

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 130
T.A. No.

19895

DATE OF DECISION 4.9.1996

Arijun Singh

Petitioner

Mr. Y.K. Sharma,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. S.S. Vyas,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. BISWAS, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. - - -

1. Whether Reporters of local papers may be allowed to see the Judgement ? -
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? -
4. Whether it needs to be circulated to other Benches of the Tribunal ? yes

(S.P. BISWAS)

Member (A)

Central Administrativ Tribunal

Jodhpur Bench, Jodhpur

O.A. No. : 130/1995

Date of order : 4.9.1996

Arjun Singh

Applicant.

Versus

Union of India & Ors.

Respondents.

* * * *

Mr. Y.K. Sharma, Counsel for the applicant.

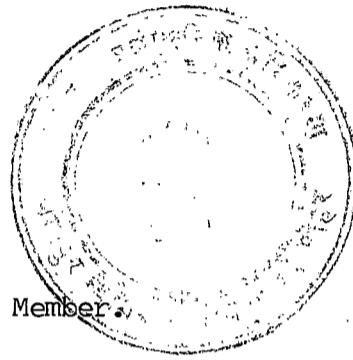
Mr. S.S. Vyas, Counsel for respondents.

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CORAM :

Hon'ble Mr. S.P. Biswas, Administrative Member.

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BY THE COURT :

Challenging reduction in pay and recoveries from the retiral benefits, this OA under Section 19 of the Administrative Tribunal Act, 1985 has been filed.

2. The applicant, a retired Assistant Superintendent of Bikaner Division Northern Railway was initially appointed on 03.03.1956 and after having served the Railways for 37 years, 9 months and 20 days retired on superannuation with effect from 31.12.1993. He was promoted as Senior Clerk in scale of Rs. 330-560 (RS) with effect from September/ 1981, Head Clerk in the scale of Rs. 425-700 (RS) from March/ 1986 and Assistant Superintendent grade Rs. 1600-2660 with effect from 27.11.1992. Accordingly, his pay was fixed in November, 1992 at Rs. 1950/-. The next annual increment fell due on 01.11.1993 when his pay was raised from Rs. 1950 to Rs. 2000/- per month.

3. On 29.12.1993 - only two days before the date of his superannuation, the applicant was told that his pay has been reduced from Rs. 2000/- to Rs. 1950/- by respondent No. 4. He was not given any prior office order or notice for that. By order dated 29.12.1993 (Annexure R/1), copy not being given to applicant, the applicant's pay was refixed retrospectively from October, 1980 in the manner evidenced in Annexure R/1. Based on the details in R/1, the respondents deducted Rs. 7058/- from the DCRG of the applicant vide a separate order at Annexure A/4 in February, 1994. This was also two days before

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his retirement. A/4 was not preceeded by a notice or hearing. The applicant made several representations dated 28.6.1994 (A/1), 29.7.1994 (A/5), 05.9.1994 (A/6), 27.9.1994 (A/7) and 25.11.1994 (A/8) but the respondents decided to turn a Nelson's eye on these representations. It is under these circumstances that this OA has been filed.

4. The respondents in their reply statement have submitted that the applicant was promoted as Senior Clerk when his pay was fixed at Rs. 404/- per month. It was only at the time of retirement of the applicant that the respondents realised that the applicant was promoted against an up graded post with effect from 1.10.1980. Accordingly, as per rule his pay had to be refixed with effect from 1.10.1980 vide orders dated 29.12.1993. The respondents admit that the applicant's pay as Senior Clerk in grade Rs. 330-560 (RS) should have been fixed long before at the time of his promotion as Senior Clerk with effect from 1.10.1980 but could not be done due to clerical mistake which was ultimately corrected.

