

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 10TH DAY OF FEBRUARY, 2004

Original Application No. 1483 of 2002

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Ehtesham Ahmad aged about
64 years, son of Late Idris Ahmed
Rtd, Chief Traction Foreman
(Railway Electrification) Sagar under
Chief Project Manager(R.E), Bhopal at
present residing at a Badraka, Azamgarh(UP)

.. Applicant

(By Adv: Shri K.N.Katiyar)

Versus

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The General Manager, Central
Organisation, Railway Electrification
(Core), Civil Lines, Allahabad.
3. The Chief Project Manager, Railway
Electrification, Bhopal.
4. The Divisional Railway Manager,
Northern Railway, Allahabad.
5. The Senior Divisional Accounts
Officer, Northern Railway,
Allahabad.

.. Respondents

(by Adv: Shri A.K.Gaur)

O R D E R(Oral)

JUSTICE S.R.SINGH,V.C.

Heard the counsel for the parties and perused the



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original application.

The applicant retired as Chief Traction Foreman, Railway Electrification(Sagar) under the Chief Project Manager,(RE), Bhopal w.e.f. 30.6.1996. The applicant was earlier given adhoc promotion to the post of Chief Traction Foreman, Railway Electrification(Sagar), as stated in para 2 of the counter, from Ex cadre to another Ex cadre post. It appears that the pay on the said post was not correctly fixed and due to wrong fixation an ~~excess~~ amount of Rs 62,202 was over paid to the applicant. By Office Memorandum dated 12/19.2.1997(Annexure A3) the applicant was informed of the sanction of the Competent Authority for waiver of over payment made to the applicant to the extent of Rs 38,539/- The said order reads as under:-

"Sanction of Competent Authority is hereby communicated for waiver of overpayment made to the following employees as mentioned against each towards fixation of pay, which was wrongly fixed for them at the time of their adhoc promotion to the next higher grade post as concurred in by SAO/RE/BPL vide letter No.BPL/RE/A/FX/ 106/Pt. IV/576 dt.18.10.96.

1. Shri S.D.Arekar,Retd CTNL/RE/BPL - Rs 4,212.00
2. Shri E.Ahmed,Retd CTFO/RE/BPL Rs 38,539/-

Sd/
R.V.Sanap
SBP/RE/BPL

The concerned authority was requested to refund the amount as mentioned above which was recovered from the gratuity payable to the applicant. The applicant, it appears, made a representation dated 4.9.02 staking his claim for refund of rest of the amount namely Rs 23,663/- out of Rs 62,202/- which had been deducted from the gratuity payable to the applicant. The representation dated 4.9.02 came to be rejected by order dated 12.9.02 which reads as

under:-

"आपके अभ्यर्थित दिनांक 4-9-02 पर समुचित विचार

किया गया। इसकायालिय के बम्बम्बयक पत्र दिनांक 15-5-97 द्वारा यथा सुचित, अधिसूचित नियत^१नोटिफिकेशन टारगेट^२ तिथि 30-11-91 तक अवैवर पेमेण्ट की माफी स्वीकार की गयी थी। बोड व स्कूल अधिकारियों के निण्य से 30-11-91 के बाद, आप द्वारा अवैवर द्वान राशि के माफी नियमतः स्वीकार्य नहीं है।"

१ बी0केओमिंट्स
कृते प्रहा प्रबन्धक ईकामिक
कोर/इलाहाबाद।

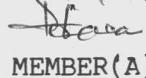
The instant OA has been instituted for quashing the order dated 12.9.02 and for issuance of a direction to the respondents to release the amount of Rs 23,663/- which had been illegally deducted from his gratuity alongwith interest @ 25% per annum w.e.f. 01.07.1996 till the date of actual payment. The ^{Urtrust} ~~excess~~ of the submissions made by the learned counsel for the applicant is that despite order dated 30.10.1991 (Annexure RA-1) the respondents failed to correctly refix the pay of the applicant by 30.11.1991 as a result of which payment continued to be made to the applicant on the basis of wrong fixation of his pay for which the applicant was not at all responsible. The applicant, it has been submitted by the counsel cannot be held responsible for the excess payment which was made due to the wrong fixation of pay done by the respondents and their failure to rectify the mistake inspite a specific order issued in this regard by letter dated 30.10.1991(Annexure RA-1) thereby conveying the decision of the Railway Board accepting the proposal of waiver of over payment and further advising that refixation and determination should be undertaken so as to be over by 30.11.1991. Had the refixation been done as directed by order dated 30.10.1991, excess payment to the applicant after 30.11.1991 would have been avoided. Respondents in the circumstances, were not justified to recover the excess

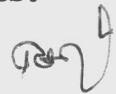
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amount from the gratuity payable to the applicant. The view we are taking finds support from decisions of CAT, Chennai bench in OA No.869/99 H.L.R Rao Vs. Union of India and Ors following the decision of Hon'ble Supreme Court in 'Shyam Babu Varma Vs. union of India & Ors, 27 ATC pg 121. It is settled that if the wrong refixation of pay is not attributable to any fault on the part of the employee, the excess payment if any would not be recoverable from the salary of the employee similar view has been taken by Chandigarh Bench in OA 960-CH-98 Arban Singh Ahuja Vs.Union of India & Ors decided on 11.7.2000(See Salik ram Vs.State of Haryana, 1995 Supp(1) SCC 18 also). In this view of the mater the impugned order is liable to be quashed.

Accordingly, the Original Application succeeds and is allowed. The impugned order dated 12.9.2002 is quashed. The respondents are directed to refund the amount of Rs 23,663/- deducted from the gratuity of the applicant together with the interest @ 18% per annum w.e.f. 1.7.1996 till the date of actual payment. Parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 10.2.2004

Uv/