

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of Aug 2009

Original Application No. 734 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Parasuram Prasad Keshri, S/o late H.P. Keshri, R/o House No. 6/34, Awakash Nagar, Chopan, P.O. Chopan, The. Robertsganj, Distt: Sonebhadra (UP).

. . .Applicant

By Adv: Shri D.S. Singh and Sri G.C. Dwivedi

V E R S U S

1. Union of India through Secretary, Department of Railways, New Delhi.
2. General Manager, East Central Railway, Hazipur, Bihar.
3. Divisional Railway Manager, East Central Railway, Distt: Dhanbad.
4. Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
5. Senior Divisional Mechanical Engineer, C&W, E/C/ Rly. Dhanbad.
6. Senior Divisional Finance Manager, E/C. Rly., Dhanbad.

. . .Respondents

By Adv: Shri A. Singh

O R D E R

This OA has been filed seeking the following reliefs:-

- "i. Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to given wrongful deducted amount of Rs. 46,390/- from gratuity w.e.f. 01.10.2002 with 10% interest to the petitioner.

137

ii. Issue a writ, order or direction commanding/directing the respondents to recalculate the pension of the petitioner on the basis of pay scale Rs. 11,050/- which petitioner drawn continuously 10 months prior to the retirement and give the balance amount which is due from 01.11.2002 with 10% interest.

iii. Issue any other writ, order or direction, as this Hon'ble Court may deem fit and proper in orders."

2. The factual matrix of the case is that applicant was working on the post of Senior Section Engineer (C&W), East Central Railway, Chopan (Sonbhadra). He was in receipt of salary of Rs. 11,050/- per month as basic pay. On completion of date of superannuation he retired from the said post. Till the month of October, 2002 i.e. till retirement he was continuously paid salary in the scale of Rs. 11,050/- till the date of retirement. On retirement the applicant received an amount of Rs. 2,66,133/- as gratuity (DCRG) and was paid monthly pension of Rs. 5,413/-. The applicant discovered that the gratuity was under paid by Rs. 46,390/- and the pension was also under calculated on the basis of basic pay of Rs. 10,825/- instead of Rs. 11,050/-. A representation was made. However there was no action on the part of the authorities and hence this OA.

3. In the counter affidavit it is submitted that while working as Senior Section Engineer (C&W)/Chopan, the pay of the applicant was

erroneously raised to Rs.11050/- per month in the scale of Rs. 7450-11500 w.e.f. 01.01.2002 due to wrong fixation of pay in 1992. However at the time of retirement the applicant's service record was forwarded to Associate Account Department for verification and fixation of pension. The account department returned the service record of the applicant unverified with the remark to re-fix the pay as on 01.01.1992 alongwith some other remarks. It was discovered that on being found suitable in the suitability test for the post of CWS/CTXR-1/CW I-1 in scale of Rs. 2375-3500. The applicant was posted as CWS/Chopan vide this office letter dated 22.11.1991 and his pay was fixed to Rs. 2,750/- on 04.11.1991 vide office order dated 10.04.1992. Subsequently, his pay was re-fixed as per his option to Rs. 2,675/- in the scale of Rs. 2375-3500 (RP) w.e.f. 01.01.1992 i.e. from the date his next increment in lower grade. The applicant's pay was fixed to Rs. 2900/- in the scale of Rs. 2375-3500 erroneously w.e.f. 01.01.1992 instead of Rs. 2,825/- vide office order dated 24.05.1994 thereafter, on scrutiny the same has been rectified and accordingly his pay was fixed and the required deduction has been made.

4. It was thus contended that after rectifying the aforesaid mistake the required amount has been

20/

deducted from the applicant and there is no illegality. All along the counter affidavit it has been accepted that the pay of the applicant was re-fixed to Rs. 2900/- in the scale of Rs. 2370-3500 (RP) w.e.f. 01.01.1992 erroneously. Consequently, in para 13 of the counter affidavit it is submitted that while working as Senior (C&W) in Chopan the salary of the applicant was raised to Rs. 11,050/- per month erroneously in the scale of Rs. 7450-11500 w.e.f. 01.01.2002 which was also subsequently revised and rectified after due scrutiny.

