

J-11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 276 of 1988

Date of decision 14th March, 1989

1. Sri B.Raju, S/o B.Paiditalli
aged about 57 years, Ex-Assistant
Yard Master, S.E.Rly now working as
Peon, S.E.Rly, Mixed Higher Secondary
School, Khurda Road, P.O.Jatni, Dist.Puri.

... Applicant

-Versus-

1. Union of India, represented by the
General Manager, S.E.Rly,
Garden Reach, Calcutta-43

2. Divisional Railway Manager, S.E.Rly,
Khurdha Road, P.O.Jatni, Dist.Puri.

3. Divisional Personnel Officer,
S.E.Rly, Khurdha Road, P.O.Jatni,
Dist.Puri

... Respondents

For the Applicant M/s.C.V.Murty,
C.K.K.Murty and
S.K.Rath, Advocates

For the Respondents. .. Mr.Bijay Pal, Senior Standing
Counsel(Railways) ~~and others~~

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR.K.P.ACHARYA, MEMBER(JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgement ? Yes

2. To be referred to the Reporters or not ? No

3. Whether Their Lordships wish to see the fair
copy of the Judgement ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to be issued to the respondents to quash the order passed by Respondents 2 & 3 under which the applicant's pay was reduced from Rs.470/- to Rs.232/- in February, 1987 and further steps were taken for recovery of the alleged excess amount paid to him in the salary from 1984 and it is further prayed that directions be issued to the respondents to restore the applicant's pay from Rs.232/- to Rs.470/- from 15.12.1984 and to refund him all the amount deducted from his salary so far and also to pay in future his pay at the rate of Rs.470/- with usual allowances.

2. Shortly stated, the case of the applicant is that he was promoted to the post of Assistant Yard Master in the year 1982 and in the year 1984 the applicant was decategorised for health reason and was posted as a Peon vide order dated 18.12.1984 contained in Annexure-2. The pay scale of Assistant Yard Master is Rs.455-700/- and accordingly on the date of decategorisation the applicant was receiving a pay of Rs.470/-. With effect from February, 1987, the applicant's pay was reduced to Rs.232/- in the scale of Rs.196-232/-. Later, the concerned authority ordered recovery of the excess drawal of the amount drawn by the applicant with effect from the date of decategorisation. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that

once there has been a decategorisation and the applicant has been placed in the post of a Peon, the applicant is not entitled to the pay scale of Assistant Yard Master and by mistake he was allowed to draw the pay which he had last drawn as Assistant Yard Master and after the mistake was discovered, rightly the authorities have ordered recovery of the excess amount drawn by the applicant. Further, it is maintained by the respondents that the case being devoid of merit is liable to be dismissed.

4. Before we express our opinion on the merits of the contentions advanced at the Bar we must say that Mr. Murty confined his arguments to the recovery of the excess amount alone and did not press for granting the pay scale drawn by the applicant in the post of Assistant Yard Master and hence Mr. Murty has confined himself to the prayer of the applicant to direct the respondents to quash their order for recovery of the excess drawal made by the applicant. On this issue, we have heard arguments from Mr. C. V. Murty, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration at some length. Mr. Murty drew our attention to the contents of paragraph 3 of Railway Board's letter No. E(NG) I/87/RE3/3 dated 3.11.1988 addressed to all General Managers of the Indian Railways. Therein it is stated as follows :

" The matter has been considered sympathetically by the Board and it has been decided that recovery of over payments made in such cases should be waived under your own powers. Pay should, however, be refixed as per clarification contained in the letter of 9.4.86 cited above. "

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Mr. Murty having confined himself to the question of recovery of the overdrawal, we are bound to consider this aspect only. Basing on the contents in paragraph 3 of the above quoted letter it was contended by Mr. Murty that the excess drawal should be waived by the competent authority. This argument was stiffly opposed by learned Senior Standing Counsel for the Railway Administration who contended that once there has been an excess drawal undue pecuniary benefit should not be given to any employee. But despite this argument advanced by Mr. Pal he was fair enough to invite our attention to the averments in paragraph 5 of the counter to the rejoinder filed on behalf of the Railway Administration in which it is mentioned that this matter was referred to the competent authority who has clarified the position and accordingly there has been waiver of over drawal with effect from December, 1984 to 8.4.1986. But recovery for the excess drawal thereafter has not been waived. However, considering the matters mentioned in paragraph 3 of the above mentioned letter and considering the argument advanced at the Bar on this question and taking into consideration the fact that the applicant shall retire on superannuation within a couple of months or little more, we direct that the entire amount drawn in excess with effect from 18.12.1984 till the end of December, 1988 be waived because the clarification about which it is stated above has been issued on 3.11.1988 which was conveyed by the Divisional Railway Manager, S.E. Railway, Khurda Road on 8.12.1988. Therefore, we have directed waiver till December, 1988.

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5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

for arrangement
..... 14.3.89

Member (Judicial)

9 agree.

B.R. Patel
14.3.89

.....
Vice-Chairman



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 14, 1989/Sarangi.