

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No. 588 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman  
Hon'ble Mr. S. Dasgupta, Administrative Member

1. Zaida Begum, widow of late Sk. Phani, residing at 17C, Watgange Street, Cal-23 ;
2. Sk. Naimuddin Phani, son of late Sk. Phani, residing at 17C, Watgange Street, Cal-23 ;
3. Sk. Shahabuddin Phani, s/o late Sk. Phani, residing at 17C, Watgange Street, Cal-23

..... Applicants

-vs-

1. Union of India, through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43 ;
2. The F.A. & C.A.O. (Pension), South Eastern Railway, Garden Reach, Calcutta-43 ;
3. The Chief Personnel Officer, S.E. Rly., GRC, Calcutta - 700 043 ;
4. The Sr. Personnel Officer, S.E. Railway, G.R.C., Calcutta - 700 043.

..... Respondents

For applicants : Ms. K. Banerjee, counsel

For respondents : Mr. P.C. Saha, counsel

Heard on : 16.6.1998

Order on : 15-7-1997

O R D E R

S.N. Mallick, VC

This application was originally filed by one Sk. Phani, the predecessor-in-interest of the present substituted applicants for a direction upon the respondents to release and pay the full amount of D.C.R.G. wrongfully withheld by them on the ground that his pay as Junior Clerk was wrongly fixed on and from 20.7.76 and as such Rs. 51,540.30p were recoverable from his DCRG due to over-payment from 20.7.76 till his superannuation on 31.10.1995.

2. The facts of the case are as follows :-

While serving as a casual Khalasi under the S.E. Railway, the original applicant since deceased after being selected through examination joined as Junior Clerk w.e.f. 13.4.65 under CE(P&D)/GRC(Vide Annexure A1). He was subsequently declared surplus by an office order of the Chief Engineer(P&D) dt.21.10.74 and was on leave from 15.11.74 to 15.1.75 awaiting posting order and thereafter was appointed as Ferro Khalasi by the Chief Engineer of Garden Reach Ferror Section(Drawing) w.e.f. 14.1.75, vide Annexure B, the office order dt.15.1.75). On such appointment, he was, however, drawing the pay drawn by him as Junior Clerk in the Construction Department and was given pay protection. He was again asked to appear in the examination for selection of Junior Clerk, in which he appeared under protest on 19.7.78 and on being successful, he was again posted as a Junior Clerk under the Chief Engineer(Open Line) Office at Garden Reach, Calcutta, Stores Section w.e.f. 20.7.76, vide Annexure 'C', the office order dt.19.7.1976. This date i.e. 20.7.76 is a crucial date. Thereafter, the said Sk. Phani was promoted as a Sr. Clerk in the Open Line under Office Order dt.9.5.88 and <sup>subsequently was</sup> ~~was again~~ promoted as Head Clerk in terms of Office Orders dated 9.5.88 and 21.10.92 respectively(vide Annexures 'D' and 'E'). On 21.10.95, the petitioner retired on superannuation and on retirement, all his dues relating to PF/GPF/Leave salary/GIS/GEIS/Pension/Commutation except DCRG were paid to the applicant in full on 2.11.95. He was subsequently intimated by an office order dt.9.2.96(Annexure-F) that due to wrong fixation of pay at the time of his regular promotion as Junior Clerk w.e.f. 20.7.76, there had been over-payment of an amount of Rs.51540.30p to him till his date of superannuation and that the said amount was to be recovered from his D.C.R.G. The original applicant was

highly aggrieved ~~by~~ such order dt.7.2.96 <sup>as</sup> ~~and~~ he was not intimated how such a large amount could be recovered from him on such plea after a lapse of about 20 years. Hence, this application.

3. Before filing such application, he gave a Lawyer's notice dated 28.2.96 as per Annexure 'G', which has not been replied to by the respondents.

4. The respondents have contested this application by filing a reply, where the facts alleged by the petitioner in his application have almost been admitted. A break-up as per Annexure R/1 has been annexed to the reply showing how a sum of Rs.51,540.30p became due from the original application as over-payment due to wrong fixation and as such recoverable from DCRG under Rule 228 of I.R.E.M. - Vol.I. In this connection, it is interesting to note that the allegation made by the original applicant in para-4.8 in the original application that after retirement the petitioner got all his post-retiral dues except DCRG on 2.11.95 has not been denied by the respondents in their reply. On the other hand, it appears from para-4.10(c) that the allegations have been admitted.

5. The question is whether the respondents can recover the above sum of Rs.51,540.30p on the allegation that due to mistake in the fixation of pay of the petitioner as Junior Clerk with effect from 20.7.76, such amount became due from him as overpayment after a lapse of about 20 years. Admittedly, after the petitioner was appointed as a Junior Clerk w.e.f. 20.7.76, he was given subsequent promotion to the post of Sr.Clerk and Head Clerk with higher scales of pay. Admittedly, his pay was fixed in those higher scales giving him all benefits of pay fixation with admissible allowances on the basis of his initial fixation of pay as a Junior Clerk w.e.f. 20.7.76.

