

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 30th day of November 2016

HON'BLE DR. MURTAZA ALI, MEMBER - J

HON'BLE MR. O.P.S. MALIK, MEMBER -A

Original Application No. 402 of 2007

Nand Lal Chaudhary, aged about 67 years, S/o Late Ram Tanal Chaudhary, retired Driver Mail/Express, N.E. Railway Varanasi, R/o Karakatpur Lohta Road, in front of Kribhco Bio Fertilizer Plant, Lohta, P.O. Lohta, District Varanasi.

.....Applicants

By Adv: Shri Sudama Ram

V E R S U S

1. Union of India through the General Manager, North Eastern Railway, Headquarter Office, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Chief Personnel Officer, N.E. Railway, DRM's Office, Varanasi.
4. Sr. Divisional Finance Manager, N.E. Railway, DRM's Office, Varanasi.
5. Secretary (Estt.) Railway Board, Rail Bhavan, New Delhi.

..... Respondents

By Adv: Shri Anil Kumar

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER - J

The instant O.A. has been filed under Section 19 of the Administrative Tribunals Act 1985 seeking following relief (s) -



- "(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned order passed vide Case No. 140 dated 16.12.2006 during Pension Adalat 2016 (Annexure A-1).*
- (ii) The Hon'ble Tribunal may further graciously be pleased to quash the Railway Board's clarification dated 24.2.2000 to the extent which is repugnant to the Revised Pay Rules 1997 circulated vide letter dated 8.10.1997 (RBE No. 133/97) circulated vide General Manager/N.E. Railway, Gorakhpur's letter dated 20.4.2000 and 5.5.2000 (Annexure A-2).*
- (iii) The Hon'ble Tribunal may further be pleased to direct the respondents to release and pay the wrongly withheld amount of DCRG Rs. 23,518/- immediately along with 18% interest on delayed payment on the whole amount since the date it was illegally withheld.*
- (iv) The Hon'ble Tribunal may further be pleased to direct the respondents to restore the fixation of pay as done on 1.1.1998 as per chart of fixation of pay and also direct the respondents to restore the additional one stagnation increment earlier allowed and arbitrarily withdrawn in Sept, 2000 and further fix his pay and pension at least at last pay of Rs.10370/- instead of Rs.10,180/- (in case original pay fixation not allowed) and allow all other pensionary benefits viz. DCRG, Leave encashment, commutation of pay etc. with arrears on restored pay with 18% interest.*
- (v) Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of*

the case may also kindly be issued in the interest of justice.

(vi) Cost of the Application may also be awarded".

2. The brief facts of the case are that the applicant was initially appointed as Apprentice Fireman -'A' on 18.9.1965. He was promoted as Driver Mail/Express in the pay scale of Rs.1640-2900 on 1.12.1983 and his pay was stagnated at Rs.2900 on 1.12.1988. He was given three stagnation increments after intervals of 2 years i.e. on 1.12.1990, 1.12.1992 and 1.12.1994. In pursuance of 5th Pay Commission Recommendation, his pay was revised in the pay scale of Rs.6000-9800 and his pay was fixed at Rs.9800/- on 1.1.1996 i.e. at the maximum of the pay scale. It is stated that next increment was due to him on 1.12.1996. In pursuance of Railway Services (R.P) Rules, 1997 (Annexure A-3), the pay of applicant was fixed at Rs.9800/- + Rs.190 + Rs.190 + Rs.714 giving one additional increment of Rs.190 at the time of fixation of his pay w.e.f. 1.1.1996. The applicant had drawn his salary accordingly till September 2000 but his pay was reduced by one increment without giving any show cause notice w.e.f. October 2000.

3. It is stated that the applicant retired from service on 31.7.2001 and his pension and other pensionary benefits have been paid at the reduced rate of pay causing substantial financial loss to him. He preferred representations on 31.7.2001 and 18/22.9.2006 but it has been rejected vide order dated 16.12.2006 (Annexure A-1). It has been alleged that the clarification letter dated 24.2.2000 (Annexure A-2) issued by the Railway Board is discriminatory in nature and in contravention of the policy of

Yes

fixation of pay of running staff and withholding the amount of D.C.R.G. (Rs.42021/-) after retirement is illegal. However, Rs.11521/- was released on 16.12.2006 after withholding it for 5 years without any interest and still the respondents have withheld Rs.23518/- without any authority which he is entitled along with 18% compound interest.

