

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1599 OF 2001
ALLAHABAD THIS THE 21ST DAY OF SEPTEMBER,2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Kamla Kant Sharma,
son of Sri Bhagwati Prasad,
resident of House No.355,
Sahukara, District-Bareilly, U.P.

. Applicant

(By Advocate Shri A.K. Srivastava & Sri R.D. Agarwal

Versus

1. Union of India,
through the General Manager (P),
N.E. Railway, Head Quarters Office,
Gorakhpur.
2. Chief Workers Manager (Karmik),
N.E. Rly Workshop, Izzatnagar,
Bareilly.
3. Production Engineer, N.E. Rly,
Izzatnagar Workshop, Bareilly.

. Respondents

(By Advocate Sri D.C. Saxena)

_O_R_D_E_R_

By this O.A., applicant has sought
quashing of the order dated 07.07.2001 and 23.07.2001
whereby his pay was reduced after 21 years by the
respondent no.2 without giving any show cause notice to
the applicant. He has further sought a direction to



respondents ^{to restore his pay B} ~~that~~ since the period from 14.4.1980 to 05.03.1983 had already been regularised by respondent no.3, as such respondent no.2 had ~~no~~ no powers and jurisdiction to declare the regularised period as leave without pay after 21 years, therefore, all his retiral benefits be released.

2. The basic fact has not been disputed, as it is an admitted fact that applicant was absent from duty w.e.f. 24.10.1979 to 05.03.1983. He reported for duty alongwith his sickness on 04.03.1983 for which he was awarded punishment for stoppage of three set passes by Disciplinary Authority. Later on, on his request the period of absence was sanctioned as under:-

Dt. 24.10.1979	to	07.11.1979	= 15 days LAP
Dt. 08.11.1979	to	13.04.1980	= 58 days IHAF
Dt. 14.04.1980	to	08.04.1981	= 360 days LND
Dt. 09.04.1981	to	04.03.1983	=extra ordinary leave

(Treating as qualifying for purpose of pensionary benefits.)

3. He was due to retire on 31.07.2001 but just three weeks before the said date respondents issued letter dated 07.07.2001 whereby the period from 14.04.1980 to 05.03.1983 was shown to be leave without pay, even though earlier this period had been sanctioned as leave not due. It was further directed to fix the amount to be recovered from Settlement dues (Page 13), accordingly, another office order was issued, On



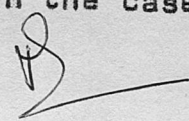
23.07.2001 whereby his pay was fixed from 1979 till September 2000 different than what it was earlier fixed by the department itself. As a result of which his pay was reduced. ~~As~~ He was not paid increments for the period 1980 to 1983 as a result of which, his pay throughout was reduced as a consequence thereof.

4. These orders have been challenged by the applicant on the ground that once ^{the period of absence R} ~~his pay~~ was sanctioned by the competent authority as leave not due, it ~~could~~ not have been changed by some other authority ~~at~~ the ~~pag~~ end of his career that ~~too~~ without giving him any show cause notice. Therefore, these orders are absolutely wrong, illegal and violative of Principles of Natural Justice, therefore, they ^{may be R} ~~are~~ quashed.

5. Counsel for the applicant has relied on following judgments:-

1. 1994 SCC (L&S) 1320 in the case of Bhagwan Shukla S/o Sarabjit Shukla Versus Union of India and Others
2. 1994 SCC (L&S) 683 in the case Shyam Babu Verma and Others Versus Union of India And Others.
3. 1979 ALL. L. J. 1187 in the case of Mohan Singh Versus Chandrika Bari and Others.
4. 2003(1) ATJ 440 case decided by Punjab and Haryana High Court in the case of Anoop Singh Vs. State of Haryana.

and number of other judgments to substantiate his claim while counsel for the respondents relied ^{on} the judgment given by Hon'ble Supreme Court in the case of Aligarh Muslim



University Versus Mansoor Ali Khan reported in 2000 SCC (L&S) 965 to state that it would have been "useless formality" to issue show cause notice to the applicant, therefore, ^{Here was B} no need to issue show cause notice as respondent. ^{only} have ~~been~~ corrected the mistake which had taken place while deciding the period of unauthorised absence.


6. I have heard both the counsel and perused the pleadings as well as the judgments relied upon by both the counsel.

7. The judgment~~s~~ relied upon by the respondent's counsel would have no application in the present facts of the case as in the said case the employee therein had obtained two years' extraordinary leave to join a job in a foreign country-Sought extension of leave by further two years but was granted extension for only one year with the warning that no further extension would be granted and that in case of overstaying he would be deemed to have vacated the office-Employee, despite this warning ~~joining~~ a fresh two-year job in the foreign country-On account of omission ~~to~~ join after the expiry of the third year of leave, order deeming him to have vacated his office passed-In the circumstances, issuance of notice to him would not have made ~~any~~ any difference and in such admitted facts, only one view was possible-Hence, the absence of notice caused ^{no B} ~~any~~ prejudice to him and was, therefore, not vitiated of the termination order-Moreover the conduct of the employee in ignoring the employer's warning, held, disentitled him to relief under Article 226.



