

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: THIS THE 2nd DAY OF SEPTEMBER 2005.

Original Application No. 27 of 2002.

HON.MR.K.B.S.RAJAN, MEMBER (J)

Smt. Johara Begam, W/o late Mohd. Khalil,
R/o Village: Khajuri,
Post: Hariharpur, Bidauli,
Distt: Mirzapur (UP).

.. Applicant

(By Adv: Shri S.S. Sharma)

V E R S U S

1. Union of India owing and representing,
'Northern Railway' Notice to be served
to The General Manager, Northern Railway,
Headquarters Office, Baroda House,
NEW DELHI.
2. The Chief Administrative Officer (Construction)
Northern Railway, Kashmere Gate,
Headquarters Office,
NEW DELHI.
3. The Divisional Railway Manager,
Northern Railway, Nawab Yusuf Road,
ALLAHABAD.
4. The Deputy Chief Engineer (Construction),
Northern Railway,
LUCKNOW.
5. The Senior Divisional Accounts Officer,
Northern Railway, D.R.M. Office,
ALLAHABAD.

.....Respondents

(By Adv: Shri P. Mathur)

O R D E R

By K.B.S.RAJAN, MEMBER (J)

This application was originally filed by Shri
Mohammad Khalil, who retired from the Railway

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Service as a H.S. Driver and from whose terminal benefits and pension, an amount of Rs 64,355/- was sought to be recovered, on the ground that out of the said amount, a sum of Rs 59,510/- was excess recovery of pay w.e.f. 10-12-1985 to 31-10-1996 and the balance of Rs 4,845/- was excess payment of leave encashment. Initially, when the respondents had directly advised the State Bank of India from where the applicant was drawing his pension, to recovery such alleged excess payment, the applicant moved the Tribunal by filing OA No. 449/2000 which was disposed of by order dated 12th December, 2000 quashing the order of recovery, but giving a latitude to initiate fresh proceedings in accordance with law. This lever made available to the respondents had resulted in the applicant being issued with a show cause notice and on his reply, the recovery of the aforesaid amount was sought to be made, vide order dated 05-01-2001. The applicant promptly moved the Tribunal with the present O.A. with the following prayer:-

- "a. That the Hon'ble Tribunal may graciously be pleased to set aside/quash impugned order dated 5.1.2001 issued by Sri D.A.O./N. Railway, Allahabad advising recovery of Rs. 64,355/- from the retiral dues of the applicant.
- b. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay all the settlement dues and pensionary benefits of the applicant on the basis of basic pay Rs. 4700/- in grade Rs. 4000-6000/- (RSRP) which the applicant was drawing during the last ten months of his service.

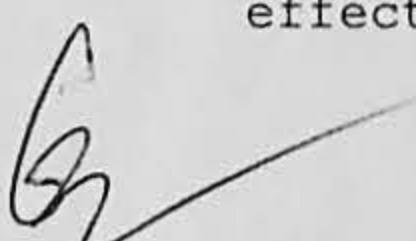


- c. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the applicant Rs. 2 lacs or as the Hon'ble Tribunal may decide/order on account of compensation/damages for grave illegal action on their part in the matter of applicant.
- d. That the Hon'ble Tribunal may graciously be pleased to allow interest @ 18% per annum compounded annually on the amount due to the applicant on account of payment of all retiral dues from the date the same are due to the date the same are actually paid to the applicant.
- e. That the Hon'ble Tribunal may graciously be pleased to award heavy cost of proceedings sin favour of the applicant."

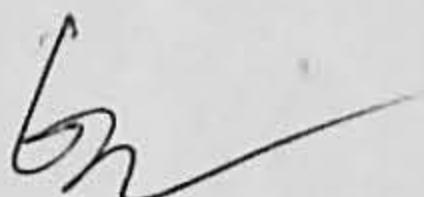
2. By an interim order dated 30th January, 2002, the operation of the impugned order was stayed.