4. In the counter reply filed on behalf of respondents, it is stated that as per 4th Pay Commission Recommendations, the applicant was drawing maximum pay at Rs.2900/- + 3 stagnation increments of Rs.75/- in the scale of Rs.1640-2900 on 1.1.1996. It is further stated that as per 5th Pay Commission Recommendations, the pay scale of applicant was revised to Rs.6000-9800 and the pay of applicant was earlier fixed w.e.f. 1.1.1996 in the pay scale of Rs.6000-9800 as Rs.9800 + 1094 and w.e.f. 1.12.1996 as Rs.9800 + 1094 which was modified on 9.4.1998 and his pay was fixed at Rs.9800 + 190 (stagnation) + 904 (P.P) w.e.f. 1.1.1996 and at Rs.9800 + 190 (stagnation) + 190 (stagnation) + 714 (P.P) w.e.f. 1.1.1998. As it was found that above pay fixation was not correct, the same was modified on 24.5.2000 and one stagnation increment of Rs.190/- was withdrawn w.e.f. 1.1.1996 and no personal pay of Rs.714/- was made admissible to him. Applicant was granted first stagnation increment of Rs.190/- after 2 years i.e. on 1.1.1998 and second stagnation increment on 1.1.2000. Against the said pay fixation, the applicant submitted a representation before Pension Adalat and it has been intimated by the G.M Office that as per Rule 7 of Railway Board letter dated 08.10.1997 (Annexure A-3), the pay in the revised scale could be fixed at the maximum of the pay scale and only after completing 2 years service in the pay scale, the employee would be entitled for

W2

stagnation increment. It is also stated the a sum of Rs.23518/- was retained as per Railway Board letter dated 24.2.2000 (Annexure A-2) till receiving the final decision of the Department in respect of overpayment made to the applicant vide letter dated 16.12.2006 (Annexure A-1).

5. It is further stated that the pay of applicant was wrongly fixed, which have been corrected/modified as per letter dated 22.12.2005 (Annexure CA-1) received from G.M (P). It is also stated that Rs.42021 was retained against the dues of Income tax, excess payment and electric bill while Rs. 1479/- have been deducted against electric charges and Rs.11521/- has been released and at present Rs. 23518/- has been retained for the reasons shown in the impugned order dated 16.12.2006 (Annexure A-1).

6. In the rejoinder, the applicant reiterated the averments made in the O.A. and further stated that the he was entitled to get one increment on 1.1.1996 under Rule 8 of Railway Services (Revised Pay) Rules, 1997. It is further stated that any administrative instruction cannot supersede the administrative provision of Railway Services (Revised Pay) Rules, 1997. It is also stated that excess payment, if any, was made to the applicant by the respondents themselves and not on account of fault of applicant, thus it cannot be recovered from the applicant.

7. In the supplementary counter reply filed on 29.7.2010, it has been reiterated that after implementation of 5th Pay Commission

102

Recommendation, the pay scale of Rs.1640-2900 was revised to Rs. 6000-9800 and the pay of applicant was wrongly fixed as under –

1.1.1996	Rs.9800+190 (stagnation) + 904 PP.
1.1.1998	Rs.9800+190+190+774 PP
1.1.2000	Rs. 9800+190+190+190+524 PP.

While in view of Railway Services (R.P) Rules, 1997 (Annexure A-3) and letter dated 20.8.1998 (Annexure CA-2), no employee was entitled to get beyond maximum of his pay scale and he could be granted benefit of maximum three stagnation increments after passing of 2 years and in pursuance of said letter and clarification, the pay of applicant in the pay scale of Rs.6000-9800 has been revised as under –

01.01.1996	Rs.9800
01.01.1998	Rs.9800 + 190
01.01.2000	Rs.9800+190+190.

8. It is also submitted that the Railway Board letter dated 23.4.2010 (Annexure SR-1) is not applicable in the instant case which is a clarification regarding stagnation benefit under 6th Pay Commission.

