

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 572 of 2000

Monday, this the 11th day of May, 2009

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

K.C. Richariya Son of Shri Swami Charan Richariya, aged about 59 years, resident of 491, Adarsh Nagar, Sipri Bazar, Jhansi (U.P.).

Applicant

By Advocates: Sri B.N. Singh
Sri S.K. Mishra

Vs.

1. The Union of India through the General Manager, Central Railway, C.S.T. Mumbai (Maharashtra).
2. The Divisional Railway Manager, Central Railway, Divisional Office, Jhansi (U.P.)
3. The Senior Divisional Accounts Officer, Central Railway Divisional Office, Jhansi (U.P.).

Respondents

By Advocate: Sri P.N. Rai

ORDER

Delivered by Justice A.K. Yog, J.M.

Heard learned counsel for the applicant and Sri P.N. Rai, learned Standing Counsel for Railways on behalf of respondents.

2. The applicant has shown his age as 59 years while presenting O.A. in the year 2000. From perusal of the pleadings, (contained in this O.A.), it transpires that sole grievance of the applicant was that once his pay was fixed and accordingly paid, it could not be reduced/recovered without giving opportunity of hearing to the Applicant to defend him including opportunity to show that fixation of pay was correct and that proposed action of respondents is not in order. Averment to this effect has been made in para-4.11 of the O.A., which reads: -



(11) That the applicant has also not been given any opportunity of hearing before deducting the Amount of Rs.5592/- from his pay for the month of April 2000, nor was he ever informed by any authority that it is proposed to recover a sum of Rs.87,500/- from his monthly pay on account of the alleged over payment nor has he been given the details of the alleged over payments."

The afore quoted para-4.11 of the O.A. has been replied vide para-10 of the Counter Affidavit, which reads: -

"10. That the contents of para-4.11 of the O.A. are denied. The applicant, after his repatriation was drawing more pay for which he was not entitled. It is further submitted that after his posting as Chief Ticket Inspector on cadre post, his pay fixation was done as per rules and accordingly overpayment made to him has been worked out and recovered through regular payments."

The applicant filed Rejoinder Affidavit and aforesaid para-10 has been replied vide para-6 of the Rejoinder, which reads: -

"6. That the contents of para-10 of the counter reply are not admitted as they are not only incorrect but also vague. It is stated that the deponent's pay at Rs.9100/- per month was correctly fixed upon his repatriation as C.T.I.

It is also stated that no specific orders to reduce the deponent's monthly pay from Rs.9100/- to Rs.7500/- w.e.f. April 2000 were passed by the competent authority nor were any such orders communicated to the deponent."

3. From the aforesaid pleadings on record, it can be seen that specific and categorical statement of fact (pleaded on behalf of the applicant) in para-4.11 of the O.A. to the effect that he was afforded no opportunity before Order, for deducting certain amount and reducing his salary, has been passed behind his back. This statement of the applicant has not been controverted by the respondents in their pleadings. Hence, this Tribunal has no option but to accept the statement of the applicant that impugned order has been passed in violation of principle of natural justice. We are of the opinion that the deduction in salary/emoluments, and recovery of the same (subject matter of present O.A.) are not in consonance with the settled principle of law, and the same is arbitrary.

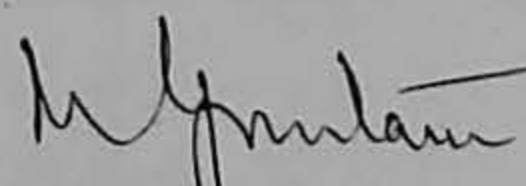
4. The applicant has placed reliance upon Order of Central Administrative Tribunal, Principal Bench, New Delhi in case of "Bahadur Chandra Bhatia vs. Union of India and others 1987 (3) Administrative Tribunal Cases page 165. Learned counsel for the applicant has also placed reliance upon the case of Shyam Babu

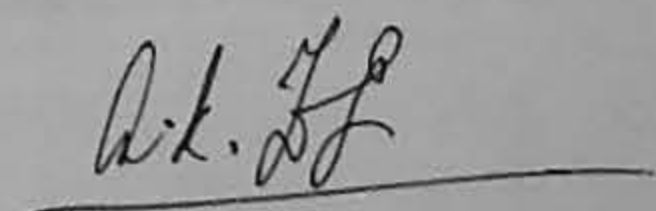
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Verma vs. Union of India and others 1994 (2) Supreme Court Cases 521, wherein Hon'ble Apex Court has held that in certain circumstances and conditions, amount once paid, should not be recovered. However, we leave to respondents' authority to consider on this aspect also.

5. In view of the above, we are of the opinion that the applicant should be given an opportunity to defend himself, and consequently we direct the applicant to file a representation before the concerned competent authority/respondent No. 2-Divisional Railway Manager, Central Railway, Divisional Office, Jhansi (U.P.) along with certified copy of this Order and copy of O.A. (with all annexures) within four weeks from today and if said representation is filed (within the time stipulated/contemplated above) before the competent authority, the said authority shall decide the same by a reasoned and speaking order within a period of three months from the date of receipt of representation alongwith certified copy of this order. In case representation is not filed within the time stipulated/contemplated above, this order shall loose efficacy. The decision taken on representation of the applicant be communicated to him forthwith.

6. The O.A. is allowed by moulding the relief to the extent indicated above. No order as to costs.


Member (A)


Member (J)

/M.M/