

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

C. A. No. 866/90 of 19  
T. A. No.

DATE OF DECISION : 30-8-95

P.D. Singhla

APPLICANT(S)

C/A Shri Sudhir Agrawal

ADVOCATE FOR THE  
APPLICANT(S)

V E R SUS

Union of India and Others

RESPONDENT(S)

C/R Shri N.K. Verma

ADVOCATE OF THE  
RESPONDENT(S)

Q U R A M

The Hon'ble Dr. R.K. Saxena, Member (J)

The Hon'ble Mr. S. Dayal, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Bench ?

No

VCP/-

I. D. Basu  
(SIGNATURE)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

*1/2  
108/2*

Original Application No. 866 of 1990

Allahabad this the 30th day of Aug 1995

Hon'ble Dr. R.K. Saxena, Member (Jud.)  
Hon'ble Mr. S. Dayal, Member (Admn.)

Purushotam Das Singha, aged about 42 years,  
S/o Shri Sri Ram, Presently posted as Divisional  
Mechanical Engineer, Northern Railway, Allahabad,  
District Allahabad.

APPLICANT.

By Advocate Shri Sudhir Agrawal.

Versus

1. The Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Rly. Board through its Chairman Rail Bhawan, New Delhi.
4. Divisional Accounts Officer/FA & CAO (Financial Advisor and Chief Accounts Officer), Northern Railway, Baroda House, New Delhi.
5. Senior Divisional Accounts Officer, Northern Railway, Ferozepur.
6. Senior Divisional Accounts Officer, Northern Railway, Allahabad.
7. Divisional Railway Manager, Northern Railway, Allahabad.

RESPONDENTS.

By Advocate Shri N.K. Verma,

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This O.A. has been filed by Purushotam Das Singha challenging the impugned orders Annexure A-1 and A-2 whereby the salary was re-fixed and reduced. The orders were also passed to make recovery of the

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excess payment made to the applicant.

2. The brief facts of the case are that the applicant was recruited in 1966 <sup>as</sup> Apprentices Train Examiner in the grade of Rs.180-240/. On successful training of 5 years, he was posted as Train Examiner in the scale of Rs.205-280/-. The post of the Train Examiner is classified as Group 'C' post and those, who work in Group 'C' were eligible to compete for promotion to Group 'D' post under Rule 211 of Indian Railway Establishment Code Vol.I which provided promotion by Limited Departmental Examination to the extent of 25% of the post of Class II.

3. The System Technical School, Charbagh, Lucknow had invited the applications on 12.9.1978 for the selection of Lecturers and Assistant Lecturers in the grade of Rs.700-900/- and 550-750 respectively for a tenure of 5 years. Those incumbents who were working in the grade of Rs.425-700/- and had 3 years of experience, were also declared eligible for the post in System Technical School. The applicant had applied and after competing <sup>in</sup> the written test and viva-voce, was empanelled on 23.7.1979. He was posted vide order dated 06.9.1979 as Lecturer in the grade of Rs.700-900/- in the System Technical School (herein after referred as S.T.S.), Charbagh Lucknow.

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4. In the year 1983, the requisition for selection in Class II service was made by the Head Quarter, Northern Railway and the applicant had applied therefor. He, however, qualified the selection test and was empanelled vide letter dated 13.12.1983. Since, the applicant got first position in this test, he was promoted to the post of Assistant Mechanical Engineer(Diesel) Ludhiana vide order dated 11.1.1984 of General Manager (P) Northern Railway. This post of Assistant Mech. Engineer was in the pay scale of Rs.650-1200/-. The applicant had joined the post on 27.1.1984 and his pay was fixed at Rs.880/- in the pay scale of Rs.650-1200/-. This scale was, however, revised to Rs.2000-3500/- w.e.f.01.1.1986. Accordingly the pay of the applicant was fixed on Rs.2750/- on 01.1.86.

5. According to the case of the applicant, Senior D.P.O., Northern Railway, Ferozpur Division was directed by the Head Quarter vide letter dated 13.1.1988 to refix the pay of the applicant excluding his services rendered on ex-cadre post of Instructor of System Technical School, Charbagh, Lucknow. It was also directed that necessary recovery of the excess payment be also made. The averments of the applicant that he was never communicated or informed of any order or step taken in the matter, otherwise, he would have explained that there was no error in fixation of his pay. The applicant, in the meantime, was promoted to the post of Divisional Mechanical Engineer and was sent to Kanpur where he joined

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on 17.1.1990. The post of Divisional Mechanical Engineer carried pay scale of Rs.3000-4500/-. His pay was fixed on Rs.3200/-. On instruction of General Manager, Northern Railway, the Senior Divisional Accounts Officer, Northern Railway issued pay slip to the applicant in April, 1989, reducing the pay of the applicant w.e.f. 01.1.1984 and recovery of the excess payment because of the wrong fixation of the pay, was also directed. The result was that the basic pay which was fixed at Rs.2750/- on 01.1.1986 was reduced to Rs.2300/-, the pay which was fixed at Rs.3200/- on 17.1.1990, was reduced to Rs.3000/-. The applicant approached Divisional Railway Manager, and was informed that the step of refixing the pay was taken on the orders of the General Manager, Northern Railway. He, therefore, filed this O.A. with the relief that the orders Annexure A-1 and A-2 dated April, 1989 and 11.10.1990 respectively, be quashed and the respondents be also directed not to make any change in the salary of the applicant and no recovery be made.