9. In the supplementary rejoinder filed on 8.1.2014, it has been reiterated that the fixation of pay of applicant was rightly fixed as per Railway Services (R.P) Rules, 1997 (Annexure A-3) and letter dated 20.8.1998 (Annexure CA-2) and he was entitled to get his pay fixed on 1.1.2006 in the pay scale of Rs.6000-9800 as Rs. 9800+190 in terms of Rule 8 of Railway Services (Revised Pay) Rules, 1997 and his pay was rightly fixed in accordance with


112

clarification dated 17.7.1998 (Annexure SA-2) on item 2. It is further reiterated that respondents had no authority to recover alleged any excess payment of salary from the D.C.R.G and Railway Board Clarification dated 23.4.2010 (Annexure SR-1) is fully applicable in his case.

10. In the supplementary affidavit filed by the applicant on 22.9.2014, it has been stated that in view of Rule 8 of Railway Services (Revised Pay) Rules, 1997 (Annexure A-3) and clarification dated 17.7.1998 (Annexure SA-2), he was entitled to get one additional increment on 1.1.1996 which was correctly allowed while revising his pay in the scale of Rs. 6000-9800 w.e.f. 1.1.1996, but his pay was wrongly reduced to Rs. 10,180/- by deducting one additional increment of Rs.190/- from his pay.

11. In the Second Supplementary Counter Reply filed on 29.1.2015, it has been submitted that the applicant was earlier getting his maximum of his pay scale and three stagnation increments in the pay scale of Rs.1640-2900 but in view of 5th Pay Commission Recommendation, he was not entitled to any stagnation increment on 1.1.1996 and it was later-on clarified that the pay of none of the employee will exceed from the maximum of his pay scale and, therefore, excess payment of Rs.23518/- paid to the applicant was withheld and finally the pay of applicant was accordingly revised.


12. In the Second Supplementary rejoinder filed on 10.9.2015, it has been reiterated that the pay of applicant was correctly fixed



as per provisions of Railway Services (R.P) Rules, 1997 (Annexure A-3) and one additional increment of Rs.190/- was rightly given to him which was to be adjusted in personal pay of Rs.714/- in terms of proviso 3 to Rule 8 of Railway Services (Revised Pay) Rules 1997, which was also clarified vide Railway Board letter dated 20.11.1997 (Annexure SA-1)). It has further been stated that Railway Board letter dated 17.7.1998 (Annexure SA-2) has not yet been overruled and one year period is to be reckoned w.e.f. the date of drawal of pay in the maximum of the scale and not from the date of drawal of stagnation increment and Railway Board letter dated 20.8.1998 (Annexure CA-2) is not applicable in the case of applicant, as it has not been issued in clarification of proviso 3 to Rule 8 of Railway Services (Revised Pay) Rules, 1997. Thus, it has been submitted that the deduction of one additional increment of Rs.190/- while fixing his pay on 1.1.1996 and on 1.12.1996 is illegal and the pay of applicant was to be protected by giving personal pay adjusting and deducting it with annual increment in future.

13. Heard Sri S. Ram counsel for the applicant and Shri Anil Kumar counsel for the respondents and perused the record.

14. There are mainly two issues involved in this O.A. Firstly, whether the respondents are justified to withhold an amount of Rs.23518/- from the D.C.R.G. payable to the applicant after retirement for adjustment of excess amount paid to the applicant due to wrong fixation of pay and secondly, whether the respondents are justified to withdraw the additional increment given to the applicant w.e.f. 1.1.1996.




