

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. O.A.215 of 1996

Present : Hon'ble Dr.B.C.Sarma, Administrative Member.  
Hon'ble Mr.D.Purkayastha, Judicial Member.

B ISWANATH KUNDU

vs.

UNION OF INDIA & ORS.  
(EASTERN RAILWAY)

• For the applicant : Mr.A.K.Samanta, counsel.

• For the respondents: Mr.P.K.Arora, counsel.

Heard on : 13.2.1997

Judgment on : 13.2.1997

JUDGMENT

B.C.Sarma, A.M.

The dispute raised in this application is about the alleged wrong fixation of the pay of the applicant on promotion and also the attempt made by the respondents to recover the alleged over-payment.

2. Briefly stated, the facts of the case are as follows :-

The applicant was appointed as a Draftsman in the year 1962 in the grade of Rs.180-6-240 (AS) and in 1966, the applicant was in the grade of Rs.205-7-240-8-280(AS) and was sent to the Research Designing & Standard Organisation of the respondents on deputation. He was released from deputation in the year 1982, precisely on 4.9.1982. During the period of his deputation from 1966 to 1982, he was not at all informed



at any stage, of his pay fixation, although the Divisional Railway Manager might have fixed his pay from time to time at different stages. The applicant did not come across with any anomaly and found no discrepancy with his pay fixation by DRM Howrah. Long after 11 years had passed away in silence, the applicant, all of a sudden, was very much surprised to get information from CPO/CCC's letter No.E/740/LP/2/Misc/36 dated 15.5.1991 which was communicated to the applicant on 10.11.1993 that excess payment was made to the applicant and recovery of the excess amount would be made in easy instalments. The Railway Administration has been actually recovering Rs.300/- from the pay of the applicant since July, 1994, as has been contended by the applicant. The applicant's specific contention is that on 5.9.1973 he was drawing pay at Rs.280/- in the scale of Rs.205-280/- and his pay on promotion would have been Rs.305/- in the scale of Rs.250-280/-. The scale of Rs.250-380 (AS) was later revised and the revised scale of Rs.425-700(RS) was introduced. The applicant's pay of Rs.305/- in the revised scale is equal to Rs.530/- on 12.9.1973. However, the authorities concerned have omitted to take into account this aspect while fixing his pay in the higher scale of Rs.250-380/-, which was subsequently revised after coming into force of the recommendations of the Third Pay Commission w.e.f. 1.1.1973. The applicant was allowed one increment thereafter on 1.6.1974 for rendering loyal service. The applicant contends that the said mistake got detected after subsequent promotions and on reaching the pay scale Rs.2375-3500/-. The applicant on receiving the letter regarding the decision of the Railway authorities to recover the alleged over-payment, filed an appeal on 3.12.1993, but the authorities took a long time to dispose of the appeal and ultimately, by an order dated 10th November, 1995, his appeal was rejected. Being aggrieved thereby, the instant application has been filed with a prayer for a direction upon the

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respondents to refix the pay of the applicant correctly and also not to recover any payment from him on the ground that there has been an over-payment.

3. The case has been resisted by the respondents by filing a reply. The respondents contend that the pay received by the applicant in the various scales, both revised and unrevised, was taken into account for the proper fixation of pay, but an anomaly had occurred in the year 1979. The respondents contend that in course of examination of a representation by one K.C.Dhar, claiming stepping up of pay at par with his junior, Shri B.N. <sup>(The applicant)</sup> Kundu, it was detected that the pay of B.N.Kundu was erroneously fixed at Rs.795/- in the scale of pay of Rs.700-900 instead of Rs.700 as on 1.10.1979 and accordingly the pay of the applicant was re-fixed correctly and the over-payment is sought to be recovered from him. The respondents have enclosed with their reply a chart, being annexure 'R' to the reply, starting from 5.9.1972 upto 1.1.1995 showing therein how the anomaly regarding the pay fixation of the applicant and the correct fixation has also been shown. Ultimately, the recovery order dated 10th November, 1995, was issued which also dealt with the appeal filed by the applicant on 3.12.1993.

4. The 1d.counsel for the applicant during hearing cited the provision of Rule 2018(b) corresponding to FR 22-C of the Railway Establishment Code, Vol. II, in this connection. According to the 1d.counsel, even though the pay of the applicant was fixed on notional basis, they should have taken into account the increments which the applicant would have drawn in the lower scale prior to 5.9.1973, prior to his promotion to the higher scale on 7.9.1973 and, thereafter, on his promotion to the higher scale on 12.9.1973, his pay should have been fixed appropriately in the scale of pay as per 22-C.