5. Rejoinder as well as written arguments have also been filed reiterating the earlier stands and raising a few new arguments. On behalf of the applicant it is submitted that as per Railway Service (Pension) Rules 1993 the mandatory provision is that the pension of an employee should be calculated on the basis of payment of salary drawn continuously ten months prior to the retirement of an employee and therefore, the applicant having been in receipt of Rs. 11,050/- continuously for ten months till the date of retirement his pension should be worked out at the pay scale of Rs. 11,050/- being the basis pay. A reference is also made to Rule 49 of the Railway Service (Pension) Rules, 1993 in this connection.

1
son

6. The counsel for the applicant also relied upon the decision of this Tribunal (Mumbai Bench) (23.03.2000) holding as under:-

"Where the employee was not responsible for the overpayments of pay made to him the order for recovering the overpayments cannot be sustained."

7. Learned counsel for the applicant has also relief upon the judgment and order of Calcutta Bench of this Tribunal decided on 08.11.2005 in the case of **Ajit Kumar Ghosh Vs. Union of India and others.**

On facts holding as under: -

"6. The mistake of payment of overtime allowance to the applicant cannot be attributed to the applicant it is undisputed that the applicant had performed overtime duty. The respondents ought to have been aware that the applicant had crossed the limit in basic pay for entitlement of overtime allowance. The fact that the applicant did not represent about the deduction of the amount of Rs. 9823/- from his DCRG for a long time, would not disentitle him to the overtime. Having worked for overtime and having been paid the overtime allowance several years ago, it would be unjust on the part of the respondents to be deducting the same from the DCRG amount which the applicant had become entitled for having rendered a long service with the respondents. The case law relied upon by the applicant is on the facts and circumstances similar to those of the present case. We do not find any reason or justification for deducting the sum of Rs. 9823/- from the applicant's DCRG. Justice warrants that applicant should be paid that amount alongwith interest @ 10% per annum from the date of deduction till the date of actual payment. The payment of interest, paying back of the amount with interest should be done within a period of two months from the date of communication of this order. The OA is disposed of as above, however without any costs."

8. Reliance was also been placed by the applicant's counsel on Hon'ble Supreme Court case in case of **Shyam Babu Verma Vs. Union of India and others : (1994) ATC 121.** On the facts holding as under:-

1
2

"10. 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. 01.01.1973 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 1.1.1973 it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that on 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."

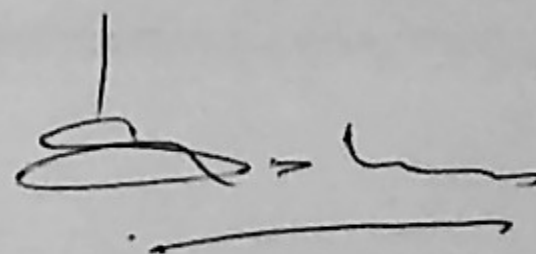
9. Considered the written arguments of the respondents as well. There is no doubt about the factual position i.e. due to two successive mistakes on the part of the respondents in fixation of the pay of the applicant, once as on 01.01.1992 and second as on 01.01.2002, the applicant was granted higher pay for no fault at his part. The applicant's case is therefore squarely covered under the three decisions cited above. Therefore, in so far as recovery of excess payment of salary is concerned, such recovery which is included in the over all recovered amount of Rs. 47,664/-, as stated on page 60 of the counter affidavit (appears to be Rs. 31563/- + Rs. 2094/- = 33657/-) cannot be recovered following the ratio laid down by the Hon'ble Supreme Court. The respondents are, therefore, directed to pay back to the applicant the amount mentioned above or any other amount deducted with regard to the excess payment of salary. To this extend the applicant's prayer is allowed.

2

10. The learned counsel for the applicant placed reliance in case of **R.P. Kapoor Vs. Union of India and others : (1999) 8 SCC 110**. The facts of the case are altogether different and this court is ^{not} able to fathom as to how the judgment rendered by the Hon'ble Supreme Court in the instant case helps the applicant with regard to the average emoluments drawn in the ten months proceeding of the retirement.

11. In so far as the applicant's prayer for granting him pension with reference to the emoluments drawn by him for last ten months prior to his retirement, this Tribunal is of the view that the mistake of over fixation of pay having been discovered, the applicant cannot be allowed to profit from the mistake committed by the department and cannot be allowed to draw higher pension calculated on incorrect and non entitled emoluments in perpetuity. This part of the prayer therefore, stands rejected.

12. In the final result the OA is allowed in part.
No cost.



Member (A)

/pc/