15. In view of law laid down by Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (Civil Appeal No. 11527/14 (arising out of SLP(C) No. 11684/12), along with other connected Civil Appeal decided on 18.12.2014)*, recovery of excess payment cannot be made from a retired employee. Hon'ble Supreme Court in para 12 of its judgment has held as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



(iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover".*

16. In the instant O.A, it is the case of respondents that due to wrong fixation of pay, a recovery of Rs.23518/- has been made from the D.C.R.G. of the applicant. In view of Item (i) (ii) and (iii) stated above, it is not permissible to recover any excess payment made to the applicant and thus it is observed that applicant is entitled to get the refund of Rs.23518/- along with interest.

17. It is also not in dispute that applicant was not entitled to get additional increment of Rs.190/- at the time of fixation of his pay w.e.f. 1.1.1996 in view of Railway Board circular dated 24.2.2000 and 5.5.2000 (Annexure A-2). The relevant para of circular dated 24.2.2000 and letter dated 5.5.2000 reads as under –

R.B.E No. 31/2000 dated 24.2.2000

"In terms of Railway Services (Revised Pay) Rules 1997, for the purpose of pay fixation in the revised pay scales, an element of 40% of Basic Pay in the pre-revised scale was to be

102

added to the existing emoluments and pay in the revised scales was required to be fixed at a stage next above the amount so arrived at. According to the first proviso to Rule 7 (1) of the Railway Services (Revised Pay) Rules, 1997, if the amount so arrived at worked out as more than the maximum of the revised scale, the pay was to be fixed at the maximum of the revised scale.

Letter No. E/213/PC/98/6/Part-2/4 dated 5.5.2000

“रेल सेवा (संशोधित वेतन) नियम, 1977 के पैरा (1) तथा बोर्ड के दिनांक 17.7.98 के पत्र के पैरा -3 में दिए गये निर्देशों के अनुसार किसी भी कर्मचारी का वेतन निर्धारण वेतनमान के अधिकतम से अधिक पर नहीं किया जाना है, रनिंग कर्मचारियों के मामलों में पूर्व की परिलब्धियों पंचम वेतन आयोग द्वारा संस्तुत वेतनमान में अधिकतम से अधिक आरही है जो उन्हें देय नहीं है। बोर्ड के दिनांक 24.2.2000 के पत्र में 01.01.96 से 31.10.97 तक की बढ़ी हुई राशि को अगले आदेश तक कटौती न करने का निर्देश दिया गया है। बोर्ड का दिनांक 24.2.2000 का पत्र जो समसंख्यक पत्र सं० ई/213/पीसी/98/6/भाग-1/4 दिनांक 21.4.2000 द्वारा परिचारित किया जा चुका है, की छाया प्रति संदर्भ हेतु संलग्न है।

आपसे अनुरोध है कि बोर्ड के उपरोक्त निर्देशों का अनुपालन सुनिश्चित करते हुए की गयी कार्यवाही से अवगत कराने का कष्ट करें।”

18. No doubt, the applicant has not committed any fraud or misrepresentation and the Railway administration itself allowed additional increment to several employees w.e.f. 1.1.1996 who were stagnating at the maximum of their pay scale. Initially, the railway administration had taken a decision not to recover the

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said excess amount paid to the employees but on the recommendation of Ministry of Finance, it was finally decided that in view of Rule 7 of Railway Services (Revised Pay) Rules 1997, the employees were not entitled to get any additional stagnation increment w.e.f. 1.1.1996 and their pay in the revised scale could be fixed at the maximum of pay scale and only after completing 2 years service in the revised pay scale, they would be entitled for stagnation increment.

19. It is the contention of respondents that in view of Rule 7 of Railway Services (R.P) Rules, 1997 and clarification dated 24.2.2000 (Annexure A-2) a sum of Rs. 23518/- payable as D.C.R.G., was firstly retained and finally adjusted. The relevant extract of Rule 7 is being reproduced below –

Rule 7- Fixation of initial pay in the revised scale –

(1) *The initial pay of a Railway servant who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised scale on and from the 1st day of January 1996, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:*

(A) *In the case of all employees :*

(i) *An amount representing 40 per cent of the basic pay in the existing scale shall be*

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added to the 'existing emoluments' of the employee;