6. It has been contended by Ms.K.Banerjee, Id.Counsel appearing for the substituted applicants that in view of the decision of the Supreme Court, reported in (1994) 27 ATC 121(Shyam Babu Verma & Ors. v. Union of India & Ors.), the respondents cannot make any recovery of such alleged over-payment due to wrong fixation of pay. In the aforesaid case, there was wrong fixation of pay of the petitioners in a higher scale while implementing the recommendation of the 3rd Pay Commission and the said petitioners enjoyed the higher scale since 1973 for more than 10 years due to no fault on their part. The Supreme Court took note of this circumstance and held that it would only be just and proper not to recover any excess amount which was already paid to them. It has been contended by Ms.Banerjee that the original petitioner in the present case is still on a better footing than the petitioners of the above reported case. Here the mistake did not arise while implementing the recommendation of the 3rd Pay Commissioner, but as alleged by the respondents, it was due to wrong fixation of pay of the petitioner while being appointed as a Junior Clerk w.e.f. 20.7.76. Ms.Banerjee has referred to a judgment of the CAT, Jodhpur Bench, reported in 1996(1) A.T.J. 74(R.E. Sexena v. Union of India & Ors.). In that judgment, the Id. Jodhpur Bench followed the judgment delivered by the said Bench dt.20.9.95 passed in O.A. No.477 of 1994 and also to a judgment of the Apex Court, reported in 1995 S.C.C.(L&S) 245(Saheb Ram vs. State of Haryana). The Tribunal following the aforesaid decision came to conclude that no recovery could be made from an employee if such over-payment was made due to wrong construction on the part of the administration and not because of any mis-representation on the part of the employee concerned. Ms.Banerjee has also referred to a decision of the Allahabad Bench of the CAT, reported in 1996(1) A.T.J. 367 (V.N. Pandey v. Union of India & Ors.), where similar view has been taken.

7. The Ld.Counsel for the respondents has contended that in view of Rule 228 of the I.R.E.M. - Vol.I, the respondent authorities are entitled to recover such over-payment. But in our view, Rule 228 has no manner of application to the present case. The aforesaid rule is applicable when promotion has been erroneously given to a person from a wrong date. In the instant case, it is not the case that promotion was given to the applicant from a wrong date due to an error on the part of the respondents.

8. In the present case, the petitioner was appointed as a Junior Clerk w.e.f. 20.7.76 and he was given all pay protection. It is also admitted that on his superannuation, all his post-retiral benefits including fixation of pension etc. have been given to him on 2.11.95. The Ld.Counsel for the respondents has drawn our attention to a decision of the Principal Bench of the CAT dt. 4.9.95 in O.A. 1548 of 1990. In the aforesaid case, there was wrong fixation of pay in terms of the Railway Services(Revised Pay) Rules, 1986 and it was contended there on behalf of the railway authorities that due to wrong interpretation of Rule 5, there was wrong fixation of pay. But in the instant case, it is not the case of the respondents that the fixation of pay of the original applicant as a Junior Clerk was in violation of the relevant rules. It was a simple mistake even if it is accepted as such. In the above case, there was question of option etc. so as to decide which scale of pay the applicant in the aforesaid case retained. But such question does not arise here. Moreover, in para-17 of the said order, the Learned Principal Bench has made a distinction between the mistakes made in making payment to an individual from a mistake made in the process of pay fixation necessitated by general pay revision. In the instant case, if we accept the respondents' version, there has been a mistake in making payment to the original applicant due to wrong fixation of pay as a Junior Clerk from the initial date i.e.

20.7.76. There was no question of pay fixation due to general pay revision at that time. Accordingly, from the materials on record, we are satisfied that there was no mis-representation on the part of the original applicant in the matter of his fixation of pay as Junior Clerk w.e.f. 20.7.76. The respondents allowed the state of affairs to continue from the aforesaid date till the superannuation of the deceased applicant on 31.10.95. Furthermore, before his superannuation, the respondents gave the applicant two successive promotions with higher scales of pay in the post of Sr.Clerk and Head Clerk respectively and his pay was allowed to be revised on the recommendation of the Pay Commission. We cannot ignore the admitted fact that on superannuation, the respondents have made all payment of retiral dues to the petitioner including pension except DCRG on 2.11.95.

9. It has been contended by the Ld.Counsel for the respondents that the original applicant after giving the Lawyer's notice as per Annexure 'G' dated 23.2.96 did not wait for the orders of the authorities and filed the O.A. before this Tribunal on 13.5.96 and that as such the application is premature. We are not convinced by such contention as the respondents did not care to consider the said lawyer's notice even within a period of 2½ months before the instant original application was filed.

10. In view of the above facts and circumstances on record and in view of the above judicial pronouncements including the decision of the Apex Court as referred to above, we are of the view that the respondents are not entitled to recover any such alleged over-payment from the applicant after a lapse of 20 years and that too after his death during the pendency of this application.

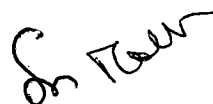
11. Accordingly, the instant application must succeed and it is allowed. The order of the respondent authorities contained in

the letter dated 7.2.96 as per Annexure 'F' is quashed. The respondents are directed to release the full amount of D.C.R.G. due to the deceased applicant to the present substituted applicants or their duly authorised agent within 3(three) months from the date of communication of this order.

12. No order is made as to costs.



( S. Dasgupta )  
Member(A)



( S.N. Mallick )  
Vice-Chairman