

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1512 OF 1996

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

Sri Raibaran
Vill. Islampur, P.O. Hasanpur,
Dist. Murshidabad

VS

1. Union of India through the
Secretary, Ministry of Railway,
Rail Bhavan, New Delhi
2. General Manager,
E. Rly. 1, Fairlie Place,
Calcutta-700 001
3. Divisional Railway Manager,
E. Railway, Malda
4. Chief Engineer, E.Rly.
1, Fairlie Place,
Calcutta-700 001
5. Divisional Engineer,
E. Rly. Malda
6. Divisional Personnel Officer,
E. Rly. Malda
7. Divisional Accounts Officer,
E. Rly. Malda
8. Asst. Engineer, E.Rly.
New Farakka, Dist. Murshidabad
9. P.W. Inspector, E. Rly.
Dhullion, Dist. Murshidabad

..... Respondents

For the applicant : Mr. M. Chakraborty, Counsel
Mr. D. Purkait, Counsel

For the respondents : Mr. C. Samadder, Counsel

Heard on : 29.7.98 : Order on : 5.8.98

O R D E R

S.Dasgupta, A.M.:

The applicant, who was initially appointed as a Gangman in the Eastern Railway, was promoted to the post of P.W.M., Gr.II on 1.5.87 in scale Rs. 1200-2300/-.. He claims that by an order dt. 11.2.88 issued by the PWI/DGLE, he was

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posted as PWM in the grade of Rs. 1400-2600/- which is ~~the~~ scale attached to the post of PWM, Gr.I. His pay was fixed in the higher grade which he continued to enjoy until his retirement on 30.9.96. At the time of his retirement his basic pay was Rs. 1720/-. His terminal benefits, however, were not calculated on the said basic pay but on the basis of pay as Rs. 1500/- in the lower scale of Rs. 1200-2300/-. Also a sum of Rs. 38,376/- was deducted from the DCRG payable to the applicant. The applicant submitted a representation against computation of his pensionary benefits on lower pay and also deduction from his DCRG on 3.12.97 to the General Manager, E. Rly. with copy forwarded to other respondents. But having received no reply, he has approached this Tribunal through this Original application filed u/s 19 of the Administrative Tribunals Act, 1985, seeking a direction to the respondents to calculate his retirement benefits on the basis of last pay drawn by him as PWM, Gr.I and to pay to him all retirement benefits viz. DCRG, pension, commuted value of pension, leave salary etc. with interest at the rate of 12% per annum.

2. The respondents have resisted the claim of the applicant by filing a reply in which it has been stated that on 11.2.88 the PWI/DGLE issued an order of transfer of the applicant posting him vice one Shri Mamtaz, who was in the grade of Rs. 1400-2600/-. This was not an order of promotion, yet the office of PWI/DGLE mistakenly treated this order of transfer as an order of promotion of the applicant from the post of PWM, Gr.II to the post of PWM, Gr.I and fixed the pay of the applicant accordingly. It is further stated that for promotion to the post of PWM, Gr.I, a suitability test is to be conducted. The applicant appeared in the suitability test in 1992 but he was declared as unsuitable. Thereafter, he was given another chance by being directed to

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appear in the suitability test in 1996 through a letter dt. 28.9.96, but he did not appear in the said test. The fixation of pay of the applicant in the higher grade was thus erroneous and this error having been come to light, his pensionary benefits were paid on the basis of the pay in scale Rs. 1200-1800/- and the overpayment already made was recovered from his DCRG.

3. The applicant has filed a rejoinder in which he has reiterated that a perusal of the order dt. 11.2.88 would make it clear that it was not an order of transfer but an order of his posting in the higher grade and therefore, after a lapse of 9 years, his pay could not be reduced on the plea that a mistake was committed by treating the said order of transfer as an order of promotion. While not denying that he had appeared in the 1992 suitability test and failed, the applicant has stated that he did not appear in the 1996 suitability test since a very short time was left before his retirement from service.

4. We heard the learned counsel for both the sides and perused the pleadings on record.

5. We are required to consider firstly whether the applicant was validly promoted to the higher post of PWM, Gr.I and his pay was rightly fixed in the higher grade and if not, whether the respondents had a right to correct the error by computing his pensionary benefits on the basis of of his pay in the lower scale and also to recovering the overpayment from his DCRG.