7- Perusal of the above clearly shows that it was in the facts of that particular case that Hon'ble Supreme Court had held that even if no notice was issued to the applicant therein, it would not have made any difference because he had not even bothered to respond ^{to the} warning which was already given to him and from the conduct of the applicant therein, only one view was possible that he was not interested in joining the post any more, therefore, naturally it was held that issuance of showcause notice in such circumstances, was only a useless formality whereas in the instant case, the leave of applicant had already been sanctioned by his authorities way back in 1983 itself by passing an order. This was done as per the understanding of the authorities at that time. It is not the case of respondents that applicant had mis-represented the facts or he had played any fraud on the respondents for seeking the benefit as was given by his officers. On the contrary at the time, when according to the respondents, the mistake was deducted by them, applicant was very much available. Therefore, the judgment relied upon by the respondent's counsel is absolutely distinguishable and would not apply in the given circumstances. The contention of respondents is accordingly rejected.

8. Coming to the submissions made by the counsel for the applicant, we find that the order which had been passed by the respondents definitely has Civil Consequences and It has already ^{been} held by the Hon'ble Supreme Court and it is settled law that any order which has civil



consequences cannot be passed without giving show cause notice to the person concerned. In this case since applicant's pay was ~~was~~ fixed adversely to his dis-advantage and respondents wanted to make certain recoveries from the applicant's settlement dues, it was all ^{more} the necessary ~~to~~ for respondents to have issued show cause notice to the applicant before passing any final orders. At this stage it would be relevant to quote few judgments given by the Hon'ble Supreme Court on the point. In the case of Bhagwan Shukla (Supra) wherein pay of applicant was reduced on the ground that it was fixed wrongly. After hearing both the counsel it was held by Hon'ble Supreme Court as follows:-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Therefore, the impugned order by which the pay of the appellant fixed on his promotion as Guard-C from the post of Trains Clerk was sought to be reduced is not sustainable Appeal accepted."

Similarly in the case of Shyam Babu Verma and Others (Supra) wherein the pay scale of the applicant was changed on the ground that the same has been given to them wrongly since 1973. It was held that petitioners received the higher scale due to no fault of theirs, it was only ~~the~~ ^{just and proper with} respondents to recover ~~an~~ ^{the} amount already paid to them.

It was thus held as under:-

"Although the petitioners were entitled only to the lower scale of pay w.e.f. January 1, 1973 and only after period of 10 years they became

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entitled to the higher pay scale but as they have received the high scale since 1973 due to no fault of theirs and that scale was 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.

Petitions allowed in part."

Similar view has been taken by the Hon'ble Supreme Court and Hon'ble High Courts in number of cases wherein it has been held that if there was no mis-representation on the part of applicant and his pay had been fixed by the respondents themselves then the same cannot be recovered subsequently after a long period of time. The same view was reiterated in the case of State of Rajasthan Versus R. Dyal reported in 1997 (10) SCC 419 wherein it was held that no recovery can be made as no misrepresentation was made by the respondents. It is thus, settled law by now that even ^{if} respondents had fixed the pay wrongly without any misrepresentation having been made by the employee concerned, then he should not be made to suffer for the fault of the respondents and no recovery can be made by them.

Of course, if there had been indeed any mistake, same can be the purposes of pay fixation only that too corrected for / after following due process of law by issuance of show cause of notice to the person concerned.

9. In the instant case, admittedly applicant was absent during the period from 1980 to 1983 which period had already been sanctioned by the authorities and his pay had been fixed with increments on the basis of which payments were given to him from time to time and it was only in the year 2001 when he was due to retire that his

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pay was reduced without even giving him show cause notice and recovery was made from his settlement dues. This procedure is unknown to the rule of law. Since it is settled law, that even for correcting the mistake one has to give show cause notice and follow principles of natural justice, the orders passed by the respondents cannot be sustained in law. Accordingly, both the orders are quashed and set aside.

10. It was not open to the respondents to recover the amount from settlement dues of applicant. However, if there was some valid mistake, the only procedure open to the respondents was to issue show cause notice to the applicant which shall still be open to them even now. Therefore, it is made clear that respondents would not be entitled to make any recovery from the applicant's settlement dues, for the amounts which were already paid to him, therefore, the recovered amount shall be released within one month. However, respondents may issue show cause notice to the applicant for correction of pay fixed within one month by detailing the facts on the basis of which, they feel that the order was wrongly passed by the authority at relevant time, giving reasonable opportunity to the applicant to file his representation and then pass reasoned order under intimation to the applicant. This exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. It is further made clear that in case no show cause notice is given by the respondents within one



month from the date of receipt of a copy of this order, all his retiral benefits shall be released on the basis of pay which was fixed earlier prior to the issuance of the impugned orders.

10. With the above directions, this O.A. is disposed off with no order as to costs.


Member J

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