

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Dated: Allahabad, This the 19th day of April,2000.

CORAM

Hon'ble Mr. Rafiuddin, JM

Hon'ble Mr. M.P. Singh, AM.

Original application No. 1338 of 1992.

1. Shri Surya Nath Singh, son of Shri Ram Balak Singh, aged about 46 years, resident of House No.C-1/115/162, Village-Bishunpurwa, P.O. Kunra Ghat, District- Gorakhpur.
2. Shri Raj Kishore, son of Shri Nand Lal, aged about 46 years, Khalasi, Bridge Workshop, Gorakhpur Cantt- resident of Avas Vikas Colony, Jharkhandi, Qr. No. 249, Hanuman Mandir, P.O. Kunra Ghat, Gorakhrur.
3. Shri Kausundra Misra, son of Shri Amendra Nath Misra, aged about 48 years, Khalasi, Bridge, Workshop, Gorakhpur Cantt.- r/o Avas Vikas Colony, Shahpur No.2, Qr.No.277, P.O. Gita Batika, Gorakhpur City, Dist.- Gorakhpur.
4. Shri Ram Lekhan, son of Shri Halroo, aged about 43 years, Chaukidar, Bridge Workshop, Gorakhpur Cantt. r/o. village Hardia, P.O. Bhawapar, Dist.- Gorakhpur.
5. Shri Shamsher Bahadur Singh, son of Shri Vishwanath Singh, aged about 42 years, Khalasi, Bridge Workshop, Gorakhpur Cantt., r/o Qr. No.277, Shahpur Avas Vikas Colony No-2, P.O.- Sita Batika, Gorakhpur City, Gorakhpur,.

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6. Shri Markanday Singh, son of Shri Durga Prasad Singh, aged about 49 years, Khalasi, Bridge Workshop, Gorakhpur Cantt. r/o Village and Post Office- Mehripur, Dist.-Basti-
7. Shri G.C. Sharma, son of Shri Ved Prakash, aged about 49 years, Chaukidar, Bridge Workshop, Gorakhpur, Cantt., c/o Motor Spares, Opp. Rly. Station, Gorakhpur.
8. Shri Hari Ram, son of late Shri Ram Yatan, aged about 30 years, Chaukidar Bridge Workshop, Gorakhpur Cantt. r/o Qr. No. 15/J Rly. Colony, Gorakhpur.
9. Shri Ram Daras, son of Shri Paltoo, aged about 37 years, Chaukidar, Bridge Workshop, Gorakhpur Cantt., r/o Qr. No. 15/J, Railway Colony, Gorakhpur Cantt., District- Gorakhpur.
10. Shri Udhram Singh, son of Shri Basudeo aged about 49 years, Chaikidar, Bridge Workshop, Gorakhpur Cantt.- r/o Village and Post- Gorakhpur, Dist.- Gorakhpur.

..... Applicants

O/A A. S, Lal

versus

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Works Manager/ Bridge, North Eastern Railway, Gorakhpur.

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..... Respondents

3. The Executive Engineer (Bridge Workshop), NN
North Eastern Railway, Gorakhpur Cantt.,
Gorakhpur.

..... Respondents

C/R, A.V. Srivastava,

(O R D E R)

(By Hon'ble Mr. Rafiuddin, J.M.)

The applicants who are Ex-Serviceman were appointed in Group 'D' in Scale of Rs.750 - 940 in the office of Executive Engineer, Bridge Workshop, North Eastern Railway, Gorakhpur vide order dated 17/18.01.90. The pay of the applicants was fixed vide order dated 26.10.90 in the scale of Rs.750-940. It is also claimed that the pay of applicant No.1 in his Military Service was Rs.1,255/- pay of applicant No.4 was Rs.1,170, the pay of applicant No.5 was Rs.1,080, the pay of applicant No.6 was Rs.1095, that of applicant No.7 was Rs.1345, and that of applicant No.8 was Rs.965/- and that of applicant No.9 was Rs.989 and that of applicant No.10 was Rs.1170 on the date of their retirement from military service. It is also claimed that the applicants were paid their salary on the basis of fixation of pay vide order dated 26.10.90. But the respondent No.3 vide office order dated 3.5.91 has cancelled the order of fixation of pay dated 26.10.90 and has re-fixed the pay of applicants at the minimum of the scale of Rs.750-940 from the date of their appointment subsequently the respondent No.3 vide order dated 1.11.91 also directed to recover the excess amount which was paid to the applicants as a result of re-fixation of their pay vide order dated 3.5.91. The applicants have now challenged the order at 3.5.91 as well as 1.11.91 by means of this original application.

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The main grounds challenged for the re-fixation of pay in the O.A. taken by the applicants are that the employees who are similarly circumstanced and have been absorbed in other Departments their pay has been fixed at the maximum of the scale Rs.750-940 on absorption but the applicants have been singled out and their pay has been fixed on the lowest stage of scale Rs.750-940. It is also claimed that the impugned order dated 3.5.91 the pay of the applicants has been reduced which is a punishment. The pay of the applicants was fixed at Rs.940 by the respondents themselves and amount was received by the applicants in good faith. Therefore, the question of any recovery from the wages of the applicants does not arise. It is also stated that the applicants are governed by the provisions of payment of Wages Act and the amount can be deducted from their wages. They have also pleaded that the impugned order has not been passed according to the Rules.

The respondents in their counter reply have stated that the pay of the applicants was fixed due to oversight and provisions of OM No. 3/1/85-Esst.(Pii) dated 31.7.86 issued by the Department of Personnel and training and circulated vice Railway Boards letter No. - E/205/3/Pt.111 (IV) dated 20.3.87/26.5.87.

The pay of the applicants has earlier fixed was corrected by the impugned order.

As regards show cause notice it is stated that the decision has been taken after the representations made by the applicants are decided.

We have heard Sri A.V. Srivastava the learned counsel for the respondents and perused the records. Learned Counsel for the respondents has drawn our attention to the provisions of the O.M dated 31.7.86 issued by Department of Personnel and Training in which the instructions for fixation of pay of re-employment pensioners included ex-servicemen have been given. Relevant parts of the instructions are as under :

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- Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.
- In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.
- In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent.
- In the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of Civilians who held posts below Group A post at a time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

It is pointed out by the learned counsel for the respondents that all the applicants were appointed after 1.7.86 and, as such, aforesaid instructions are applicable in the case of the applicants and accordingly the pay of the applicants have been fixed at the minimum of scale of Rs.750 ignoring the pension. We also agree with the contention that their case is fully covered by the aforesaid instructions.

It has also been specifically stated by the respondents in the counter reply that there is not a single case in the entire Railways where pay of Ex-Military Personnel absorbed like the applicants on or after 1.7.86 had been fixed at the Rs.940/- in scale of Rs.750-940 as claimed by the applicants. The applicants have not filed any

re-joiner to the counter reply nor have specifically mentioned the name of any Ex-Militaryman whose pay has been fixed in the maximum pay scale of Rs.750-940/-.

The impugned order has been imposed only after considering the ^{representations} ~~respondents~~ of the applicants. Therefore, the question of violation of principle natural justice does not arise.

Since the pay of the applicants was fixed due to inadvertance and the same has been re-fixed in terms of the orders applicable in the case of the applicants, the respondents have right to recover the excess amount paid to the applicants.

For the reasons stated above, we do not find any merit in the O.A. The O.A. is dismissed.

No order as to costs.

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A.M.

Rafiquddin
J.M.

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