6. In order to answer the first question, it is necessary to refer to the order by which the applicant claims to have been promoted to the higher grade. A copy of the said order has been placed at Annexure-A. The relevant portion relating the applicant reads as follows :

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"No. E/3

Dated 11.2.88

SUB: OFFICE ORDER

The following arrangement has been ordered by the competent authority to have effect from 12.2.88.

1. Shri Raibaran from SPL(Se) in grade Rs. 1200-2300/- is hereby posted vice Shri Momtaz PWM(HG) in grade Rs. 1400-2600/- will look after the section of Gang No. 1 to 3 Km 181/0 to 202/0 between Station HCLE to Gankar & Headquarter will be at MGLE.

7. From the text of the order quoted above, it is quite clear that by no stretch of imagination the aforesaid order can be treated as an order of promotion. It was only an arrangement made by the authorities concerned to man the post in a higher scale of pay by the applicant, who was in the lower grade. Such a local arrangement cannot be treated as an order of promotion. The applicant has brought on record certain documents in which his designation has been referred to as PWM, Gr.I. But this can~~not~~ detract the fact that he was not promoted to the post of PWM, Gr.I but was merely directed to function on a post which carried higher scale of pay. The applicant, therefore, was not entitled to be get the benefit of higher scale of pay and his fixation of pay in the higher scale was, therefore, erroneous.

8. No doubt that such erroneous fixation of pay was allowed to continue for 8 years or more. But this cannot confer on the applicant any inalienable right to enjoy the said benefit of an administrative error indefinitely.

9. The fact, however, remains that such erroneous fixation of pay in higher scale was not attributable to any misrepresentation on the part of the applicant. Having been given the benefit of fixation of pay in higher scale, the applicant has continued to enjoy the said benefit without

158

there being any contributory negligence on his part. The respondents, therefore, had no right to recover the overpayment made to the applicant from his DCRG without giving him an opportunity or without putting him ~~on~~ notice.

10. The Hon'ble Supreme Court in the case of Bhagwan Shukla -vs- UOI & Ors, AIR 1994 SC 2480, had held in no uncertain term that when fixation of pay of a Govt. servant was done erroneously by the Deptt., his pay cannot be reduced by correcting such error after a long time had elapsed without giving an opportunity to him or by putting him ~~on~~ notice. In Bhagawan Shukla case, the promotion was given correctly but the pay was fixed wrongly. In the case before us, there was no promotion given and yet benefit of fixation of pay in the higher scale was given. Therefore, although we cannot protect the pay given to the applicant in the higher scale of pay for the purpose of fixation of pensionary benefits, the ratio decidendi of Bhagawan Shukla case would certainly be applicable to protect the applicant from civil consequence of recovery from the DCRG.

11. In taking this view we are fortified by the decision of the Hon'ble Supreme Court in the cases of Sahib Ram -vs- State of Haryana & Ors, 1995 SCC (L&S) 248 and Gabriel Saver Fernandes & Ors -vs-State of Karnataka & Ors, 1995 Supp (1) SCC 149.

12. In the case of Shyam Babu Verma & Ors -vs- UOI & Ors, (1994) 27 ATC 121, the appellants were given erroneously higher pay scale since 1973 and the scale was reduced in 1984 on the error having been detected. The Hon'ble Supreme Court held that in such a situation it would be just and proper not to recover any excess payment already made to the appellants since they received higher scale of pay due to no fault of theirs.

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13. In view of the foregoing, we hold that the respondents had exceeded their jurisdiction in deducting an amount of 38,376/- from the DCRG of the applicant. We accordingly allow this application in part and direct the respondents to refund to the applicant the said amount with interest at the rate of 12% per annum with effect from 1.1.97 i.e. 3 months after the date of retirement of the applicant till the said amount is refunded to him. Let this direction be complied with within 3 months from the date of communication of this order.

14. The application is disposed of on the above terms leaving the parties to bear their own costs.



(S. DASGURTA)

MEMBER(A)



(S.N. MALLICK)

VICE CHAIRMAN