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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1650 OF 2005

ALLAHABAD THIS THE 14th DAY OF August 2007

Hon'ble Mr. Justice Khem Karan, V.C.

Mrs. P.B Benjamin, a/a 61 years, W/o Mr. B. Benjamin, R/o 60-B, Defence Colony near Air Force Station, Izzatnagar, Bareilly.

.....Applicant

(BY Advocate: Shri Vinod Kumar)

Versus.

1. Union of India thorough the General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (P), N.E. Rly., Izzatnagar, Bareilly.
3. The Chief Medical Superintendent, Railway Hospital, N.E. Rly., Izzatnagar, Bareilly.

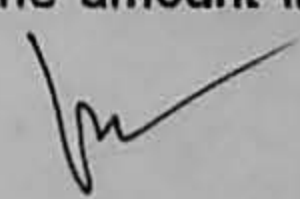
.....Respondents

(By Advocate: Shri Anil Kumar)

ORDER

This Original Application is directed against the order dated 28.7.2005, (Annexure 1) by which the Divisional Railway Manager (P), N.E. Railway, Izzatnagar, refused to refund the amount of Rs.47,000/- ,which he recovered from her retiral dues. It is prayed that respondents be directed to refund the said amount to the applicant.

2. Admittedly, there was an all India strike of Railway employees from 3.5.1974 to 28.5.1974. During the said period, applicant was posted as Staff Nurse under Divisional Medical Officer, Izzatnagar, Bareilly in N.E. Railway. It is an admitted fact that she was on duty from 3.5.1974 to 25.5.1974 and was on leave on 26.5.1974, 27.05.74 and 28.5.74. There was no dispute that Railway Board issued various circulars such as 10.6.1976 (A-2), 27.1.75 (A-4) 10.9.75 (A-6) and 11.6.74 for preparing the list of Railway employees who did not go on strike and to reward them as loyal workers by giving one increments etc. The applicant alleges that in view of the Railway Board letter dated 10.9.75 (A-6) read with previous letters, she was also declared or treated as "loyal worker", and was given one advance increment, which, she received till her retirement. It appears that while scanning or scrutinizing the record for purposes of retiral benefits, respondents discovered that advance increment was wrongly given from 1.1.1980 without any specific order of the Competent Authority, so vide letter dated 6.7.2004, they decided to recover the amount in question. Before



doing so, respondents had issued a show cause notice to the applicant and applicant submitted a representation.


3. Her contention is that firstly she was rightly given the increments as she was a loyal worker in terms of orders of Railway Board and secondly no such amount can be recovered from her retiral benefits, as she was not instrumental in getting that increment or she did not play any fraud etc. in getting that increment.

4. In their reply, respondents have tried to say that in absence of any order, declaring the applicant as a "loyal worker" in terms of letters issued by the Railway Board, grant of increment was wholly impermissible and erroneous. They have tried to say that applicant's name does not find place in the list of eligible persons.

5. It is stated in para 6 of the rejoinder affidavit that original service book/record of the applicant could not be verified as the same was destroyed by the Personnel Branch in the month of June 1980, so duplicate service book was prepared by the Railway Administration.

6. I have heard Shri Vinod Kumar appearing for the applicant and Shri Anil Kumar, learned counsel for the respondents and have perused the entire material on record.

7. The respondents concede that applicant was not on strike from 3.5.1974 to 25.5.1974 and was on leave on 26.5.1974, 27.05.74 and 28.5.74. In view of letter dated 10.9.1975 (A-6), applicant was entitled to advance increment/cash reward as a "loyal worker". It was this letter by which the Railway Board decided that Staff who were on leave upto 3 days but had worked for major period of strike, may also be considered for grant of such benefits. The Tribunal is of the view that absence of formal orders for grant of advance increment, will not deprive her of the benefit of advance increment, which she had for almost two decade upto to her retirement. After all, the Authority or the officers who gave advance increment to the applicant from 1.1.1980 must have some basis to do so. It can be presumed that there was some order of Competent Authority, for allowing advance increment to the applicant on the ground that she worked during the period of strike and was a loyal worker. The contention of the applicant that her service records were destroyed and were reconstructed, has



not been refuted by the respondents, even in the supplementary reply. So how can it be said that there was no such order for giving her advance increment on the ground that she was a loyal worker in terms of Railway Board letters.

8. I am of the view that applicant was rightly given advance increment, the benefit of which, she received for over a period of 2 decades, till her superannuation. Absence of order in the record does not matter. Even if it is assumed for the sake of argument that she was erroneously given benefit of advance increment, the respondents cannot recover the amount from the retiral benefits as there is no allegation that she practiced any fraud or suppressed any material fact in connection with receiving of said advance increment. Such a view has been taken by this Tribunal in decision dated 3.8.2004 in O.A. No.1366/03, Gopal Prasad Vs. U.O.I and Ors (Annexure 12). I need not make this order lengthy by quoting judicial pronouncement on the point that amount paid to an employee as part of his salary, cannot be recovered from his retiral dues on the ground that payment was wrong unless ofcourse it is proved that he was instrumental in getting that wrong benefit or he practiced any fraud for getting the same.

9. So this Original Application is allowed and impugned order/letter dated 28.07.2005 (Annexure A-1) is quashed with a direction to the respondents to ensure that the amount of Rs.47,000/-, which they have recovered from the retiral dues to the applicant, is refunded to her, within a period of two months from the date, a certified copy of this order is produced before them and they are further directed to revise the pension accordingly by taking into account the fact that applicant was rightly allowed advance increment.

No order as to costs.

16.8.07

Vice-Chairman

Manish/-