

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 488 of 1996

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

H.K. BISWAS AND 25 OTHER

TEACHERS OF C.L.W.

VS

UNION OF INDIA THROUGH THE

GENERAL MANAGER, C.L.W., CHITTARANJAN

For the Applicants : Mr. B. Chatterjee, counsel

Ms. B. Mondal, counsel

For the Respondents: Mr. P.K. Arora, counsel

Heard on 15.11.1996

: :

Date of order: 22.11.1996

O R D E R

Twenty six teachers of C.L.W. School, Chittaranjan have jointly filed this application praying for the relief that a declaration be issued to the effect that the respondents have no right or authority to take any step whatsoever of any nature to recover any amount drawn as alleged excess on refixation in terms of Annexures 'A' series appended to the application, which was enjoyed by them from 1.1.1986 and also for the issue of a direction on the respondents to recall or rescind the orders at Annexures 'A' series with intention to recover the alleged overpayment. The applicants contend that their pay was fixed in the scale of Rs.2000-3500/- in 1988 and that was given effect from 1.1.1986. On the ground that there was an error in the fixation of pay, the respondents have now sought to refix their pay in the same scale under Rule FR 22(a)(ii). It is the specific contention of the applicants that they are in no way responsible for fixation of pay in 1988, even if it was wrongly done, as contended by the respondents. They have enjoyed the benefit for the last 10 years and, hence, the respondents cannot be permitted to take away the right enjoyed by them. Being aggrieved thereby



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the instant application has been filed with the prayer mentioned herein-before.

2. The case has been resisted by the respondents by filing a reply. They contend that the Ministry of Railways have introduced revised pay scale on the recommendation of the Chattopadhyay Commission on Teachers of Railway Schools giving effect from 1.1.1986 vide Railway Board's letters dated 11.1.1988 and 11.4.1988. As per the orders of the Railway Board, the Teachers, who have completed 12 years services in the basic grade, are eligible to get higher grade i.e., senior grade and the Teachers who have completed 12 years service in senior grade are eligible for next higher grade i.e., selection grade subject to screening by the D.P.C. Accordingly, in terms of para 6 and 7 of the Railway Board's letter dated 11.4.1988, all the Teachers, who have completed 12 years service in basic grade have been granted senior grade in the corresponding scale but their pay were inadvertently fixed under Rule 2018-B(FR 22-C(ii)) of R-II instead of Rule 2017(a)(ii) of R-II (FR 22(a)(ii)). In terms of the Railway Board's letter dated 6.7.1989, where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance than those attached to the old post, the pay of the employee will be fixed under Rule FR 22(a)(ii). In this case the applicants concerned were given senior grade by giving benefit under Rule 2018-B which is not at all applicable in their cases, since they have not taken higher duties and responsibilities. Accordingly, the mistake has been corrected and the pay has been refixed under Rule 2017(a)(ii)-R-II and in terms of para 1019 of IREM Vol.1, 1989, the overpayment of the Teachers, if any, will be recovered in suitable instalments with a view to mitigating the hardship to the Teachers concerned. The anomaly in the pay fixation was detected in the year 1993 vide Railway Board's letter dated 9.3.1993. The Railway Board, in their letter dated 9.3.93, directed to refix the pay fixation in the light of the rule circulated vide letter dated 7.6.89 and they have clarified in the aforesaid letter that Rule 2018-B (FR 22-C(ii))-R-II is not applicable. The respondents have, therefore, prayed for dismissal of their application on the ground that it is devoid of merit.



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3. During the hearing Mr. Chatterjee, learned counsel for the applicants submitted that he will not press the prayer at para 8(b) for quashing the fixation of pay, but will keep his arguments confined to the prayer at para 8(a) of the application which is as regards the recovery of the alleged excess payment made to the applicants.

