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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 11th DAY OF ^{November} OCTOBER 1998

CORAM: HON'BLE MR. S.DAYAL, A.M.
HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO.763 OF 1996

Puran Chand Wadhwa aged about
56 years son of late Shri Ganga Ram
R/o 1/1764, Gali No.3, Chandra Nagar
Saharanpur.

... Applicant

C/A Shri Rakesh Verma, Advocate.

Versus

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Personnel Officer,
Northern Railway, Ambala Cantt.
Ambala.

.... Respondents

C/R Shri Prashant Mathur, Advocate.

OCT 1998

P.D.M.

ORDER

BY HON'BLE MR. S.L. JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act 1985 for issue of a writ/ order/direction quashing order dated 14.2.94 passed by respondent no.2 reducing the basic pay of the applicant from Rs.3050/- to Rs.2750/- as on 1.5.93, to refix the pay at par with his counter parts, pay the arrears, not to make further recovery from the salary of the applicant and refund the amount already recovered.

2. There is no dispute between the parties that the applicant joined the service as Apprentice Train Examiner in July 1953, confirmed and regularised as Train Examiner at Ghaziabad w.e.f. 5.12.68. Thereafter he was transferred as Train Examiner to Saharanpur Khan Alampura Yard, w.e.f. 12.9.69. He was promoted to the post of Head Train Examiner w.e.f. May 1982 and was posted at Sakurbasti. He was transferred from Sakurbasti to Khan Alampura Yard Saharanpur in April 1984. An upgradation scheme came into effect with retrospective effect from 1.1.84. Due to wrong fixation of pay, he represented the matter and vide letter dated 5.7.88 Annexure A- IV, the pay was refixed correctly.

3. The applicant's case in brief is that as a consequence of the aforesaid scheme, the applicant was promoted as Chief Train Examiner w.e.f. 1.1.84 vide Annexure-A-II, which carries the pay scale of Rs.700 - 900 (Pre-revised) and Rs.2,000 - 3200 (revised). His Pay Scale as Head Train Examiner was Rs.550/- Rs.750 (pre-revised). The annual increment of the applicant becomes due in the month of May every year and as such he gave option that on promotion also his increment may be fixed in the month of May every year and accordingly his pay was fixed at Rs.830/- p.m.

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as on 1.5.86 vide letter dated 18.12.87 vide Annexure A-III. The pay of Shri R.N.Pathak, Shri V.P.Khurana, Shri Mohan Lal was fixed at Rs.865/- p.m., who are at serial no.9,13 17 and applicant is at serial no.34 of the aforesaid order all drawing pay at Rs.730/- as on 1.1.84. On representation, the matter was decided vide Annexure A-IV dated 5.7.88. Vide order dated 1.5.93 when the applicant was drawing the basic pay of Rs.3050/- his pay was reduced to Rs.2750/- and started recovery, recovered Rs.500/- from the pay of March and April 1998 and thereafter recovery @ Rs.100/- p.m. is to be ^{made} recovered. No order in writing has been passed and communicated to the applicant. Hence this O.A. for the above said reliefs.

4. The respondents resisted the claim on the allegations that Annexure A-1 itself gives a clear picture that discrepancy crept due to certain clerical ^{error} ~~error~~ which on detection was corrected and excess amount paid is ordered to be recovered from the salary of the applicant in easy instalments. The applicant was working as TXR on 31.5.82 in the grade of Rs.425 - 700 was permitted to officiate as Head TXR since 31.5.82 in the pay scale of Rs.550 - 750 vide letter no.758E/85/10/H/TXR dated 3.5.82 and accordingly his pay was fixed to Rs.650/- by giving one notional increment in the working grade of Rs.425- 700 and the stage in the grade of Rs.550-750 on 31.5.82, i.e. the date of resumption of his duty but due to clerical mistake and on the basis of the same one increment in the grade of Rs.550 - 750 instead of 1.5.83 was given on 1.5.82 which infact, should be Rs.675/- w.e.f. 1.5.83. Hence, the pay was rectified in the scale of Rs.700 - 900 / 2000 - 3200 vide impugned order.

