

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. No. 403/91**  
**T.A. No.**

(9)

**DATE OF DECISION** 28th April 1993.

Shri B.C. Bhattacharya Petitioner

Shri P.K. Handa Advocate for the Petitioner(s)

**Versus**

Union of India and Others Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N.B. Patel Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

B.C. Bhattacharaya  
Asstt. Station Master  
Ankleswar.  
No.5, Viharika Park,  
Society, Opp. E.S.I  
Hospital, Near Tarika  
Society, Gotri Road,  
Vadodara 390 021

**Applicant.**

Advocate Shri P.K. Handa

## Versus

1. Union of India  
Owing and representing through  
General Manager, Western Railway,  
Churchgate, Bombay 400 020.
2. Divisional Railway Manager,  
Western Railway  
Pratapnagar, Vadodara 390 004.
3. Sr. Divisional Operating Supdt.  
Western Railway, Pratapnagar,  
Vadodara 390 004.

### Respondents

Advocate Shri N.S. Shevde

## ORAL JUDGEMENT

In

O.A. 403 of 1991

Date: 28-4-1993

Per Hon'ble Shri N.B. Patel

**Vice Chairman**

The applicant who was working as Assistant Station Master in the Western Railway, voluntarily retired from service, with effect from November 30, 1989. The pension payable to him was to be computed on the basis of his average basic pay for the last ten months of his service, i.e., for the period from February 1989 to November 1989. It appears that till May 1989, the applicant was paid

basic salary at the rate of Rs. 2100/- per month, and, thereafter, from May 1989 to November 1989, he was paid the basic salary at the rate of Rs. 2150/- per month. He was paid basic salary at the rate of Rs. 2150/- per month from May 1989 on the basis that annual increment at the rate of Rs. 50/- per month had become due to him with effect from 1st May 1989. However, at the time of computing the pension payable to the applicant, it was noticed that, in a departmental proceeding, the punishment of withholding of increment for the period of three months, without any future effect, was awarded to the applicant, by an order in November 1988. The applicant had preferred an appeal against the said order and the appeal was rejected on 28-3-1989. The result of this would be that the increment, next accruing due to the applicant after 28-3-1989, was liable to be withheld for a period of three months. In other words, the increment which was normally to accrue due to the applicant from 1-5-1989 was required to be withheld for three months i.e. for the months of May, June and July 1989. However, the increment was not actually withheld and the applicant was paid at the rate of Rs. 2150/- per month for the months of May, June and July 1989 also. Obviously, this payment of Rs. 50/- per month for the period of three months, i.e. May, June and July 1989, might have been made through oversight. However, as noticed above, this mistake was detected at the time of computation of pension payable to the applicant and, therefore, his average basic pay during the last ten months of his service was calculated at the rate of Rs. 2100/- per month upto July 1989 and thereafter for the months of August, September, October, and November 1989 it was calculated at the rate of Rs. 2150/- per month. On this basis,

the average monthly basic pay of the applicant for the last ten months of his service came to Rs.2120/- and, on that basis, pension payable to him was computed at the rate of Rs.1060/- per month, as shown by the pension payment order (Annexure-A). The applicant's case is that once he was paid the salary at the rate of Rs.2,150/- for the months of May, June and July, 1989, his basic pay should have been worked out on the footing that for the months of May, 1989 to November, 1989, his basic salary was Rs.2,150/- per month. It is the case of the applicant that if his basic average pay for the last ten months of his service was calculated accordingly, he would be entitled to payment of pension at the rate of Rs.1068/- and not Rs.1060/- per month as computed by the department. It is the case of the applicant that pension is to be paid on the basis of the actual payment of salary made to him during the last ten months, eventhough, during such period some overpayment might have been made either through oversight or erroneously. In other words, the applicant says that, even assuming that overpayment was made to him in disregard ~~or~~ ignorance of the punishment order passed against him, his pension ~~should~~ have been computed on the basis of the actual payment made to him. The applicant has contended that it would be illegal not to pay him pension on the basis of the actual payment made to him during the last ten months of his service, eventhough such payment might include some overpayment made through oversight.

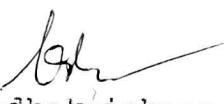
2. In the reply, it is contended that on the

(13)

implementation of the penalty order passed against the applicant, the applicant was entitled to get the salary at the rate of Rs. 2100/- per month, even for the months of May, June and July 1989 and the mere fact that through error he was paid at the rate of Rs. 2150/- for the said three months, cannot entitle ~~the~~ the applicant to claim ~~the~~ computation of his pension on the basis of wrong over payment made to him for the said three months. It appears to us that the contention raised on behalf of the applicant is thoroughly misconcieved and must be rejected without any hesitation. The department was bound to implement the order of penalty passed against the applicant and <sup>the</sup> applicant was not <sup>legally</sup> entitled to claim salary in excess of Rs. 2100/- per month for the said three months of May, June and July 1989. Obviously, the payment of salary to the applicant at the rate of Rs. 2150/- per month, when he was entitled to claim the said payment at the rate of Rs. 2100/- per month, was in disregard or ignorance of the penalty order and the applicant cannot be permitted to take any advantage ~~out~~ of such erroneous over-payment made to him. The applicant has annexed (Annexure A-2) with his application, the instructions (Annexure A-2) issued by the Railway Board to elucidate the relevant Rules out of the Railway Servants (Discipline & Appeal) Rule, 1968. It appears that the applicant relies upon one note dated 2-7-1960, which only states that the order of withholding of increment can become operative <sup>for</sup> only ~~to~~ the increments to which the employee has not

(94)

become entitled on the date the order is passed. Clearly, the meaning of this Rule is that the order of withholding of increment will be implemented in respect of the increments falling due after the date of the passing of the penalty order and not to any increment which might have fallen due to the concerned employee before the date of the passing of the punishment order. The effect of this Rule in the present case would only be that, the punishment order by which the increment of the applicant was withheld for the period of three months, would be operative in respect of the increment that was to accrue to the applicant with effect from 1st May, 1989. Despite this position, the applicant somehow got paid at the rate of Rs.2,150/- per month for the said three months also and the applicant now claims the benefit of the said erroneous payment in the computation of his pension also. We are not at all inclined to accept the submission of the applicant that, even though there might be erroneous overpayment during the last ten months of his service, the error is to be ignored and pension is to be paid on the basis of the wrong overpayment made to the employee. We, therefore, find that there is no merit in the application and dismiss the same. No order as to costs.

  
( V. Radhakrishnan )  
Member (A)

  
( N.B. Patel )  
Vice Chairman