

ground that the applicant's pay was rightly fixed at Rs.470/- vide order dated 6.6.1979 in the scale of Rs.330-560 before he was promoted to the scale of Rs.425-640. The case of the applicant is that in the scale of Rs.330-560, his pay was fixed at Rs.470/- vide order dated 6.6.1979 by giving him one additional increment as per orders of the Railway Administration extending certain benefits to those Railway employees who did not abstain from their work during the ^{Employees} Railway strike in the year 1974. The other ground on which the order impugned herein is sought to be quashed is that the order has been passed without affording any opportunity of showing cause to the applicant. It has also been submitted by the counsel for applicant that even in case of the wrong fixation of pay, ^{Since} the applicant was not responsible for that and, therefore, the emoluments already paid on the basis of wrong fixation ^{If any} ~~are~~ ought not to be recovered in view of the law laid down by the Hon'ble Supreme Court in case of Shyam Babu Verma Vs. Union of India & others (1994) 27 ATC 121 (SC). The case of the respondents, on the other hand, is that there is no material on record to show that the applicant was granted one additional increment because of his loyalty during the strike period.

4. Having heard counsel for the parties we are of the considered view that the order impugned herein is liable to be quashed on the ground of having been passed in breach of natural justice. The applicant's pay in the scale of Rs.330-560 before his promotion to the next higher grade of Rs.425-640 was fixed vide order dated 6.6.1979 at Rs.470/- and he has been getting subsequent increment on that basis. What was ^{settled} ~~settled~~ in the year 1989 was ^{settled} ~~not~~ ought to have been ^{settled} ~~settled~~ without giving an opportunity ^{to} ~~to~~ showing cause to the applicant. In any case the question whether the amount due to wrong fixation to the applicant ^{ought} ~~ought~~ could not be recovered is also a question which ought to

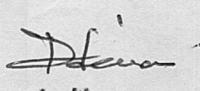
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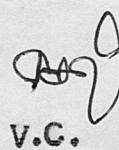
~~have been decided on the background of the fact after giving a show cause notice to the applicant. In his letter dated 15.4.2003, the Divisional Railway Manager, Izzatnagar Mandal, N.E. Railway, the applicant requested for cancellation of the impugned order inter alia on following grounds :-~~

~~"मेरे वेतन का निधारण 7 मई 1974 की हड्डताल से संबंध रखता है, जिस दिन मैं सेहरामऊ स्टेशन पर कार्यरत था। हड्डताल के समय डियूटी करने वालों को प्रशासन ने दो तरह की सुविधाएँ दी थीं - पहली यह कि जिसके बच्चे बड़े थे, उन्हें नौकरी दी गई अधारा दूसरी यह कि बच्चे बड़े न होने की स्थिति में एक अतिरिक्त वेतन बूढ़ि दी गई। मेरा मामला दूसरी सुविधा से संबंधित है।"~~

5. Accordingly, the O.A. succeeds and is allowed. The impugned order is quashed. The amount recovered from the salary of the applicant on the basis of the impugned office order No.2/32 dated 11.3.2003 shall be refunded to the applicant within a period of two months from the date of receipt of a copy of this order. It shall, however, be open to the respondents to pass a fresh order in accordance with law after giving an opportunity to show cause to the applicant and after taking into consideration the reply, if any, submitted by the applicant in respect to the show cause notice.

6. The O.A. is disposed of in terms of the above direction with no order as to costs.


A.M.


V.C.

Asthana/