

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 10th day of *Nov* 2004.

QUORUM: HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1307 of 2003

1. Motilal Saxena, son of Shri Phulbasi Lal Saxena working as Driver (Goods) under Crew Controller, Diesel Lobby N.E. Railway, Kasganj.
2. Amir Chandra S/o Shri Bhanggoo Ram Working as Diesel Assistant under Crew Controller, Diesel Lobby, N.E. Railway, Kasganj.
3. Keshri Singh S/o Naunihal Singh working as Diesel Assistant under Crew Controller, Diesel Lobby, N.E. Railway, Kasganj.
4. Kalicharan S/o Shri Naval Kishor working as Driver (Goods) under Crew Controller, Diesel Lobby N.E. Railway, Kathgodam.

. Applicant

(By Advocate Shri Sudama Ram)

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Railway, Izzatnagar.

. Respondents

(By Advocate Shri K.P. Singh)

Deva

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicants have impugned the order/letter dated 15/16.3.2000 (Annexure A-1) by which deduction @ Rs. 500/- per month from the salary of the applicants have been given effect. They have prayed for issuance of direction to the respondents to refund the deducted amount @ 18% interest in accordance with the similar benefits granted to the applicants in the case of Hori Lal & others passed by this Tribunal in O.A. No.508/2000 on 15.5.2001.

2. Briefly stated, all the applicants at the relevant time, were working as Diesel Assistants/Driver Goods under the Respondent's establishment. They were all working in the grade of Rs.950-1500 and prior to implementation of the recommendation of the Vth Pay Commission, they were drawing total emoluments @ Rs.4936/-p.m. After fixation of their pay in accordance with the recommendation of the Vth Pay Commission effective from 1.1.1996, their pay was fixed at Rs.4509/- p.m. which is Rs.346/- less than the total pay given prior to 1.1.1996. The aforesaid excess amount of Rs.346/- was given as Personal Pay (PP) after adding Rs.80/- as increment. They have contended that the respondents started deduction @ Rs.500/- p.m. on the strength of the letter dated 15/16.3.2000 issued by the DRM(P), North Eastern Railway, Izatnagar. They could come to know of it from their salary bill which was started w.e.f. March, 2000.

3. Being aggrieved by this illegal deduction, some Diesel Assistants (Hori Lal & others) approached this Tribunal and filed O.A. No.508/2000 which was allowed vide its order dated 15.5.2000 with the observation that the order as far as it relates to applicants are set aside (Annexure A-2). The respondents, following the order of the

D. R. Tiwari

Tribunal, refunded the whole amount which was already recovered vide letter dated 2.11.2001 of DRM(P) Izatnagar (Annexure A-3). They have also contended that some similarly situated persons who were also working as Diesel Assistants and Driver Goods when they came to know about it, they also filed O.A. No.1319/02 and their O.A. was also allowed and their recoveries made so far as also been refunded. Since all the applicants are similarly situated hence they are also entitled to get the similar benefits of the judgment of Hori Lal case but the Respondents have illegally denied the similar benefits to them. It is for this reason that the instant O.A. has been filed.

4. They have assailed the impugned order on various grounds mentioned in para 5 of the O.A. and have stated that it is a settled law that once the payment of arrear has been made as per policy, no recovery can be made when the policy is revised subsequently, because there is no fault of the employees. It has been submitted that the recoveries effected is illegal, unjustified and arbitrary hence the impugned order deserves to be set aside.

5. The Respondents, on the other hand, have opposed this O.A. by filing C.A. It has been submitted that the pay in the revised scale of pay in accordance with the recommendation of Vth Pay Commission of the applicant was wrongly fixed over and above the maximum of the revised scale of pay granting personal pay. They have further stated that it has clearly been mentioned in the office order dated 15/16.3.2000 that grant of personal pay over and above the maximum of the revised scale of the pay is not admissible in terms of the Railway Board's letter dated 17.7.1998 and as such, the same is being withdrawn making recovery of excess payment. They have further argued that as a result of the decision taken by the respondent No.2 in compliance of the order dated 15.5.2001 passed by the Tribunal in O.A. No.508/2000 (Hori

Hori

Lal and 4 others Vs. Union of India & others) when these four applicants along with similar other employees were given opportunity at a later stage vide letter dated 27.12.02 to make representation, if any, against their re-fixation of pay in Vth Pay Commission scale and none of them made any representation hence the pay of the applicants as revised vide the impugned office order has been continued. They have argued that initially the pay of the applicants and other such employees was fixed as per Vth Pay Commission w.e.f. 1.1.1996 granting personal pay over and above the maximum of the revised scale due to misrepresentation of the provisions of Rule 7(1)(A). They have submitted that these four applicants were neither amongst the applicants of the said O.A. No.508/2000 nor they were party of them. Their contention is that the order dated 15.5.2001 passed by this Tribunal in O.A. No.508/2000 was only applicable in respect of the applicants of that O.A. and as such in compliance of the said order the respondents refunded the amount recovered to those applicants vide letter dated 2.11.2001. They have also said that in addition to O.A. No.508/2000, O.A. No. 1319/02 (Mohd. Yasin Khan and 16 others) decided on 28.11.02, the applicants in this O.A. also were refunded the amount recovered. They submitted that since they were not a party to the O.As. mentioned above, they are not entitled for refund of recoveries made. Hence the O.A. may be dismissed.

6. We have heard counsel for both the parties at length and carefully considered the rival contentions of the parties and perused the pleadings.

7. During the course of the argument, counsel for the applicant as well as the counsel for respondents almost reiterated the contentions made in their pleadings. The only question for consideration is whether the applicants are entitled to the refund of the recoveries already made of over over payment on account of the revised orders. Since the counsel for applicants insisted that the present

Deva

impugned order has been contested in O.A. No.508/2000 and the Tribunal has been pleased to allow the same and as a consequence of which the recovery of over payments has been refunded and in this O.A. also the same order has been impugned and the facts are similar, the Tribunal may allow this O.A. also.

8. It may be profitable to reproduce the operative portion of the order passed by this Tribunal in O.A. No. 508/2000 decided on 15.5.2001 :-

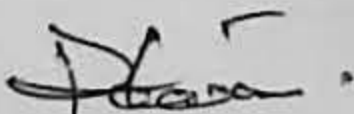
"As far as the recovery of over payment on account of the revised orders is concerned, the same is not permissible in the light of orders of the Apex Court in the case of Shyam Babu Verma Vs. Union of India & ors. (1994) 27 ATC 121 and in the case of Bhagwan Shukla Vs. Union of India & others (1994) 28 ATC 258. The applicants shall, therefore, be entitled to refund of the amount recovered by the respondents on account of revised fixation of pay. This shall be given to the applicants within a period of three months from the date of receipt of this order.


There shall be no order as to costs."

9. If one has regard to the operative portion quoted above, the applicants in this O.A. are also entitled for the similar reliefs and this O.A. is likely to succeed and may be disposed of on the same terms and conditions as contained in order dated 15.5.2001.

10. In view of the facts and circumstances mentioned above and the discussions made, the O.A. is allowed and the applicants shall, therefore, be entitled to refund of the amount recovered by the respondents on account of revised fixation of pay. This shall be given to the applicants within a period of three months from the date of receipt of a copy of this order.

No order as to costs.


A.M.


V.C.