

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH,
J O D H P U R

Date of order :21.05.1997

OA NO. 98/1995

P.Khondelwal S/o Sh.Govind Narain, R/o 32-A, Karjali complex Kachi Basti Road, Sardarpura, Udaipur at present employed on the post of O.S. Zonal Training Centre, W.R., Udaipur.

..... Applicant

Vs.

1. Union of India thr. General Manager, Western Railway, Church Gate, Bombay.
2. The Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. The Principal, Zonal Training Centre, Western Railway, Udaipur.
4. Shri Srinivas Panwar, Office Superintendent (Policy), D.R.M.Office, Ajmer, Western Railway.

..... Respondents

Present :

Mr. J.K.Kaushik, counsel for the Applicant.
Mr. S.S.Vyas, counsel for the Respondents No. 1 to 3.
None for Respondent No.4.

CORAM :

THE HON'BLE MR. S.C.VAISH, MEMBER (ADMINISTRATIVE)
THE HON'BLE MR.A.K.MISRA, MEMBER (JUDICIAL).

PER HON'BLE MR.A.K.MISRA :

The applicant who is now a retired Railway servant, had filed this OA while he was in service and has prayed that the orders dated 14.9.1993, 7.10.1994 and 10.11.1994 (Annexs. A-1 to A-3), relating to proforma promotion, revision of date of promotion and fixation of pay and order dated 8.4.1995 (Annex.A-7), regarding re-fixation of pay of the applicant, be quashed and the respondents may be directed to refund Rs. 29,631/- recovered from the Death-cum-Retirement-Gratuity of the applicant alongwith interest at the market rate.

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2. Briefly the facts are that the applicant was initially appointed on the post of Clerk on 5.7.1957 and was promoted to the post of Sr. Clerk w.e.f. 17.10.1974. In the year 1982 when the applicant was transferred to Ajmer vide an order dated 2.1.1982 on pin pointed post of Senior Clerk against 10% quota carrying special pay of Rs.35/- per month, he expressed his inability to go on transfer vide his letter dated 23.1.1982. When a Pin pointed post fell vacant at Udaipur on 23.11.1983, the applicant was posted on that post against 10% pin pointed quota and was granted special pay. The applicant was promoted to the post of Head Clerk w.e.f. 1.1.1984 and fixation of pay of the applicant on the new post was done counting the special pay. Thereafter, the applicant was promoted to the post of Chief Clerk and Office Suprintendent w.e.f. 4.4.1987 and 1.3.1993 respectively. It is further alleged by the applicant that vide Divisional Office letter dated 14.9.1993, he was declared senior to Shri N.R. Vadwani on the post of Senior Clerk and proforma promotion w.e.f. 10.1.1983 was ordered during the debarring period from 30.1.1982 to 29.1.1983. According to an audit objection the pay of the applicant was ordered to be/fixed vide order Annexure A-4 and consequently pay fixation order Annexure A-3 was issued. Thereafter, the applicant submitted his representation but his contentions were not accepted. In the case of similarly situated person Shri Om Datt Sharma, the date of promotion was taken to be 23.11.1983 instead of 10.1.1983, thus the applicant has been picked up only to suffer financially. The applicant shouldered the responsibility of the post carrying the work of more complex nature and was paid for that. In the earlier pay fixation, the applicant had not played any role and if by mistake wrong fixation was done and payment of pay was made accordingly, the respondents cannot recover the payment on the ground that payment was wrongly made or over payment was made due to wrong fixation. If that is permitted the applicant would suffer irreparable financial loss. Consequently, the applicant had to come to the Tribunal to seek redress and for grant of relief stated earlier.



3. The official respondents have filed their reply in which they have admitted that the applicant was appointed and promoted, but the respondents have disputed that the applicant was promoted during the debarring period of one year. It is alleged by the respondents that the applicant

