

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. No.158 of 1997
O.A. No.535 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. B. P. Singh, Administrative Member

Anil Kumar Hore, s/o late Khitish
Chandra Hore, Ex-Station Master, E.
Rly. Rishra, now residing at Nandan
Kanan (South), P.O. Rahara, Dt.N.24.prg

.... Applicant

VS

1. Union of India, through the
General Manager, E. Rly., 17, N.S.
Road, Calcutta-700 001

2. The Divisional Rly. Manager,
E.Rly. Howrah

.... Respondents

For the Applicant : Mr. B. Chatterjee, counsel

For the Respondents: Mr. M. K. Bandopadhyay, counsel

Heard on 16.6.1999

: : Date of order: 16.6.1999

O R D E R

D. Purkayastha, JM

The case of the applicant is that he retired from the post of Station Master, Eastern Railway, Rishra on 31.3.1994. But the respondents imposed the penalty by an order dated 21.4.1993, Annexure/A1 to the application holding that his next increment raising his pay from Rs.2150/- to Rs.2200/- shall be withheld for a period of one year (NC) with effect from the date when it will be otherwise due to him. According to the applicant, that punishment cannot be given effect to since he was due to retire on 31.3.1994 and the imposition of punishment was given within one year. Therefore, the action of the respondents in respect of fixation of pay of the applicant on the basis of the punishment is wrong, illegal and without jurisdiction. It is also stated by the applicant that his pay was reduced from Rs.2200/- to Rs.2150/- in violation of the rules. The applicant has also filed one MA for certain amendment in the OA.

2. The respondents have denied the allegation of the applicant by filing a reply to the OA. It is stated by the respondents in para 10 of the reply that on account of an error in calculating the applicant's fixation of pay, a substantial amount was paid to him as overpayment. When it was detected, the excess amount so far paid to the applicant was deducted from the DCRG amount. It is also stated by the respondents that as per Rule 11(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 no punishment which adversely affects the retirement benefits can be awarded without having an enquiry where the charged official is given all possible opportunities to defend him in the case. In the instant case, an enquiry was held and after considering the Enquiry Officer's report, the Disciplinary Authority had passed his order imposing punishment upon the applicant. So, the respondents have prayed that the application be dismissed.

3. We have gone through the impugned punishment order and we find that the punishment reducing of his pay on the basis of enquiry report without affording a further opportunity of being heard to the applicant had been imposed. We find that the disciplinary authority awarded the punishment stating that he had decided to stop the next increment raising his pay from Rs.2150/- to Rs.2200/- for a period of one year. But we find that on the face of the said order it cannot be implemented as the applicant was due to retire on 31.3.94. So, on a perusal of the impugned order, it is found that it is not sustainable. However, it is admitted by the respondents in para 10 of the reply that due to an error in calculating the fixation of pay of the applicant a substantial amount was paid to him as overpayment. We find that overpayment to the extent of Rs.11,234.90 was made to the applicant and after retirement when detected the same was deducted from the DCRG amount without serving any notice to the applicant. Mr. Bandopadhyay, learned advocate for the

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respondents submits that the applicant did not prefer statutory appeal before the appellate authority being aggrieved by the order of punishment and thereby, he has no right to challenge the order of punishment before this Tribunal. We find that the respondents deducted the same without giving an opportunity to the applicant. In this connection, Mr. Chatterjee, learned advocate relies on two judgments of the Hon'ble Supreme Court one reported in AIR 1994 SC 2480 (Bhagwan Shukla vs. Union of India and others) and another reported in 1994(27) ATC 121, (Shyambabu Verma and others vs. Union of India and others). In the aforesaid judgments the Hon'ble Apex Court held that since petitioners received the higher pay due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them due to higher pay scale erroneously given to them since 1973 but reduced in 1984. In the instant case we find that the applicant has retired from service on 31.3.1994 and before making recovery of the alleged overpayment on account of excess payment to the applicant no opportunity has been given to him to state his case. So, we are of the view that apparently there is no fault of the applicant in the matter of receiving of overpayment as salary from the respondents and we also find that reasonable opportunity was not given and principle of natural justice has been violated in this case. So, we are of the view that such recovery to the extent of Rs. 11,234.90 was made illegally from DCRG money of the applicant. Thereby we set aside the order of recovery of Rs.11,234.90 as ordered by the respondents and direct them to make payment of the said amount of Rs.11,234.90 with interest at the rate of Rs.12% per annum from the date of recovery till payment is made.

4. The case is disposed of accordingly along with MA. No order is passed as regards costs.

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(B. P. Singh)

MEMBER (A)


(D. Purkayastha)

MEMBER (J)