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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 5th day of July 2001.

Hon'ble Mr. S. Dayal, Member-A
Hon'ble Mr. Rafiq Uddin, Member-J.

Original Application No. 610 of 1997.

Shri Virendra Kumar, S/o Late Narendra Nath,
R/o Bunglow No. 269/A, Railway Colony,
Saharanpur.

ORIGINAL APPLICATION NO. 611 of 1997.

B.P. Singh, S/o Shri Nanhe Singh,
R/o Railway Bunglow no. 94,
Railway Colony,
Saharanpur.

ORIGINAL APPLICATION NO. 612 of 1997

- ✓ 1. Prem Nath, S/o Sri Haveli Ram,
R/o C/o Sri Rajendra Kumar,
E-11, Keshav Nagar, Numais,
Campus,
Saharanpur.
2. Rajendra Kumar, S/o Late Shri Kapoor Singh,
R/o E-11, Keshav Nagar, Numais Campus,
Saharanpur.

ORIGINAL APPLICATION NO. 613 of 1997

Hari Ram, S/o Shri Atma Ram,
R/o Sri BP Singh Railway,
Bunglow no. 94, Railway Colony,
Saharanpur.

ORIGINAL APPLICATION NO. 614 of 1997

Ashok Kumar Chopra, S/o IR Chopra,
R/o 71-B, Near Railway Institute, Railway
Colony, Saharanpur.

...Applicants

✓ C/As Shri Rakesh Verma (in all the OAs)

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VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House,
NEW DELHI.
2. Senior Divisional Personnel Officer,
Northern Railway, D.R.M. Office,
NEW DELHI.
3. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

... Respondents
(in all the OAs)

C/Rs. Shri P. Mathur
Shri A. Tripathi
(in all the OAs)

ORDER (Oral)

Hon'ble Mr. S. Dayal, Member-A.

These OAs have been heard together as they have been filed in connection with the same order dated 08.05.1997 by which Senior Divisional Personnel Officer passed order withholding the benefit of upgradation, granting to them by letter of D.P.O. dated 24.6.1988 and refusing the pay of the applicants and also ordering that other payment made to them be recovered.

2. The applicants were working as train examiner in the scale of Rs. 425 - 700 as per scales recommended by 3rd Pay Commission. The cadre of Train Examiner, Head Train Examiner, Chief Train Examiner and Carriage and Wagon Supdt. was restructured by the Railway Board's

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letter dated 1.5.1984. As a result thereof the number of posts at higher level increased and in order to fulfil those posts, 118 Train Examiners were upgraded to the scale of Rs. 550 - 750 w.e.f. 1.1.1984. The order was passed on 23.9.1987 and these 118 persons including those who had expired and retired before that date. The pay fixation order were to be issued separately and it was stipulated in order dated 23.09.1987 that the persons though promoted to higher grade shall continue to do the same duties as they were performing in the lower grade. It was also mentioned that out of these 118, the cases of 7 persons at item nos. 47, 92, 96, 97, 98, 104 & 114 were under consideration and ^{orders} would follow. It appears that 8 applicants had filed OA 851-HR of 1989 and by order dated 16.11.1995, a Division Bench of CAT Chandigarh Bench, set aside the orders on account of the fact that no show cause notice was issued and no opportunity of being heard is given to the applicants. The impugned order of recovery was also found to be against of principles of natural justice. The respondents were given liberty to proceed afresh in the matter after giving notice to the applicants. The notice was given to the applicants on 31.7.1996 and, thereafter, impugned order dated 31.7.1996 was passed. The applicants have filed fresh OAs against the said order.

3. Heard Shri R. Verma learned counsel for the applicant, Shri P. Mathur learned counsel for the respondents no. 1 and 3 and Shri R. Mishra brief holder to Shri A. Tripathi learned counsel for the respondents no. 2.

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4. It was submitted on behalf of the applicant that 109 persons were promoted correctly as the total number of posts after restructuring of the cadre of Head Train Examiner was 109. We are unable to accept this contention because of the fact shown by learned counsel for the respondent no. 2 in para 2 of the C.A. ^{Vacancies} ~~It~~ appears to ^{have} ~~be~~ arisen only on account of change in percentage of the posts in the cadre including Train Examiner, Head Train Examiner, and Chief Train Examiner and Carriage and Wagon Supdt. It arose because of increase in the posts in Carriage and Wagon Supdt and Chief Train Examiners and do not appear to be more than 77. Learned counsel for the respondents has mentioned increase of 67 posts by virtue of upgrading orders and that appears to be closer to truth than claim of the applicant that 109 vacancies were available on account of restructuring in the cadre of Head Train Examiner. Therefore, we cannot accept the plea that the applicant, ^{as} ~~who~~ ^{could} have been promoted at that time, the ranks of the applicant in the order dated 23.9.1987 stands at sl. no. 94, 96, 97, 101 and 112. The name of Shri Hari Ram does not appear in the order of promotion dated 23.9.1987 although he has also been subjected to re-fixation of down gradation of pay in the impugned order at sl no. 5.

5. As far as the question of recovery of the ~~impugned~~ amount from the applicants is concerned, learned counsel for the applicant relies upon the law laid down

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Hon'ble Supreme Court in Sahab Ram Vs. State of Haryana, 1995 SCC (L&S) 248 and Shyam Babu Verma & Ors Vs. Union of India & Ors, 1994 SCC (L&S) 683. The Hon'ble Supreme Court has in deciding the question of recovery laid down in this judgment as follows :-

"Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the ~~XX~~ Third Pay Commission w.e.f. January 1, 1973 and only after the period of 19 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 230-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973 it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we, direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

6 In the case before us we also find that the wrong promotion and thereby wrong fixation of pay in the higher scale was not on account of any fault of the applicants. In the case before us, the order has been passed after 10 years of the order of promotion. We, ~~are~~ following the law laid down by the Apex Court, set aside the impugned order dated 8.5.1997 in so far as it relates to recovery of overpayment, the rest of the order ~~is~~ shall remain as it is.

7. The OA stands disposed of with the above direction.
No order as to costs.