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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIABAD BENCH,
Allahabad.

Dated : Allahabad this the ^{6th} day of November 1995.

CORAM : - Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 1729 of 1993.

V. N. Pandey,
Guard Special (Retired),
Northern Railway, Allahabad Division,
R/o. 129/40/B-1 C/o. Sri Nawal Mishra,
Chakia, Allahabad.....Applicant.

Versus

1. Union of India
through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Senior Divisional Accounts Officer,
Northern Railway,
Allahabad.
3. Senior Divisional Personnel Officer,
Northern Railway,
Allahabad.
4. Divisional Railway Manager,
Northern Railway,
Allahabad.

.....Respondents.

O R D E R

(By Hon. Mr. T. L. Verma, J.M.)

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The applicant was initially appointed as
Guard Grade 'C'. In due course he was promoted as Guard
Grade 'A', in the scale of Rs. 425-600. He was, thereafte
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promoted as Chief Yard Master in the Scale of pay Rs. 700-900. As he failed to clear the promotion course No. 16, he was reverted to the post of Guard Grade 'A' and his pay was fixed at Rs. 515/- which was subsequently raised to Rs. 600/-. After the recommendation of the IVth pay Commission was implemented, the pay of the applicant was fixed at Rs. 2150/- in the replacement scale of Rs. 1350-2200/-, recommended for Guard Grade 'A'. He was promoted as Guard Grade Special in the pay scale of Rs. 1400-2600/- and his pay in that scale was fixed at Rs. 2540/-. He continued to draw pay at that rate till he retired from service on 31.3.1992.

2. It is stated that after retirement of the applicant, the respondents issued Service Certificate cum Identity Card showing Rs. 2250/- as last pay drawn by the applicant. The respondents, on being contacted, informed the applicant that his pay was erroneously fixed at Rs. 600/- on being reverted to the post of Guard Grade 'A' in place of Rs. 515/- with effect from 3.9.1984 and at Rs. 2150/- in the replacement scale Rs. 1350-2200 and at Rs. 2540/- in Guard Special Grade Rs. 1400-2600/-. The error has been corrected by correctly fixing his pay.

3. The action of the respondents in unilaterally reducing his pay and recover the alleged over payment, according to the applicant, was arbitrary and against the principle of natural justice. He therefore, challenged the same by filing O.A. No. 996/92. The said O.A. was disposed of by ~~the~~ order dated 22.3.1993, directing the respondents to dispose

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of the representation filed by the applicant within a period of three months by speaking and reasoned order, taking into consideration all the pleas factual and legal raised by the applicant. The respondents were also directed to give hearing to the applicant. The operative portion of the order passed in the said O.A. reads as follows :-

"Accordingly, the respondents are directed to decide this matter within a period of three months associating the applicant with the matter in accordance with law in the light of observations made above. The applicant shall approach Senior Personnel Officer, Railway Administration within a period of three weeks from today and who shall fix a date two weeks thereafter and after hearing the applicant pass a speaking order taking into consideration all the pleas and the legal and factual position and without trying to save the skin of office and officers against whom no action was taken in case error was on their part. As they have indicated earlier so far as the position of the railway quarter is different that the respondents in accordance with law the applicant cannot be benefited to the cost of Railway Administration for a particular benefit, he can not be deprived of the benefit of the other side also."

4. The respondents have decided the representation of the applicant by order dated 29.7.1993. By this order the pay of the applicant has been stepped up at par with his junior Sri S.C. Mishra with effect from 1.6.1981. The benefit arising out of stepping up of pay has been worked at Rs. 7,142.95 for the period from 1.6.1981 to 31.6.1982. Additional bonus at enhanced rate

has also been sanctioned for the year 1987-88 and 1988-89. The said amount however, has been ordered to be adjusted against the dues recoverable from him on account of over payment made to him.

5. This application has been filed for quashing order dated 29.7.1993 and for issuing a direction to the respondents not to reduce the pay of the applicant from Rs. 2540 to Rs. 2300 per month and to make payment of entire arrears of gratuity and other retiral benefits including pension etc. calculated treating his pay Rs. 2540/-

6. The respondents have contested the claim of the applicant, inter-alia, on the ground that this application application is barred by principle of res-judicata and that the pay of the applicant was fixed at Rs. 600/- in place of Rs. 515/- with effect from 3.9.1984 and at Rs. 2150/- in the replacement scale in place of Rs. 1850/- This led to further mistake in fixing his pay, on his promotion as Guard Grade special, 1400-2600/-. This mistake, it is stated, has subsequently been rectified and the pay of the applicant has rightly been reduced to Rs. 2250/-

7. I have heard the learned counsels for the parties and perused the record. So far as the contention of the respondents that this application is barred by res-judicata is concerned, I find no merit in this argument. Although O.A. No. 996 of 1992 was filed for similar reliefs but, the issue raised

by the applicant was not adjudicated in the said O.A. The matter was been left to the respondents to determine on the basis of pleas legal and factual raised by the applicant in his representation.

8. This application has been filed against the order passed by the respondents on the representation of the applicant pursuant to the direction given in the said O.A. According to the applicant, the respondents have committed error in fixing his pay.

