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CENTRAL ADMINISTRATIVE TRIBUNAL

ALIAHABAD BENCH

....

Registration T.A. No. 977 of 1987

S.S.Sing and others ... Petitioners

versus

Union of India and others.... Respondents

Hon' D.K. Agrawal, J.M.

Hon' Ms Usha Savara, A.M.

(By Hon' D.K. Agrawal, J.M.)

Civil Misc. Writ Petition No. 12527 of 1982 ,
filed before the High Court of Judicature at Allahabad,
received on transfer to the Tribunal, under section 29
of the Administrative Tribunals' Act, 1985^{was}, registered
as T.A. No. 977 of 1987, as indicated above. The prayer
in the writ petition is for quashing the order (objection)
raised by Accounts Officer vide his report dated 4-3-82
as contained in Annexure-8 to the counter affidavit
on the basis of which subsequent orders were passed by
the concerned authorities as contained in Annexures-IX-A,
K-B and IX-C (to the petition), whereby the pay of the
petitioners was sought to be stepped down nullifying
the earlier orders of stepping up of pay.

2. Briefly, the facts are that the petitioners
employed as telegraphists were given advance increments
on their qualifying in Hindi Morse and Hindi Teleprinter
before 1-1-1973. Consequently, pay scale being revised
w.e.f. 1-1-1973, the pay of the petitioners was
revised in the new scale of pay. One Sri R.N. Yadav
junior to the petitioners also qualified in the above
said special training and became entitled^{to} two increments.
However, it so happened that the pay of Sri R.N. Yadav
as on 19-5-73 was fixed at a higher amount than the

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petitioners. The petitioners being senior to Shri R.N. Yadav raised their grievance. The department remedied the grievance of the petitioners by raising their pay equivalent to Sri R.N. Yadav under the instruction of Director General, Posts and Telegraphs dated 24-12-1975, the relevant *extract* *percentage* of which read as under:

".....2. By grant of advance increments and consequent fixation of pay in the revised pay scale under C.C.S.(R.P.) Rules, 1973, it may so happened that a senior official who derived the benefit of advance increments prior to 1-1-73 may draw lower rates of pay in the revised scale than a junior official who was granted advance increments in the revised scale under the aforesaid orders on or after 1-1-1973.

3. In order to remove the anomaly it has been decided that in such cases the pay of the senior official should be stepped up to a figure equal to the pay as fixed for the junior official in the revised scale of Rs.260/480. The stepping up should be done with effect from the date the junior official starts drawing pay at a higher rate than the senior official. The senior official whose pay is stepped up will however draw his next increment on completion of the requisite qualifying service with effect from the date of refixation of pay. The orders refixing the pay of the senior official will be issued under FR 27 by the competent authority. It must however be ensured that the anomaly has arisen as a result of direct application of the orders mentioned in para 1 above."

Subsequently, on objection raised by the Accounts Officer vide order dated 4-3-82 (CA-8), General Manager (Telecommunications) issued orders on 5-8-82 for compliance of the orders of Accounts Officer. Superintendent, Central Telegraph Office, Varanasi and Kanpur, consequently, passed orders contained in Annexures-IX-A, IX-B and IX-C undoing the benefit

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of stepping up of pay in respect of all the petitioners. The petitioners, therefore, filed the above mentioned writ petition in the High Court and obtained stay order on 22-10-1982 for staying the operation of the orders contained in Annexures-IX-A, IX-B and IX-C to the writ petition.

3. The respondents in their counter affidavit do not deny the applicability of the orders of Director General, Posts & Telegraphs dated 24-12-1975. ^{"Shy"} _" ["] _{That} only contended that the stepping up of the pay was permissible only, if the anomaly has arisen as a result of direct applications of advance increments admissible to a person ~~not~~ ^{for} qualifying in Hindi Morse and Hindi Teleprinters.

4. We have heard the learned counsel for the petitioners and perused the record. We could not have the benefit of the arguments of learned counsel for the respondents on account of his absence. On perusal of Annexure-8 to the petition, we find that the anomaly in case of all the petitioners, except petitioner nos. 4 and 15, namely, S/ Shri Munshi Singh Yadav and Sewak Singh has arisen as a result of grant of two advance increments admissible on the special training in Hindi Morse and Hindi Teleprinters. If so, it can be at once said that the stepping up of pay of the petitioners, other than the aforesaid two petitioners, was done in a rightful manner. Consequently, the writ petition has to be allowed, in respect of all the petitioners except the petitioner nos. 4 and 15. A question may also arise as to whether the petitioners 4 and 15 should be made to pay back the benefit already derived by them from fixation of pay. In this regard, our attention

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has been invited to a judgment rendered in
writ petition no. 3465 of 1973 B.N. Singh and others
vs. State of U.P. and another, by High Court,
Allahabad. Hon'ble Mr Justice K.N. Singh (as his
Lordship then was) observed as follows:

"...It is well settled principle that wages
paid to an employee by an employer voluntarily
in bonafide manner without there being any
element of fraud or misrepresentation, cannot
be recovered from the employees subsequently
merely on the ground that some mistake of
interpretation of rules might have been committed
by the employer for which the employees could
not be held responsible....."

The Tribunal also in various decisions has followed
the same principle. The Patna Bench of the Tribunal
in Satyanand Sinha vs. Union of India and ors,
ATR 1990(1) CAT 147, held that recoveries by rectifying
the earlier orders so belatedly ^{made} would not be
justified, if there was no element of fraud or
mis-representation on the part of the employee.
Therefore, in view of the legal position, we hold
that recoveries of excess payment shall not be
effected from the petitioner nos. 4 and 15 up to
21-10-82. The said petitioners will however, be
responsible to pay back the amount which they have
drawn after obtaining the stay order from the
High Court of Judicature at Allahabad from 22-10-82.

5. In the result, the writ petition is allowed
in part, The order of the respondents denying the
benefit of stepping up of pay to the petitioners,
other than the petitioner nos. 4 and 15 is hereby
set aside. The orders in respect of petitioner nos.

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4 and 15 shall stand subject to our observation above, about the recovery from them for a limited period up to 21-10-82. The parties shall bear their own costs.

M. Lawrence
MEMBER (A)

DR. Qureshi
17.12.90

MEMBER (J)

(sns)

December 17, 1990

Allahabad.