

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 13th DAY OF October, 2009)

PRESENT:

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

ORIGINAL APPLICATION NO. 266 OF 2003

(U/s, 19 Administrative Tribunal Act.1985)

Bhola Nath aged about 44 years, S/o Late Sri Ram Nath R/o 186, Tula Ram Bagh Daraganj, Posted as Assistant Accountant in the office of Senior Accounts Officer, Construction Division, Northern Railway, Allahabad.

.....Applicant

By Advocate: Shri S. C. Dwivedi
Shri Rakesh Verma

Versus

1. Union of India through General Manger, Northern Railway Baroda House, New Delhi
2. Senior Divisional Accounts Officer, Northern Railway, Allahabad.
3. Senior Accounts Officer, Construction Northern Railway, Allahabad.
4. Joint Director (Establishment) RES Railway Board, New Delhi.
5. Financial Advisor & Chief Accounts Officer, Northern Railway, Baroda House New Delhi.

..... Respondents

By Advocate: Shri A. K. Pandey
Shri P. Mathur.

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

1. Heard learned counsel for the parties. Perused the pleadings and the documents on record.
2. Without burdening our order, without reiterating the parties, this OA can be disposed of on short point with reference to undisputed facts.



(X) Conceded today as per
 order at 26/11/09 allowing
 ref No AS/9/09 Date 26/11/09
 M. S. Verma

3. By means of this OA (filed in the year 2003) applicant seeks to challenge order dated 6.4.2009/Annexure-1 to the OA. The relevant extract of the impugned order reads:-

8. RELIEF SOUGHT

- 8.1 *The Hon'ble Tribunal may be pleased to quash the order dated 6.4.1999 and 13.7.1999 passed by Financial Advisor and Chief Accounts Officer and Chief Accounts Officer (contained Annesures-1 and 2 to this application);*
- 8.2 *The Hon'ble Tribunal may be pleased to direct the respondents to give benefit of pay fixation in pursuance of the order dated 7.2.1996 and fixation made on 27.11.1996;*
- 8.3 *The Hon'ble Tribunal may be pleased to direct the respondents to fix the seniority as Clerk Grade I since 3.1.1981 on which date petitioner is working continuously on the said post including all the arrears according to letter dated 7.2.96 and fixation made on 27.11.1996 within stipulated period.*
- 8.4 *To pass any other writ, order or direction in the nature which this Hon'ble Tribunal may deem fit and proper*
- 8.5 *Cost of the applicant may be awarded in favour of the applicant."*

4. By means of the said impugned order the concerned authority purported to have disposed of representation (filed by the applicant) dated 29.06.2002/Annexure-10/compilation-II.

5. Apparently, the plea/explanation submitted by the applicant through above referred representation does not find mention in the impugned order. This impugned order is, therefore, not a speaking order.

6. It is now well settled that where aggrieved person is not charged of 'misrepresentation/fraud' no recovery should be ordered. Reference may be made to para 11 of *Shyam Babu Verma*



and Others Vs. Union of India and Others, 1994 SCC (L&S) 683

which reads:-

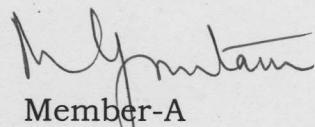
"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the 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."

Learned counsel for the applicant has also placed reliance on the decision of *Sahib Ram Vs. State of Haryana and Others, 1995 SCC (L&S) 248*. Para 5 of the same reproduced below:-

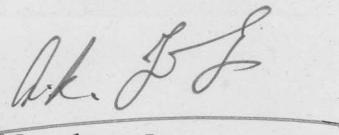
"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, 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. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

7. In view of the above, the impugned order dated 6.4.1999; Annexure-1/compilation-II to the OA is hereby set aside. Considering that matter is old, we direct that matter shall be treated closed by the respondents.

8. OA is allowed. No Costs.


Member-A

/ns/


Member-J