9. In view of the foregoing conclusion the next question that arises for consideration is whether the pay of the applicant on reversion to the post of Guard Grade 'A' was wrongly fixed at Rs.600/- in place of Rs. 515/-. The averment made in the application, rejoinder application as also counter-affidavit filed on behalf of the respondents are vague inasmuch as they do not disclose as to what was the pay of the applicant as Guard Grade 'A' at the time he was promoted as Chief Yard Master in the pay scale of Rs. 700-900/-. In absence of the aforesaid information it is not possible to determine as to whether the pay of the applicant should have been fixed at Rs. 515/- or Rs. 600/- on his reversion to the post of Guard Grade 'A'. It is, however, admitted that the replacement scale of Guard Grade 'A' as recommended filed by pay Commission was Rs. 1350-2200/-. The Railway Board has issued instructions regarding principle for fixation of pay in the replacement scales. In absence of relevant information the correctness or otherwise of the fixation of pay as done by the respondents on detection of

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administrative error cannot be determined.

10. It was next argued that the applicant should have been given benefit of stepping up of pay at par with the pay of Sri K.G.Srivastava who was immediate junior to the applicant. Parity given to him on par with Sri S.C.Mishra, it was submitted, was not justified as Sri Mishra is an appointee of year 1961. In para 2 and 3 of the Counter-Affidavit filed by the respondents it has been stated that the applicant was irregular in service as a result he earned late increment therefore, he was getting less pay than his juniors and as such he cannot claim parity with Sri K.G.Srivastava. In the rejoinder-affidavit, the applicant has not effectively denied the aforesaid averment of the respondents. It has rather been stated that "Even assuming for the sake of argument without admitting that the petitioner earned late increment because of his irregular service then also his pay should have been stepped up in terms of para 1313 of the Indian Railway Establishment Code, 1987. The instructions for stepping up of pay on par with the junior have been issued to remove the anomaly caused by junior drawing higher pay as a result of junior officiating in higher post without giving such opportunity to the senior and sanctioning advance increment to the junior or for some allied reasons. These provisions, however, do not apply to a case where senior draws less pay than his junior as a ~~result~~ result of disciplinary proceeding and /or shifting of date of increment on account of the senior remaining on Extra ordinary leave for long spells. The averment

made in the application do not disclose that the applicant was drawing less pay as compared to Sri Srivastava not because of shifting of date of increment on account of irregular service but, because of error on the part of the respondents. For want of relevant crucial information in that regard, we are not in a position to hold that the applicant was entitled to stepping up of his pay on par with Sri K.G.Srivastava and not Shri Mishra as has been done by the respondents. We, therefore, find merit in this argument also.

11. It was next argued that even if it be assumed that the pay of the applicant was wrongly fixed, the same cannot be reduced after retirement of the applicant. In support of this argument, reliance has been placed on the decision of Calcutta Bench of the Central Administrative Tribunal in Neel Kant Shah Vs. Union of India, reported in 1987 S.L.J.(3) page 306. In the said case the applicant, who was State Government employee, was working as Stenographer in the S.S.B. Organisation on deputation. He gave his option for fixation of his pay in the Central Government pay scale. His pay, accordingly was fixed. In 1970, State Government revised pay scales of its employees. After revision of the State Government's Pay Scales, pay of the applicant, in the Central Government, scale, was again fixed taking into

account the revised basic pay scale of the applicant in the revised scale of the State Government. The scale of Central Government employees were revised in 1973. The applicant was given benefit of this revision also. When the Government detected the mistake in fixing the pay of the applicant, order for recovery of the over payment was passed. Calcutta Bench of the Central Administrative Tribunal quashed the said order on the ground that the applicant was not responsible for wrong fixation and also on the ground ~~that~~ of delay apparent on the part of the department in passing recovery order. In the case at hand also the respondents are themselves to be blamed for wrong fixation of the pay of the applicant on his reversion to Guard Grade 'A' and, thereafter, in the replacement scale of Rs. 1350/- to 2200/- and in scale Rs. 1400-2600 on his promotion as Guard Grade Special. The respondents, have taken more than 8 years in detecting their mistake regarding wrong fixation of pay. It has resulted in over payment of Rs. 30,000/-. Even on re-fixation of his pay after stepping up of the same w.e.f.1.6.81, the applicant is required to pay back huge amount from his DCRG. At the time he was given benefit of fixation of pay, obviously he was not aware of the fact he will have to return amount drawn and spent deduction of such huge amount after retirement, in our opinion will cause immense hardship to the applicant. That being so, and having regard of the fact that the applicant is not responsible for wrong fixation of pay than, applicant deserved to be absolved from liability of paying back. So far as payment of retirement benefit is concerned, he will be entitled to

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the same working on the basis of pay he should have been drawing at the time of his retirement, had the respondent not committed error in fixing his pay.

12. Admittedly the applicant was not given any opportunity to show cause as to why his pay be not reduced from Rs. 2540/- to Rs. 2250/-. The decision has been taken unilaterally, without affording any opportunity to the applicant as to why his pay should not be reduced. The age old principle that administrative orders having civil consequences should abide by the principle of natural justice, in this case, appears not to have been complied with while reducing the pay of the applicant. We have already noticed above that the applicant was allowed the benefit of drawing pay at higher rate for over seven years. It was only after his retirement, his pay has been reduced from Rs. 2540/- to Rs. 2250/- that too without giving any opportunity to him. This order, therefore, cannot be upheld.

13. In view of the above, this application is allowed and the order reducing the pay of the applicant from Rs. 2540/- to Rs. 2250/- and ordering recovery of the alleged over-payment is hereby quashed. The respondents are directed not to adjust the alleged amount of over payment against Death-Cum-Retirement Gratuity, admissible to the applicant. It will, however, be open to the respondents to pass fresh orders so far

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as the question of re-fixing the pay of the applicant is concerned, after giving him to show cause against proposed reduction and re-fix his terminal benefit including pension on the basis of pay so fixed. It is, however, made clear that the respondents shall not recover alleged amount of over-payment made to the applicant. There will be no order as to costs.

Yashwant
Member-(J)

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