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5. The respondents further alleged that the applicant was promoted with effect from 1.1.84 but this benefit was withdrawn by a subsequent order dated 24.6.88, as the benefit of such upgradation was not due to the applicant, as such no credence whatsoever can be given on the basis of the subsequent letter dated 24.6.88 Annexure E.A.-II. The increment was not due in the month of May and no option as alleged was ever given by the applicant for fixing his pay from the date of increment. Against the withdrawal of benefit, the applicant along with ~~xxxxxxx~~ other Chief TXR and Head TXR on revision of their pay had filed O.A. No.851/HR/1989 on 22.8.89 before C.A.T. Chandigarh Bench and had obtained an Exparte Stay order on the ground that no show cause notice was given before revision of pay. In the instant case show cause notice for fixation of pay is given and pay as fixed as detailed in para 11 of C.A. at page 10. Shri R.N.Pathak, B.P.Khurana, Mohan Lal were senior to the applicant before upgradation. The benefit of upgradation was not withdrawn from the aforesaid persons as senior and otherwise in Zone of consideration. Since the letter dated 5.7.88 has been issued in suppression of letter dated 18.12.87 which was subsequently withdrawn vide letter dated 24.6.88 and as such question of pay benefit in view of letter dated 5.7.88 has no relevance. Show cause notice for fixation of pay was already given. Hence prayed for dismissal of O.A. with costs.

6. The applicant filed the rejoinder reiterating the correct fixation of pay along with R.A.1. The judgment of O.A.No.1258/88 decided by Principal Bench the applicant was not a party to the same.

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7. The applicant filed C.M.A.No.1357/97 along with annexure-1 by which the applicant was allowed the benefit of restructuring ⁱⁿ grade Rs.700 - 900 w.e.f. 1.1.84 against the resultant vacancies dated 6.3.97.

8. The applicant further filed C.M.A.No.1130/98 along with the salary fixed of Shri K.M. Sharma and Subhash Chandra.

9. The applicant failed to file or get it produced from the respondent any option to the effect that on promotion also his increment may be fixed in the month of May be fixed to the month of May every year. The above fact was alleged by the applicant and denied by the respondents, hence it was the duty of the applicant to produce the same. When an option which is reduced to writing an oral statement in this respect cannot form the basis of evidence. Therefore it is hereby held that applicant failed to establish that he ever submitted the option as alleged.

10. The applicant himself alleged that Shri R.N.Pathak, B.P.Khurana and Mohan Lal are at serial no.9,13 and 17 while he is at serial no.34. Thus the contention of the respondent finds favour that the said persons are senior to the applicant. The result is that applicant cannot claim any similarity in fixation of pay with them.

11. The benefit of upgradation which was allowed to the applicant vide Annexure A-III dated 18.12.87 was withdrawn vide Annexure C.A.II dated 24.6.88, hence fixation of pay vide Annexure A-IV dated 15.7.88 which is in supersession of order passed vide Annexure A-III is of the assistance to the applicant.

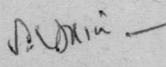
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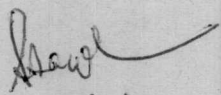
12. On perusal of C.A. para 11 at page 10 we find that on 1.12.80 pay of the applicant was at Rs.600/- and on 1.12.81 it was Rs.620/- in the pay scale of Rs.425/- - 700/- on 31.5.82 it was fixed at Rs.650/- and again on 1.5.82 it was increased to Rs.675/-. Thus one additional increment is provided to the applicant in the scale of Rs.550 - 750/- for which he was not entitled.

13. The applicant was not an instrument for fixation of his pay on 31.5.82 and onwards. The respondents, who have fixed the pay of the applicant on 31.5.82 and even afterwards on representation of the applicant are estopped by their conduct to reagitate the matter for recovery of the same.

14. Certainly, the respondents are entitled to correctly fix the pay of the applicant henceforth, but they are not entitled to recover the same.

15. In the result, O.A. is partly allowed, the respondents are restrained from recovery of the amount already paid to the applicant as salary, refund Rs.500/- as already recovered from the pay of March & April 98. The rest of the reliefs, the applicant is not entitled hence forthe said reliefs, the O.A. is dismissed. Parties to bear their own costs as both the parties succeeds partly.


MEMBER (J)


MEMBER (A)