

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 497 of 1987

Union of India & another ..... Defendant-Appellants.

## Versus

B.M. Gupta & others .... Plaintiff-Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This appeal has been received on transfer from the court of District Judge, Lucknow under Section 29 of the Administrative Tribunals Act, 1985. The appeal is against the judgment and decree dated 5.4.1978 passed by the Additional Munsif, Lucknow in Suit No. 945 of 1971, B.M. Gupta & others v. Union of India & another, decreeing the suit against the defendants. The grounds for appeal are that the trial court erred in holding that the notice under Section 80 of the Code of Civil Procedure was served on the defendants and that it was valid and because the trial court had not correctly appreciated the two circulars dated 22.2.1971 and March, 1971 and declared them null and void and that the trial court had not framed issues regarding mis-joinder of causes of action pleaded by the defendant-appellants.

2. In Suit No. 945 of 1971 the plaintiffs, who were working as Train Examiners (TXRs) under the defendants in the grade of Rs.180-240, by an order dated 10.11.1970 the plaintiffs were promoted to the grade of Rs.205-280 with effect from 1.4.1966 and they were paid arrears of salary from 1.4.1966 to 1.7.1970. By an order dated March,1971 this arrear was proposed to be recovered from the plaintiffs and they filed the suit against this



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recovery. The defendants in that suit had said that the order dated 2.7.1970 did not indicate from which date the promotion was to be made. This was subsequently decided by the Railway Board by their letter of 17.2.1971, which was circulated by the General Manager's (GM) letter dated 23.2.1971 according to which the plaintiffs were allowed only proforma fixation and no arrears. The plaintiffs were also to be paid <sup>or in</sup> the higher grade from 2.7.1970. On the issue whether the order dated March, 1971 and the order dated 22.2.1971 <sup>are</sup> ~~and~~ legal, the learned trial court had held that the defendants in para 3 of their written statement have said that there has been over payment on account of mis-understanding and mis-interpretation of the Railway Board's letter of <sup>31</sup> 2.7.1970 because it had not been decided as to from which date the payment should be made in the higher scale to the plaintiffs. The trial court had referred to the Railway Board's letter of 2.7.1970, according to which the plaintiffs were decided to be promoted and had observed that it appeared that on receipt of the Railway Board's orders defendant no.2 had promoted the plaintiffs from 1.4.1966 and also decided to pay them arrears. The trial court had observed that it has not been said that the defendants were not eligible for the same. The trial court had noted that there was no change in the work content or rank of the plaintiffs and <sup>& fixation in higher scale. Arrears</sup> the only benefit they got was the arrears of pay <sup>which</sup> ~~which~~ have been now set aside by the clarification issued by the Railway Board in 1970. Since it was only a change in the pay scales of the plaintiffs the trial court had observed that there was no question of any promotion and since re-fixation has been done with effect from 1.4.1966 the question of arrears also gets decided automatically and, therefore, they were entitled to the arrears of salary. Rejecting the plea taken by the defendants that the Railway Board's orders were wrongly interpreted, the trial court referred to the



Indian Railway General Code, Volume I para 1706 which laid down that whenever erroneous payments have been made for considerable time owing to wrong interpretation of a rule or an order the new interpretation will be given effect to from the date which the competent authority may decide giving the correct interpretation. Interpreting the word 'considerable time' given in para 1706 the trial court had held that since the payments were made from 1966 and the revised interpretation came only in 1971, therefore, the defendants were not entitled to make any recovery.

3. In regard to the issue whether a void legal notice under Section 80 of the Code of Civil Procedure was served on the defendants, the learned trial court after observing that the notice was served in the office of the Divisional Superintendent which is one of the offices of the Northern Railway, the notice was legal.

4. We have heard Sri V.K. Goel, learned counsel for the defendant-appellants. None was present for the plaintiff-respondents. Sri Goel submitted that GM is empowered to make rules in respect of class III employees and, therefore, any order passed by him in respect of such employees will become a rule but in this case the decision in regard to payment of actual salary was given by the Railway Board which is an authority higher than GM. It was further contended that the Civil Courts had no jurisdiction to decide this issue which lay squarely within the powers of the executive and, therefore, the decree setting aside the Board's orders was illegal. The learned counsel also submitted that the notice under Section 80, C.P.C. was not served on GM or in his office at Delhi and the service in the Divisional Superintendent's office cannot be considered adequate in terms of the Code of Civil Procedure. Therefore, even on this account the judgment and decree of the trial court was erroneous.



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5. On 2.7.1970 the Ministry of Railways issued a circular regarding the filling of posts of TXRs consequent to upgradation. This letter conveyed the decision of the Board that all TXRs working in the grade of Rs.180-240 consisting of both apprentice TXRs and promotees as on 1.4.1966 should be promoted en masse to the grade of Rs.205-280. After the crucial date of 1.4.1966, 50 percent of the vacancies were to be maintained in the grade of Rs.205-280 and the remaining 50 percent were to be down graded to the grade of Rs.180-240 which were to be filled by promotions from Artisans. Para 2 of this letter further said that the staff promoted to the grade of Rs.205-280 as on 1.4.1966 will be assigned seniority amongst themselves in the order of their inter se seniority in the grade of Rs.180-240 for the purpose of confirmation and also for further advancement. They will rank senior to those recruited as Apprentice TXRs with 5 years training and appointed after 1.4.1966 to the grade of Rs.205-280.