5. We have heard the submissions of 1d.counsel for both the parties and have also perused the records and considered the facts and circumstances of the case. From the records produced

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before us, it is clear that the anomaly in the fixation of the pay of the applicant, as contended by him had arisen in the year 1973 and as per the version of the respondents, the anomaly had occurred in 1979. Normally such an application would have been dismissed by us for delay and laches and also being barred by limitation. But we note two things in this respect. First, any wrong fixation of pay even though done earlier, results in continuing wrong and that has to be taken into account before taking a decision as to whether the application suffers from any infirmity of delay and laches. The second point to be considered in this case is for long several years during the period of his deputation from 1966 to 1982, the applicant was completely in the dark about the scale of his pay even on notional basis. No intimation was sent regarding the same by the Railway authorities. The applicant suddenly came to know about his fixation of pay, as alleged by the respondents, only when there was a claim from his next junior who had appealed for stepping-up of pay at par with the present applicant. The applicant had filed an appeal in time but the said appeal also remained pending with the respondents for about 2 years. It was ultimately replied to only on 10th November, 1995. It is, therefore, clear that the applicant did not have any knowledge about his fixation of pay and the question of delay and laches in this case does not arise. We, therefore, overrule the objection raised by the ld. counsel for the respondents, Mr.P.K.Arora, on this count.

6. We have perused the conditions of Rule 2018-B of the Railway Establishment Code which states— "Notwithstanding anything contained in these rules, where a railway servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him

his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued". Although the respondents have averred that necessary increments were given to him from time to time, there is no specific averment by the respondents to the averment made by the applicant that the increments which he would have drawn on 5.9.1973 prior to his promotion to the higher scale on 12.9.1973, was not taken into account by the respondents in fixation of his pay after promotion in the higher scale after getting another increment in that grade. It might have been possible that since the applicant was on deputation, his fixation of pay was not done in time by the railway authorities and it might have been that ~~only when~~ the report of the Third Pay Commission came into force, the respondents fixed his pay accordingly. But the fact remains that if the respondent authorities had fixed the pay of the applicant even on notional basis in time, certainly the increments of pay of the applicant which the applicant would have drawn in the lower scale on 5.9.1973 prior to his promotion on 12.9.1973 would have been taken into account in fixation of his pay in the promotional scale. We are, therefore, of the view that there is a case and that the matter should be looked into by a group of officers taking this factor into their notice and also the provisions of Rule 2018-B of the Railway Establishment Code on that count.

7. We, therefore, direct the respondent authorities to constitute a group of two officers other than those who dealt with the matter of the applicant and these officers shall give a personal hearing to the applicant and thereafter they shall reconsider the entire matter of fixation of the pay of the applicant w.e.f. 1.1.1973 in the light of the observations made by us. They shall also scrutinise all the records on this count. Such action shall be taken by the respondents within a period of four months from the



date of communication of this order and the result thereof shall be communicated to the applicant within a period of one month thereafter.

8. Regarding the prayer of the applicant for stopping of the recovery, the matter has been considered by us in the light of the law laid down by the Hon'ble Apex Court in Shyam Babu Verma Case. In that case, the petitioners were erroneously given the higher pay scales since 1973 and the pay was sought to be recovered only in 1984. It was, therefore, held by the Hon'ble Apex Court that it would be just and proper not to recover the over-payment. In this case, it was only because of their own fault, we find, the alleged over-payment has been made by the respondents and as per the respondents version, the same was detected as early as in 1979 and that was continuing and the applicant was in no way responsible for such drawal of money at all. This being the position on the basis of the law laid down by the Hon'ble Apex Court, we have no hesitation to hold that the respondents are debarred from making any recovery from the said over-payment made to him if at all. We have been given to understand that the applicant has been paying the amount sought to be recovered by the respondents @ Rs.300/- p.m. for the last two years. If that be so, the amount recovered from the applicant shall not be refunded to him by the respondents, but the respondents shall not recover any over-payment made to the applicant from this date.

9. The application is thus disposed of in the light of the directions given by us accordingly, without passing any order as to costs.

10. We further direct that if the applicant is found entitled to get the refund as per re-fixation done on the basis of the recommendation of the group of officers, to which we have referred already, such refund shall be made to the applicant by the respondents.

  
(D. Purkayastha)  
Judicial Member

  
(B.C. Sarma)  
Administrative Member