3. During the pendency of the O.A. as the applicant died, his wife was brought on record by order dated 03-02-2003.

4. The respondents contested the O.A. As per the counter filed by them as the applicant's pay scale was erroneously fixed right from 1983, which was detected after his retirement, the excess amount of pay and allowances plus that of leave encashment to which he was not entitled, is sought to be recovered from the terminal benefits/pension. It has been stated that the applicant was given an opportunity of being heard and hence, there is no illegality in effecting recovery.

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5. Arguments were heard and the documents perused. Admittedly the alleged excess amount of payment was due to wrong fixation of pay scale for the period from 1983 onwards. The records nowhere reflected that the erroneous fixation was due to any misstatement or misrepresentation of the applicant Railway employee. The entire blame for the erroneous fixation was attributable to the Railways only. Though the counsel for the applicant made an attempt to justify that there was no erroneous fixation of pay scale by referring to certain documents filed with the OA including one at annexure A 14, Railway Board Circular letter dated 01-08-1986, this need not detail us simply on the ground that even assuming without accepting that there was erroneous fixation of pay scale, whether the authorities could at this distance of time recover the amount from the terminal benefits/pension payable to the applicant? The answer is an emphatic NO. For, the erroneous fixation is not on account of any misstatement or misrepresentation of the retired Railway employee and that no provision exists for recovery from the pension. It would have been a different matter if the recovery is on account of any misconduct of the retired employee whereby some pecuniary loss was caused to the Government. That is not the case here. In this regard, the following decisions of

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the Apex Court are apt to be referred to arrive at the correct legal position:-

(a) **Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, at page 525:**

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

(b) **Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18, at page 19:**

it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

(c) **Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99, at page 103**

We do record our concurrence with the observations of this Court in Sahib Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience

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and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.

(d) **Kerala SRTC v. K.O. Varghese, (2003) 12 SCC 293, at page 305 :**

36. In addition to the general questions raised in other appeals, one other aspect which needs to be noted is that some amount was sought to be recovered from the respondents on the ground that they were paid amounts in excess of their legal entitlements. The attempt to recover the amount was resisted by the respondent employees who filed writ petitions before the High Court which at the first instance directed disposal of the representations filed by them. On fresh consideration, orders were passed for recovery. The ground taken for directing recovery was that there was wrong fixation of pay. That was again challenged before the High Court. Taking note of the fact that pay was fixed in 1974 and the writ petitioners were not responsible for any wrong fixation of pay, the recovery of the amount was held to be inequitable by the learned Single Judge of the High Court. The writ appeal was also dismissed. In addition to the questions raised in other appeals, the Corporation has assailed the directions of the High Court not to recover. On hearing learned counsel for the parties and taking note of the peculiar circumstances noticed by the High Court, we do not find any scope for interference with that part of the High Court's directions which related to recovery of the amounts allegedly paid extra to the employees. So far as other issues are concerned, this shall be examined by the High Court afresh as directed.

(e) **Union of India v. Indian Rly. SAS Staff Assn., 1995 Supp (3) SCC 600, at page 601 :**

8. The result, therefore, is that the respondent-employees in the present proceedings would be entitled to the revised pay scales only with effect from 1-4-1987 since the revised pay scales will be fixed for the first time with effect from that date. They are not entitled to any difference on the basis of the notional fixation of pay w.e.f. 1-1-1986. The arrears, if any, paid to the respondent-employees on account of the notional fixation of their pay w.e.f. 1-1-1986 may be recovered from

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their future salaries. It is, however, made clear that the said arrears shall not be recovered from those of the employees who have already retired from service.

(f) *Ram Dayal Rai v. Jharkhand SEB, (2005) 3 SCC 501, at page 506 :*

If the pensioner's benefit is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since, after retirement, the pensionary benefit is the only amount available to eke out a livelihood for the retired employees of the Government.
(emphasis supplied)

6. In view of the above the O.A. succeeds. The order dated 05-01-2001 (Annexure A-1) is quashed and set aside. The respondents are directed not to make any recovery on account of the alleged excess payment of pay and allowance from the legal heir of the applicant. Any amount of terminal benefits withheld by the respondents shall be released forthwith with simple interest @ 6% pa. This should be complied with within a period of three months from the date of communication of this order.



Member (J)

/pc/