6. On 22.2.1971 a copy of the Railway Board's letter of 17.2.1971 was circulated by the Northern Railway. This letter referred to the earlier letter of 2.7.1970 and to the question raised by various Railways where TXRs, who have been promoted to the grade of Rs.205-280 with effect from 1.4.1966 should also be allowed arrears of pay on this account. By this letter the Railway Board conveyed its decision that the staff may be allowed proforma fixation of pay with effect from 1.4.1966 under the normal rules, but arrears of pay should be paid only from 2.7.1970. In March, 1971 the Divisional Superintendent's office at Lucknow referring to this letter of 17.2.1971 issued by the Railway Board and to the fact that arrears have been paid from 1.4.1966 advised that recoveries of over-payments be made allowing arrears from 2.7.1970 instead of 1.4.1966. These arrears were ordered to be charged through supplementary bills in the month of November, 1970 (paper no. C-50/1).



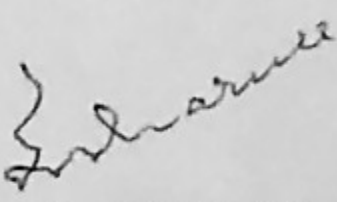
7. In Civil Writ No. 479 of 1969 the Delhi High Court had considered over payments made to certain petitioners in that petition due to a mistaken interpretation of a letter issued by the respondents in that petition and commented on the provisions of para 1706 of the Indian Railway General Code, Volume I. In that case also the Railway Board had not in the earlier direction given any date from which the correct interpretation was to be given effect to and, therefore, they had ordered recovery of the payments made. The Delhi High Court had observed that para 1706 has been obviously introduced with a view to prevent recovery of excess payments made for considerable time to a railway employee. The learned trial court had ~~also~~<sup>by</sup> relied on this judgment before it came to the conclusion. In this writ petition the Delhi High Court had partly accepted the petition and quashed the orders in so far as they related to the direction for recovery the excess payments made to those petitioners. In para 12 and 13 of their written statement the defendants had said that the over payments amounted to Rs.17,367.71 P. and the amount of over payment made to an individual which have to be recovered was in the range of Rs.675/-. There are 30 applicants in this case. We have considered the pleas raised by the learned counsel for the appellants and we take support from the case of Jagjit Mohan Singh Bhalla v. Union of India (1975 Lab.I.C. 197), a decision of Punjab & Haryana High Court's Full Bench, wherein the Full Bench of the Punjab & Haryana High Court had said that once an order fixing higher salary <sup>or in</sup> for a higher scale is passed by the competent authority it confers on the persons covered by the order a legal right to claim and recover such salary. The right of a Government servant to recover salary at a rate fixed by the Government with effect from the date from which it is fixed cannot, by <sup>any</sup> stretch of imagination, be called a concession. Observing thus the Punjab &

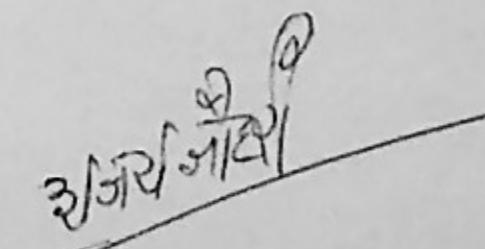


Haryana High Court Full Bench had held that the order depriving the right to recover the arrears suffers from invidious discrimination and is hit by Articles 14 and 16 of the Constitution of India. We also note that the arrears were paid sometime in November, 1971 and covered a period from 1.4.1966 to 22.2.1970. We also note that in the order fixing the plaintiff-respondents in the higher scale of pay what was intended by the Railway Board was as confirmed by them in their subsequent letter of February, 1971 and, therefore, it cannot be said that this aspect was mis-interpreted by the Divisional Superintendent's office at Lucknow and the arrears were erroneously paid. The fact remains that the plaintiff-respondents were considered to have been promoted and given the higher scale of pay from 1.4.1966. In the above circumstances, we are of opinion that they cannot now be asked to refund the <sup>or already</sup> arrears paid to them.

8. As far as the notice under Section 80, C.P.C. is concerned, we do find that there is force in the plea taken by the learned counsel but we do not feel that this aspect should in any way override the facts and circumstances of the case <sup>or as</sup> taken into consideration by the learned trial court to quash the Board's letter.

9. In the above view, we reject this appeal and uphold the judgment and decree of the trial court in Suit No. 945 of 1971 in as far as it <sup>or pertains</sup> ~~pertains~~ to the recovery of the arrears already paid to the applicants. Parties will bear their own costs through out.

  
MEMBER (J).

  
MEMBER (A).

Dated: February 22<sup>nd</sup>, 1989.

PG.