5. Heard the counsel for the parties.

Shri Y.K. Sharma, learned counsel for the applicant urged that even if there had been overpayments on salary account, it was not due to any act on the part of the applicant and it was totally inequitable to recover the alleged overpayments made over 13 years from the retiral benefits. The learned counsel referred to para 1014(b) and 1016 of the Indian Railway Establishment Manual (IREM, for short), Volume I (Revised Edition-1989) and also other judgements of this Tribunal in which directions were issued to waive such unmeritted recoveries. To support his contention, the counsel cited decisions of the Apex Court in the case of Bhagwan Shukla Vs. Union of India and Others, (1994) 28 ATC 258.

6. Shri S.S. Vyas, learned counsel for the respondents could not produce any authority which permits recovery as in the present case. It was admitted that the error took place long ago but it could not be detected immediately before the retirement of the applicant. However, since it was an erronious payment, the same had to be recovered from the applicant. This overpayment had been made from 1980.

The only question for determination is whether the refixation of pay and the consequential order of recovery from the retiral benefits two days before retirement and that too without notice is in confirmity with the rules/instructions and is just and equitable.

7. I find paragraph 1014 (b) of IREM requires erroneous

payments passed through oversight in the accounts office less than 12 months earlier should be recovered and orders of competent authority obtained with regard to overpayments made. Paragraph 1016 and 1017 deal with recovery of payments. Waiver of overpayments is suggested if the overpayment had occurred over long periods and the amount involved was very large and would require many years to recover the amount. The nature of the irregularity is also required to be considered. Even in the case of Gazetted railway servants, the General Manager is given the discretion and the power to waive recovery of amounts overdrawn, if the erroneous payment is discovered by accounts or audit more than one year after the date on which it was made. There is no indication, not even a whisper, that the above provisions under the Manual were taken into consideration before the recovery was ordered in Feb 1994.

8. The applicant has been vitiated with civil consequences but has not been granted any opportunity to show cause against the deduction of his pay and recovery from DCRG. He was not even put on notice by the respondents and the order came to be made behind his back without following any procedure known to law.

9. A system governed by the rule of law reckons no decision, without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves ordinances. This is a basic requirement of natural justice which has always been part of adjudicatory process.

10. Sir Edward Coke described requirements of natural justice as the duty "to vocate, interrogate and adjudicate". It has been said that :

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence".
(Cooper v. Wandsworth Board of Works) 1863
(143) ER 414.

The Supreme Court of India has highlighted this requirement in a long line of decisions e.g. State of Orissa vs. Bina Pani Dei (1967) 2 SCR 625.

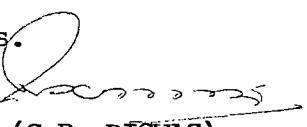
11. In the case of Sahib Ram Vs. State of Haryana 1995 SCC (L&S) 248, the Supreme Court restrained recovery of overpayments made to a Librarian in a Government College in Haryana. The court observed that the higher scale was wrongly given to the applicant, not on account of any misinterpretation made by him but due to wrong construction of the rules by the respondents, for which the applicant would not be held to be at fault. The same situation prevails here. The recovery in the instant case is sought to be made on

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account of overpayments of pay and allowances made during last 13 years preceding the retirement of the applicant. The said overpayment was due to clerical error for which the applicant herein was not at all responsible. It appears a little care on the part of the Railways could have brought to light the error much earlier. Instead, only two days before the retirement, the applicant was informed and that too informally, that a substantial portion of his retiral benefits would be withheld for overpayments made during last 13 years. It is also seen that the applicant has made several representations against the recovery and though there are enabling provisons in IREM for exercising the discretion to consider the overpayments, the respondents decided to remain silent. The decision in the instant case has been taken in contravention of the principles of natural justice and cannot stand in the eye of law. The interest of justice would be served by directing the respondents to fully waive the overpayments

12. In the result,

- (i) The OA is allowed.
- (ii) The respondents shall refund to the applicant the sum withheld (Rs. 7058/-) towards the overpayments alongwith 12 percent interest from the date it was withheld till the date the refund is made.
- (iii) This shall be done within a period of two months from the date of receipt of a copy of this order.
- (iv) There shall be no order as to costs.


(S.P. BISWAS)

MEMBER (A)

SM