- (ii) *After the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.*

Provided that –

- (a) *If the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;*
- (b) *If the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.*

(Emphasis supplied)

20. We have also gone through RBE No. 165/97 dated 20.11.1997 (Annexure SA-1) which clarifies proviso 3 to Rule 8 of Railway Services (Revised Pay) Rules 1997 and stated that the increment in question will be admissible to all those employees who are stagnating at the maximum of their pay scale for more than 1 year as on 1.1.1996 including those who are in receipt of stagnation increment (s) and it was also clarified that the 1 year period was to be reckoned w.e.f. the date of drawl of pay at the maximum of their scale and not from the date of drawl of stagnation increment.

102

21. Our attention has also been drawn on the following clarification circulated vide RBE NO. 163/1998 dated 17.7.1998 (Annexure SA-2), which states as under –

Point raised	Clarification
2. Date of next increment in the revised scale of pay in cases where an employee has reached the maximum of the applicable pre-revised scale or has been stagnating at the maximum for more than a year as on 1 st January 1996.	It appears that there has been some confusion about the manner in which the next increment is to be regulated in respect of employees who have drawn stagnation increments in the pre-revised pay scale. In these cases, the pay of the employees is to be fixed initially in the revised scale in terms of the provisions of Rule 7 after allowing the benefits of bunching or of one increment for every three increments earned in the pre-revised scale as the case may be. Thereafter, if the employees have also been stagnating for more than one year at the maximum of the pre-revised scale or have drawn one or more stagnation increments as admissible, they may also be allowed an additional increment on 1 st January, 1996 itself in terms of the third proviso to Rule 8. The subsequent increment in such

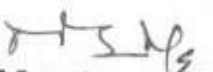
	cases shall be admissible on 1 st January, 1997. The benefit of an additional increment on 1 st January 1996 shall also be admissible to those employees who reached the maximum of their pre-revised scale of pay on 1 st January, 1995.
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22. We have also gone through to letter dated 20.8.1998 (Annexure CA-1), which also clarifies that the stagnation increment (s), if any, already earned in the pre-revised scale of pay will not be counted towards the maximum of three increments admissible in the revised scale of pay. The relevant para 3 is being reproduced below –

"3. In the case of Railway servants whose pay in the applicable revised scales is fixed at the maximum of the scales as on 1.1.96, the stagnation increments in the revised scales of pay will be admissible only on expiry of a period of two years reckoned from 1st Jan 96. In other words, no Railway servant will become eligible for the first stagnation increment in the revised scale of pay before 1.1.1998. Consequently, the period, if any, spent at the maximum of the pre-revised scales will not be taken into account in determining the eligibility of Railway servants to draw stagnation increments in the revised scales of pay. Similarly, the stagnation increment (s), if any, already earned in the pre-revised scales of pay will not be counted towards the maximum of three increments admissible in the revised scale of pay".

102

23. We are also in agreement with the learned counsel for the respondents that the Railway Board clarificatory letter dated 23.4.2010 (Annexure SR-1) is inapplicable in the instant case as it relates to the proviso to Rule 10 of Railway Services (Revised Pay) Rules, 2008 and not to the Railway Services (Revised Pay) Rules, 1997.
24. Considering the relevant provision of Railway Services (Revised Pay) Rules, 1997 and letter dated 24.2.2000, 20.8.1998 and 17.7.1998, we are of the considered view that applicant is not entitled to get additional stagnation increment w.e.f. 1.1.1996 and the respondents have every right to rectify their mistake but they could not recover the amount of excess payment made to the retired employee during the course of his employment. Thus, the applicant is entitled to get the amount of Rs.23518/- back along with interest.
25. Accordingly, O.A. is partly allowed and the respondents are directed to refund the amount of D.C.R.G. Rs.23518/- along with interest at the same rate which is admissible on the deposit of Provident Fund from due date till the actual payment is made. The said exercise shall be completed within a period of 2 months, otherwise the applicant shall be entitled to get interest at the rate of 12% per annum after expiry of 2 months. There is no order as to costs.


Member (A)


Member (J)

Manish/-