4. During the hearing, Mr. Chatterjee cited a decision of the Allahabad Bench of this Tribunal in the case of V.N. Pandey v. Union of India & others, reported in 1996(1) ATJ 367, wherein it was held that order reducing the pay issued without notice and that too after retirement is bad in law and the applicant was not responsible for wrong fixation of pay and the order of recovery of overpayment issued after 8 years is not sustainable and, hence, quashed. Mr. Chatterjee also cited the decision of this Bench of the Tribunal rendered in OA 157 of 1993 (Shiva Sankar Sinha & others v. Union of India & others), wherein it was held that overpayment made for wrong fixation of salary shall not be recovered by the respondents. Mr. Chatterjee also cited the decision of Hon'ble Apex Court in Shyambabu Verma's case reported in 1994(2) SCC 521. In this case higher scale was erroneously given to the petitioners in 1973 and reduced in 1984. It was held by the Hon'ble since Apex Court that /the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. Mr. Chatterjee argued that on the basis of the above judgment the application should be allowed.

5. Mr. Arora, learned counsel appearing for the respondents submitted that in this application re-fixation has not been challenged. Mr. Arora argued that in Shyambabu Verma's case, pay was reduced after a lapse of 11 years and in that case the appellants were entitled to the higher scale that was given earlier. In the instant case the applicants were not entitled to higher scale while the appellants in Shyam Babu Verma's case were entitled to the higher pay when recovery was started. According to Mr. Arora, Shyam Babu Verma's case can be differentiated and therefore, the ratio of the judgment cannot apply. Mr. Arora cited the decision of the Bombay Bench of this Tribunal in the case of A.K. Ravi v. Union of India & others, reported in (1996)



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32 ATC 785, wherein it was held by this Tribunal that the Government are not estopped from effecting recovery when mistake in pay fixation was detected within a period less than 10 years and the employee was still in service and a period of more than a decade could be regarded as a long period disentitling the Government to effect recovery. Mr. Arora, therefore, argued that on the basis of the decision of the Bombay Bench of this Tribunal, the application deserves to be dismissed.

6. The matter has been examined by me carefully after hearing the submissions of the learned counsel of both sides and perusing the records and considered the facts and circumstances of the case. Admittedly, the fixation of pay of the applicants in the scale of Rs.2000-3500/- was earlier erroneously made by the respondents while applying Rule 2018(b) of R-II, which is not applicable. As per directives issued by the Railway Board, the respondents have now sought to rectify the mistake by applying correct Rule which is 2017<sup>(a)(ii)</sup> of R-II corresponding to FR 22(a)(ii). It has to be noted that the fixation of pay of the applicants under the correct rule has not been challenged by the applicants now. The only challenge that has been made is the apprehended recovery to be made from the salary pursuant to the issue of the order dated 6.2.96 as annexed as Annexures 'A' series to the application. I note that in the new fixation of their pay done in 1993, there has been quite a difference in their pay to which the applicants are legally entitled. While it may be argued by Mr. Arora that there is a slight difference in the facts leading to the fixation of their pay in Shyam Babu Verma's case and the instant case, the fact remains that the Hon'ble Apex Court had held that because of the long span of time during which the appellant have enjoyed the enhanced pay, the respondents were allowed to recover the overpayment. In this case it is true that the pay fixation was done originally in 1988 and that was corrected in 1996, but the effect of pay fixation was given with effect from 1.1.1986. It is interesting to note that although the respondents have issued the order in 1996, they have not yet issued a notice to the applicants regarding recovery of the overpayment made to them consequent to the wrong fixation of pay. In effect, therefore, the applicants have enjoyed the higher



pay for more than 10 years from 1.1.1986 either till the date of filing of this application which is 15.4.1996 or till the date of hearing of the application which is 15.11.1996. The applicants in no way were responsible for the wrong fixation of their pay. The drawal of the enhanced pay, whatever the reason may be therefor, has increased the life style of the applicants and the respondents cannot, therefore, be permitted to recover the alleged overpayments made to them after a lapse of more than a decade. I have, therefore, no doubt that the ratio of the judgment in Shyam Babu Verma's case should apply in this case and on the basis of that I do not have any hesitation to hold that the respondents cannot be permitted to recover the overpayments made to the applicants at such a distant date. It will be unfair and unjust if they are permitted to do so.

7. In view of the above the application in respect of the prayer 8(a) which was only pursued is allowed. The respondents are directed not to recover the overpayments made to the applicants as a result of wrong fixation of pay through the application of Rule 2018(b) of R-II. The parties to bear their own costs.



(B. C. Sarma)

MEMBER (A)

22.11.1996