element and does not count for dearness allowance or other purpose. Hence, the demand of the applicants is unjustified and uncalled for. The advance increments were granted to the Stock Verifiers after passing the examination but these advance increments are not the part of the pay. Therefore, the applicants are not entitled to reliefs sought for.

4. Rejoinder affidavit has been filed by the applicant reiterating the facts mentioned in the OA and submitting that the impugned order dated 8-5-1998 is bad in law and any recovery made in pursuance of this order is not sustainable.

5. Heard learned counsel for the applicant as well as the learned counsel for the respondents and perused the whole record carefully.

6. The prayer of the applicants in this case are twofolds:-

- (a) to quash the impugned order dated 8-5-1998.
- (b) to direct the respondents not to reduce the pay of the applicants or to make any recovery in pursuance to the order dated 8-5-1996.



7. Admittedly the applicants are working as Accounts Stock Verifiers in the Railways and passed Appendix IV Examination and, therefore, they are



entitled to three additional increments as incentives in addition to their normal increments.

8. It is contended by the learned counsel for the applicant that respondent no.4 has wrongly clarified that the said additional increment will not be treated as part of pay. Therefore, no dearness allowance is admissible to them. They have further contended that on this wrongly qualifying pay of the applicant was reduced to Rs.220/- per month and any recovery in pursuance of the impugned order is violative of the the principles of natural justice.

9. On the other hand, learned lawyer for the respondents has argued that three increments granted to the applicants are only incentives and they are not part of the pay. Therefore, any recovery of dearness allowance already paid to the applicants is not in any way bade in law and it does not violate the principles of natural justice.

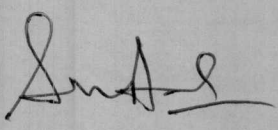
10. We have given our thoughtful considerations to the rival contentions of both the parties and perused the whole record carefully.

11. As regards the first contention of the learned lawyer for the applicant is concerned, it is submitted by the learned lawyer for the applicants that by the impugned order the vested rights of the applicants have taken away. Therefore, the impugned order is arbitrary, discriminatory and against the principles of natural justice.

12. We are not inclined to accept the above submission of the learned lawyer for the applicants on

the ground that the impugned order is merely a clarification and not an amendment with retrospective effect of any order already passed. Therefore, the impugned order which provides only clarification to the order already passed, there is no justification to quash the impugned order dated 8-5-1996. Rule 123 clearly states that the Railway Board has full power to make Rules of general application to Group 'C' and 'D' Railway Servants under their control. Rule 1303 refers to pay. It does not include the present incentive offered to the employees. It is a policy decision taken by the Railway Board and this Tribunal has no basis to interfere in the policy decision. I, therefore, see no merit in the contentions raised by the learned Counsel for the applicant.

13. As regards the second contention of the applicants is concerned, it is submitted by the learned counsel for the applicant that the order of recovery in pursuance to that order dated 8-5-1996 with retrospective effect is bad in law, inasmuch as, it also violates the principles of natural justice. This argument was objected to by the learned lawyer for the respondents and who submitted that in pursuance of the impugned order recovery is not in any way bad. In the State of Gujarat Vs. Amba Lal Hyder Bhai and Ors, AIR 1976 SC 2002, it was held that Rules of natural justice are not Rules embodied always expressly in a statute or in Rules framed thereunder. They must imply from the nature of duty to be performed in a statute. What particular rules of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of the case.



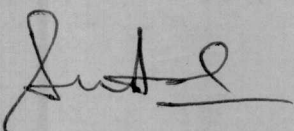


14. In Arjun Singh Vs. UOI, 1997 CAT Jodhpur 98, it was held that if recovery is made on account of overpayment of pay and allowances during the last 10 years without show cause notice, directions given to waive the same.

15. In Nathi Lal Vs. UOI, 1997 CAT Jodhpur 348, it was held that the overpayments made not on misrepresentation of employee cannot be recovered. It was further held that an amount which has been paid to the employee in pursuance of an order passed by the competent authority and if remained vague for a number of years cannot be recovered subsequently on revision of policy.

16. In Laxmi Chand Vs. UOI & Ors, 1998, ARC Page 590, it was held that if order involves civil consequences and has been issued without affording opportunity to the applicant, such an order cannot be passed without complying with audi-alteram-partem meaning thereby that the party should be given an opportunity to meet his case before an adverse decision is taken.

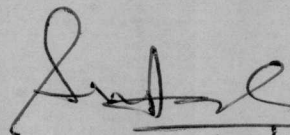
17. On the basis of the above legal proposition, it becomes abundantly clear that if an amount has been paid to an employee in pursuance of an order issued by the competent authority and after a number of years because of some clarification, subsequently there is a change in the order, in pursuance of that order no recovery should be made as the overpayments have not been made on misrepresentation of the employee and it clearly violates the principles of natural justice. In the instant case no recovery can be made in pursuance

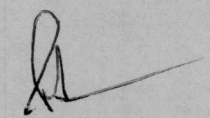


of the order dated 8-5-1996 as it violates the principles of natural justice. If the respondents have already paid the dearness allowance the same is not liable to be recovered from the applicants.

18. Therefore, this application is allowed to the extent that the impugned order is prospective and the respondents shall not make any recovery from the applicants of dearness allowance already paid before passing the impugned order dated 8-5-1996 at Annexure-1.

19. No order as to costs.

  
Member (J) 10/9/98

  
Member (A)

Dube/