6. The matter has been contested by the respondents and it is averred that the pay on promotion to Group 'D' post is fixed in terms of para 1316 of Indian Railway Establishment Code, Volume II. It is also pleaded that the applicant before his promotion to Group 'B' service, was holding ex-cadre post in S.T.S., Charbagh, Lucknow in the grade of Rs.700-900/- whereas substantively he was in the grade of Rs.550-750/-.

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It was also pointed out that before going to S.T.S. Charbagh- an ex-cadre post - he was drawing Rs.675/- but, on joining S.T.S. his pay was fixed at Rs.830/-. As a matter of fact while fixing the pay in Group 'B' service the substantive grade of Rs.550-750/- should have been taken into consideration but, by mistake the grade of Rs.700-900/- was made basis, This mistake was detected later on and, therefore, the mistake was rectified. It is also contended that <sup>in &</sup> rectifying the mistake, there is no necessity of giving any show-cause notice ~~before~~ passing an order. The respondents, therefore, pleaded that the O.A. is liable to be dismissed.

7. We have heard the learned counsel for the parties and perused the record.

8. The crux of the matter is whether the respondents can re-fix the salary if, mistake is detected and whether the recovery of excess payment can be made from the applicant. It is well settled law that the pay is fixed by the Employer or the Department and the employee has no role to play therein. The contention of the counsel for the respondents is that the salary of an employee can be reduced by refixing the same if, by mistake higher salary was fixed earlier. In this connection, the emphasis has been laid on Rule 1316 of Indian Railway Establishment Code, Vol.II. ..... pg.6/-

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The learned counsel for the applicant on the other hand placed reliance on the decision rendered by the Tribunal as well as by the Hon'ble Supreme Court. In the case 'Swapan Kumar Saha and Others Vs. Union of India and Others (1993) 23 A.T.C.902', it was held that "Erroneous fitment in a higher grade, the recovery of resultant overpayments cannot be done". In another case 'Narayan Chandra Dey Vs. Union of India and Others(1993) 23 A.T.C. 937', Calcutta Bench had taken the view that "an employee whose pay scale is sought to be lowered on the ground that higher scale was granted erroneously, was entitled to an opportunity of representation. It was further held that the recovery of excess payment was not allowed". Allahabad Bench in the case 'Smt. Mohindra Kaur Chaddha and Others Vs. Union of India and Others (1995) 1 UPLBEC 5(Trib.)' also took the view that "reduction in pay and recovery of amount paid, was not justified, unless an opportunity was given". Their Lordships of Supreme Court in the case 'Shyam Babu Verma and Others Vs. Union of India and Others (1994) 2 S.C.C. 521' held that "if the higher pay scale was erroneously given to the petitioners due to no fault of theirs, it would be just and proper not to recover any excess amount already paid to them". In the case 'Bhagwan Shukla Vs. Union of India and Others J.T.1994(5)S.C.253' it was held that "the appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause".

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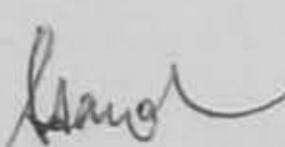
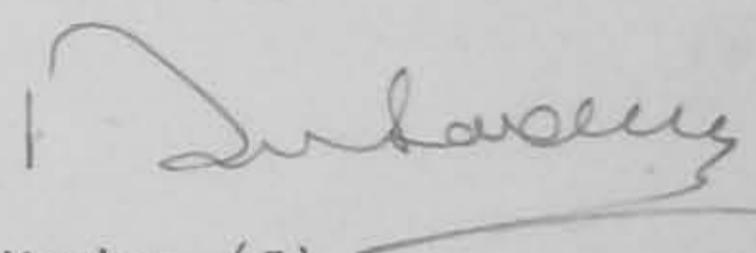
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against the reduction of his basic pay. It was further held that he was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. Accordingly their Lordships held that there had been <sup>4</sup> flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which had the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter." In another case 'Sahib Ram Vs. State of Haryana and Others J.T. 1995(1) S.C.24' it was held that "the appellant was not responsible for any mis-representation and, therefore, the amount paid till date, may not be recovered."

9. When we examined the facts of this case in the light of the Judgments referred to above, we came to the conclusion that in this case the applicant had not misrepresented about fixation of his pay. The respondents had fixed <sup>on their own</sup> the pay and the applicant drew the same accordingly. If, the higher salary was fixed erroneously, the notice ought to have been given to the applicant. It is admitted fact to the respondents that no notice was given. Therefore, the order of

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reduction of pay without hearing the applicant as is observed by their Lordships of Supreme Court in Bhagwan Shukla's case, is violated of the Principle of Natural Justice. It is well settled that the payment of salary made to an employee even on erroneous fixation of the same, it cannot be recovered. Thus, the impugned orders are not sustainable in law. In case, the respondents feel that higher pay has been erroneously fixed, it can be rectified only after following the principle based on natural justice.i.e. after giving an opportunity of hearing. The result, therefore, is that the impugned orders dated April, 1989 and 11.10.1990 (Annexure A-1 and A-2 respectively) are hereby quashed and set aside. The O.A. is disposed of accordingly. No order as to costs.

  
Member (A)  
Member (J)

/M.M./