

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of July, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

O.A. No. 823 of 2001

Surendra Shaw S/O Sri Ram Chandra (Retired Shuntman),
Eastern Railway, Mughal Sarai.....Applicant.
Counsel for applicant : Sri S. Agarwal.

Versus

1. Union of India, Ministry of Railway, through the
General Manager, Eastern Railway, Calcutta.
2. The Chief Personnel Officer, Eastern Railway, Calcutta.
3. The Divisional Railway Manager, Eastern Railway,
Mughal Sarai.....Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S. Agarwal, learned counsel for the
applicant, Sri A.V. Srivastava, learned counsel for the
respondents and perused the pleadings.

2. The short question, which requires consideration
in this case, is whether the salary paid to the applicant
for the work performed by him on the basis of interim
order, passed by the Tribunal in O.A. No. 78/91 dated
31.1.1991 is liable to be recovered on the dismissal of
the said O.A. on merits. It is not disputed that the
applicant in the said O.A. had challenged the superannua-
tion notice on the ground that his date of birth was
wrongly recorded in the Service Book. The Tribunal passed
an interim order on the basis of which the applicant
worked upto 10.12.1994 though he was to supernuuate on
31.1.1991 according to his date of birth. The O.A.
ultimately failed and dismissed on merits vide judgment
and order dated 25.11.1994. By order impugned herein, the
respondents have initiated the proceedings for recovery

(R.S.J.)

of the emoluments paid to the applicant from 1.2.1991 to 12.12.1994 i.e. the period during which the applicant continued in service on the basis of impugned orders dated 14.12.2001 and 22.1.2002.

3. In Baijnath Singh Vs. State of UP (1990) 1 UPLBC 106, a Division Bench of Lucknow Bench of the High Court of judicature at Allahabad was called upon to decide a similar question. The petitioner therein had worked ^{2 on the strength of} ~~by~~ an interim order passed by the High Court and the question was whether ² the dismissal of the writ petition, the pay and allowances paid to the petitioner therein, pursuant to the interim order passed by the High Court, was liable to be realised from him or adjusted from the funds. The High Court held that in case the petitioner ^{had} worked on the basis of interim order passed by the High Court, his pay could not be realised from him nor it could be adjusted from the funds

4. In case of Mool Raj Upadhyaya Vs. State of H.P. and others 1994 Supp(2) SCC 316, the Hon'ble Supreme Court was called upon to decide the question as to whether the excess payment received by the Class II & IV employees under the interim order of Supreme Court could be recovered. Their Lordships held that any excess amount received by an employee on the basis of interim order passed by the Court "shall not be" required to be refunded by him. In State of Bihar Vs. Narsimha Sundaram AIR 1994 SC 599 too the Hon'ble Supreme Court had taken the similar view.

5. Sri A.V. Srivastava has, however, placed reliance on a decision of Hon'ble Supreme Court in State of UP & others Vs. Raj Karan Singh 1998 SCC (I&S) 1709 in support of his contention that amount paid to the applicant for the period beyond the date of his superannuation is liable to be recovered notwithstanding ² the fact that he continued in service on the basis of interim order passed by the ² ~~an authority on the point~~ Tribunal. The decision relied on by the counsel is that

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continuance of service on the basis of interim order passed by the court 'does not confer any right for continuance, nor does it enhance his case for regularisation.' It is true that rights of the parties should be decided with a reference to the date of institution of the case but having regard to the fact that the applicant had actually worked and performed duty and the decisions referred to hereinabove have laid down, that the payment made for the work actually done on the basis of interim order should not be recovered even after the dismissal of the case. I am of the view that the orders impugned herein cannot be sustained.

6. Sri A.V. Srivastava has also placed reliance on the circular dated 7.10.99 annexed as Annexure R-4, issued in pursuance of the decision of Hon'ble Supreme Court in the case of Radha Kishun Vs. Union of India & others in SLP(C) No.3721 of 97 arising out of O.A. No.6521 of 1995 dated 26.11.96 of C.A.T. Patna. A perusal of the said circular would indicate that it was made effective from the date of its issuance, ~~with a clear stipulation of the clauses for retention in service which have not been decided~~. The circular became effective w.e.f. 7.7.1997 whereafter in all cases where ~~regular~~ continuance in service beyond the age of superannuation period of over stay is to be treated as ~~regular~~ for which the employee will be considered to be equally responsible and the action will be taken to recover the pay and allowances etc. paid to him for the entire period of over stay. The circular does not have any retrospective effect.

* Connected vide
Order dated 23-12-04
passed on M.A.S.S. 82/04.

RA 23/12

V.C.

7. Accordingly, the O.A. succeeds and is allowed. The impugned order dated 14.2.1997 is set aside with all consequential benefits.

8. The O.A. is disposed of in terms of the above direction with no order as to costs.

RA
V.C.