

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Original Application No. 5 of 1999

Dated : This the 03rd day of February, 2004

Hon'ble Maj Gen K.K. Srivastava, A.M.
Hon'ble Mrs. Meera Chhibber, J.M.

Dwarka Prasad Dwivedi aged about 49 years son of
late Shri K.P. Dwivedi resident of Railway Qr. No.
C-101, Station Road, Jhansi.

....Applicant.

By Advocate :- Shri R.K. Nigam

VERSUS

1. Union of India through General Manager, Central
Railway, Mumbai CST.
2. Divisional Railway Manager, Central Railway, Jhansi.
3. Divisional Audit Officer, Central Railway, Jhansi.
4. Sr. Divisional Accounts Officer, Central Railway,
Jhansi.

.....Respondents.

By Advocate :- Shri D.C. Saxena.

ORDER

By Hon. Mrs. Meera Chhibber, JM

By this O.A. applicant has sought the
following relief(s):-

- " i) issue a writ, order or direction in the nature
of CERTIORARI quashing the impugned orders
dated 4-4-97 (Annexure A-I), dt. 2-5-97
(Annexure A-II) and dt. 15.7.97 (Annexure A-III)
together with any recovery made or purported
to be made thereunder;



- ii) issue another writ, order or direction in the nature of MANDAMUS thereby commanding the Respondents not to give effect the impugned orders of recovery and also to refund the amount whatever deducted under the impugned orders alongwith penal interest and also fix his pay giving the benefit of addl. increment already already granted in his favour from 1982;
- iii) issue any other suitable order in favour of the humble petitioner as deem fit by this Tribunal in the facts and circumstances of the case;
- iv) award cost of the petition in favour of the humble petitioner.

2. It is submitted by the applicant that he was working as Signal Inspector Grade III in the pay scale of Rs.425-700 in 1982, when he underwent Vasectomy operation, therefore, as per rules he was granted additional increment of Rs.20/- raising his pay from 560-580/- (Annexure A-V). Therefore, applicant rose to the level of Assistant Signal & Telecommunication Eng. Class II gazetted Officer in the scale of Rs.7500-12,000/- and was drawing Rs.950/- (Annex.AVI).

3. Grievance of applicant started when his pay was fixed at Rs.2900+40 PP instead of 3050 (Annex.A-II) as a result of which he was being paid at reduced amount of Rs.9,500/- instead of Rs.9,750/-. Not only this, the respondents also issued an order for recovering an amount of Rs.27,704/-.

4. Being aggrieved applicant gave a representation on 19.07.1997 (Annexure A XI)). However, no decision was taken on the same and recovery was being started, therefore, he had no other option but to file the present O.A.

5. Counsel for the applicant relied on judgment given by the Tribunal in the case of P.G.Goyal (Annexure-A-XII) and Para 1013 to 1016 of IREM.

6. Respondents on the other hand have submitted :

"As per Rly Board's letter personal pay Rs.20/- equal to one increment of the scale of pay of Rs.425-700(RS) of the applicant as an incentive was granted per month on under-going his vasectomy operation on 12.7.82. The Personal pay Rs.20/- was to be shown separately and it was not to be merged in the basic pay. His basic pay was to be shown as on 1.10.1982 as 560+20 pp and not as Rs.580/-, D.A. etc is given on basic pay Rs.560/- and not on personal pay. Erroneously his personal pay Rs.20/- was merged in his basic pay and shown as Rs.580/- instead of Rs.560/-+20 pp. as on 1.10.82. The over payment as a result of merger of P.P. will have to be recovered."

They have further explained that recovery of the over payments will be made in suitable easy instalments as permitted under rules:

"It is fact that the applicant was promoted in several higher grades after getting personal pay and his pay was fixed on the basis of wrongly merged personal pay into basic pay. Thus, over payment made to the applicant can be recovered in suitable instalments as per IREM Rule -1013. "

7. They have also explained that personal pay has been correctly fixed at Rs.9,000/- w.e.f. 01.1.1996 9250 w.e.f. 01.06.1997 and 9500 w.e.f. 01.06.1998 and he is drawing the pay correctly ^{as is} on date.

8. Counsel for the respondents submitted that errors can always be rectified and there was no need to give any notice to the applicant as it would have been a futile exercise. He relied on 2000 S.C.C.(L&S) 965 judgment given in the case of Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan.

9. We have heard both the counsel and perused the pleadings from which it is clear that the personal pay of Rs.20/- was not to be added in his basic pay as an increment, but was to be paid extra, however, by mistake the same was added in his basic pay and fixation was done accordingly from 1982. It is not the case of

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respondents that there was any misrepresentation made by applicant or he was responsible for getting his pay fixed wrongly. The mistake was detected by respondents only in 1997 i.e. after 15 years. All this while the amounts which were paid to the applicants must have been spent by him, therefore, we feel it would not be in the interest of justice or equity to demand recovery from him after 15 years, but the action of respondents in correcting the mistake cannot be faulted with because after all once mistake is found out, it could always be corrected.

10. At this point it would be relevant to quote the following judgments of Hon'ble Supreme Court wherein *anush* similar circumstances it was held as under:

Higher pay scale fixed erroneously and given to personal pay since 1975-It was reduced in 1984 Supreme Court held since personal pay received higher pay scale due to no fault of his, it shall only be just and proper not to recover any excess amount already paid to him. 1994(2)SCC 521 Shyam Babu Verma & Ors Vs. similarly in 1995(1) Supplementary SCC18 Sahile Ram Vs. State of Haryana it was held as under:

Excess pay-upgraded pay scale given due to wrong construction of relevant order without any misrepresentation by the employee. Recovery of payment already made restrained.

Similarly in 1997(1) SCC 419 State of Rajasthan Vs. R.Dyal also it was held recovery cannot be made as no misrepresentation.

However
In A.K. Shamma Vs. U.O.I. & Ors. 2000(1) AISLJ SC257 it was held by Hon'ble Supreme Court that administrative errors can be rectified.

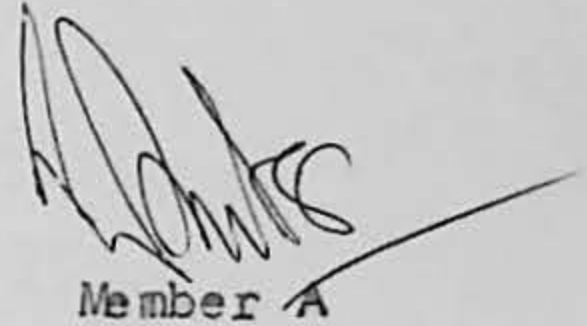
11. In view of above judgments, we are of the view that though respondents could have corrected the mistake, but recovery should not have been made after 15 years as it was none of applicant's fault if respondents fixed it wrongly without any misrepresentation by the applicant.

B The O.A. is therefore, partly allowed. It is seen that

the recovery was stayed by this Tribunal vide its order dated 15.3.99 which is now confirmed and respondents are directed not to recover the excess amount from applicant, however, correction of pay cannot be said to be illegal. Order dated 4.4.97 and 15.7.97 to that extent only are quashed whereby recovery is ordered. The O.A. is partly allowed with no order as to costs.



Member J



Member A

GIRISH/