

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD

DATED : ALLD. ON THIS

16<sup>th</sup> DAY OF SEPTEMBER , 1998

CORAM : HON'BLE SHRI S.L.JAIN, MEMBER (J)

ORIGINAL APPLICATION NO. 357 OF 1996

R.R.Sharma S/o Late Shri K.L.Sharma,  
R/o House No.21D/1,Kala Danda,Himmatganj,  
Allahabad.

..... Applicant

C / A : Shri K.S.Saxena, Advocate

**Versus**

1. Union of India through General Manager,  
Northern Railway,Baroda House,New Delhi.
2. Divisional Railwy Manager,  
Northern Railway, Allahabad.
3. Divisional Personnel Officer,  
Northern Railway,DRM's Office,  
Allahabad.

..... Respondents

C / R : Shri S.K.Jaiswal , Advocate

O R D E R  
(By Hon'ble Shri S.L.Jain, Member(J))

This is an application under section 19 of the Administrative Tribunals Act,1985 for release of Rs.1,500/-alongwith interest @ 18% p.a. compounded annually since September,1980 till the date of payment.

1. There is no dispute between the parties in respect of fact that the applicant retired as Head Clerk (O.S.) on 31.08.1980 from the office of the Divisional Railway Manager,Northern Railway, Allahabad, out of settlement dues

*S.Y.*

Rs.1,500/-were ~~retained~~ out of D.C.R.G. for which no prior notice was given to the applicant, the said amount is said to be in respect of alleged excess amount paid to the applicant with regard to fixation of pay when he was promoted to the post of Head Clerk. The applicant had brought this matter to the Pension Adalat held at Northern Railway to ultimately decide the case and their judgement has been communicated to the applicant vide letter dated 13.12.1995 (Annexure A-1).

2. The applicant's case in brief is that he was holding substantively the post of Senior Clerk Grade Rs.130-300 (PS) and was promoted to the post of Asstt. Personnel Inspector Grade Rs. 210 - 320 (PS), subsequently he was promoted from the post of Asstt. Personnel Inspector to the post of Head Clerk Grade Rs. 210 - 329 (PS). His pay was fixed taking a basis from the immediate lower post and he continued on the said post since 1973 to 1976 and has drawn the salary and allowances as per fixation. The above said Rs.1,500/-were withheld without no prior notice which is illegal one. The respondents denied that from the post of Asstt. Personnel Inspector to the post of Head Clerk is a promotional post. They alleged that no notice was necessary and only a mistake in fixation of pay which has occurred was rectified, excess amount paid is deducted.

3. On perusal of R.A. in para 12 it is mentioned that the promotion of the petitioner from the post of Asstt. Personnel Inspector to the post of Head Clerk has been as per extant rules, as certified by the D.P.O.(C) vide his note dated 18.12.80 a copy of which has already been attached as annexure A-3 to the Original Application.

4. On perusal of the annexure A-3, I find that it is a letter by D.P.O. which mentions that A.P.I.'s post is a cadre post where only clerks of Personnel Branch stand for promotion in their direct channel of promotion. Fixation of pay of Asstt. Personnel Inspector and thereafter with reference to that of Head Clerk is in accordance to the order issued by the

Board from time to time and, therefore, there is no irregularity whatsoever in the matter of fixation of pay as such, no representation, therefore, on this amount stands, fixation of pay is done at Rs.750/- stands.

5. This is an opinion of the D.P.O but this opinion cannot be said to be the <sup>letter</sup> ~~law~~, even the said opinion is considered, it is clear that clerks of Personnel Branch are to be promoted in their direct channel of promotion to the post of <sup>if M</sup> A.P.I.s. , thus <sup>is</sup> entirely a different cadre.

6. The Post of Head Clerk on which the applicant was posted from the post of A.P.I. is a different cadre, <sup>as</sup> no such service rules are brought to the notice of this Bench that from the post of A.P.I. , a channel for promotion to the post of Head Clerk is there.

7. When the post of Head Clerk is filled from a different cadre, then fundamental rule 22 is not applicable , hence (1994) 26 Administrative Tribunals Cases 187 P.S.Subramaniam and another V/s Union of India & others cited by the learned counsel for the applicant , is not applicable to the present case.

8. The applicant in his R.A. relied on rule 9 of Railway Services(Pension)Rules,1993. The said rules have come in force on 03.12.1993 while the applicant's retirement took place on 31.08.1980, hence the said rules are not at all applicable to the case of the applicant. Furthermore, the said rule is in respect of withholding or withdrawing the pension when in a departmental enquiry or judicial proceeding the petitioner is found guilty of grave misconduct or negligence during the period of his service. We have no case before us of such nature , hence the said rule is of no assistance to the applicant.

9. No such rule has been brought to the notice of the Bench that before withholding of the excess payment, prior notice and hearing is necessary.

SMJ / -

10. The applicant had submitted his matter to the Pension Adalat and found no favour from the said Adalat except to the extent of Rs.54/-, atleast it is a case where the matter was referred by the applicant himself to the Pension Adalat and if a decision goes against the applicant, he is estopped by the conduct in agitating the said matter before this Tribunal. Atleast the decision of a Pension Adalat can be treated as an arbitration which cannot be challenged by way of an Original Application on all the counts.

11. In the result, it is found that post of A.P.I. is not from the channel of clerks who are to be promoted for Head Clerk. It is entirely a different cadre, hence fundamental rule 22 has no application and applicant is debarred after a decision of the Pension Adalat on the basis of estoppel by conduct.

12. In the result, the Original Application is partly allowed to the extent of Rs.54/- only payable to the applicant with interest thereon since 01.12.1980 @ 12% p.a. compounded annually. Looking to the facts and circumstances of the case, it is ordered that parties shall bear their own costs. The amount so calculated be paid to be applicant within two months of receipt of the order.

J.L.BRN  
MEMBER (J)

/rsd/