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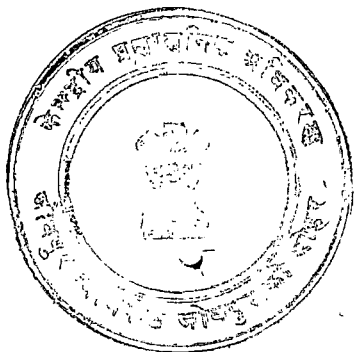
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had opted not to go on transfer on pin pointed 10% special pay post, therefore, his debarring period only relate to his posting on pin pointed 10% special pay quota post for one year. This debarring period does not effect the regular promotion or proforma promotion and pay fixation vis-a-vis Shri N.R. Vadwani. It is alleged by the respondents that in the year 1985, the applicant had specifically represented vide Annexure R-3 for correction of seniority list and grant of proforma fixation of pay as Head Clerk with reference to Shri N.R. Vadwani who was applicant's Junior. The representation of the applicant was accepted and he was also promoted to the post of Head Clerk and proforma fixation of pay w.e.f. 10.1.1983 was done with reference to his Junior Shri N.R. Vadwani. In these circumstances, the special pay on which the applicant was posted on 23.11.1983 was not required to be counted for fixation of his pay but the same was wrongly counted and pay was fixed accordingly. During the audit, the mistake was discovered and consequently the impugned orders fixing the pay of the applicant were issued and over payments were ordered to be recovered. The case of the applicant is not similar to that of Shri Om Datt Sharma who was even drawing special pay of Rs. 35/- on 10.1.1993 and was senior to the applicant. Applicant was not in receipt of special pay as on 10.1.1983, therefore, he cannot equate his case with Shri Om Datt Sharma. While submitting representation Annexure R-3 the applicant had specifically requested for correction of seniority list and proforma fixation of pay with reference to his Junior Shri Narain, therefore, the applicant is now estopped from saying that he never claimed promotion and proforma pay fixation. The fixation of pay of the applicant has been ^{as per} rules and recovery of over payment has been ordered/ done as per the procedure laid down in the Manual. At the time of retirement, the overpayment has been withheld from his death -cum-Retirement-Gratuity because that amount was recoverable from the applicant. The applicant is not entitled to any relief and the OA is not maintainable and is required to be dismissed with costs.

4. Respondents No.4 had also filed his reply separately which is almost supporting the reply of the official respondents. The contents of the same are not required to be repeated in detail. The reply of respondent No. 4 can be summarised in these words, that the applicant has not exhausted all remedies available under the law, on the representation of the applicant himself, he was given promotion and proforma fixation of pay vis-a-vis his junior, the

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case of Shri Om Datt Sharma is absolutely on the different footing and the promotion as claimed by the applicant was granted to him on 10.1.1983. Debarring provision was not applicable in the instant case because it was only in relation to 10% special pay post that applicant had refused to go on transfer. The OA has got no force and is liable to be dismissed.

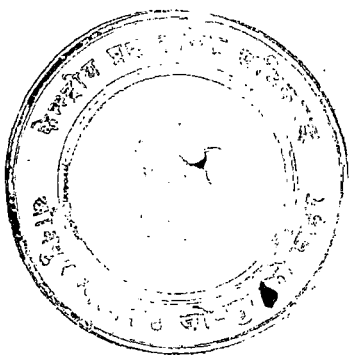
5. We have heard the learned counsel for the parties and gone through the record of the case.

6. The learned counsel for the applicant has argued that the applicant was given promotion from 10.1.1983 and consequent proforma fixation was ordered but as ~~provision~~ ^{per debarring} no promotion could have been ordered within the period of one year which has been done in the instant case. Consequently, the pay fixation etc. is wrong and against the rules.

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7. We have considered this contention. In our opinion the debarring provision for promotion is not applicable in the instant case because the applicant had refused to go on transfer on a post which was pin pointed 10% special pay post, therefore, debarring provision would only apply in respect of applicant been again posted on the pin pointed 10% special pay post within a period of one year, which is not the case here. Therefore, the argument in this context can not help the applicant.

8. The learned counsel for the official respondents has argued that the applicant cannot have hot and cold at one time, neither he can always claim only advantageous position. In the instant case, the applicant had represented for fixation of his seniority by correcting the seniority list by showing himself to be senior than Shri N.R. Vadwani and proforma fixation of pay. In this representation, he has also mentioned that due to wrongly showing Shri N.R. Vadwani as senior, Narain Vadwani was promoted earlier than applicant. In view of this, he had prayed that seniority list be corrected accordingly and he be granted proforma fixation of pay as Head Clerk with reference to pay of Sh. N.R. Vadwani. The seniority was accordingly corrected and as per the prayer of the applicant in this representation, he was given promotion w.e.f. 10.1.1983 vide order Annexure A-I dated 14.9.1993 and was ordered to be given proforma



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pay fixation benefits. Therefore, now the applicant cannot be allowed to say that his pay was wrongly fixed.

9. We have given our anxious consideration. In fact, the proforma pay fixation in respect of applicant was ordered because his representation was found to be based on sound footings. Applicant was senior to Shri Vadwani and, therefore, on revision of seniority list, he was given promotion w.e.f. 10.1.1983 as his junior was promoted. On 10.1.1983, the applicant was not drawing any special pay. The applicant was given special pay posting on 23.11.1983 and again he was promoted to the post of Head Clerk w.e.f. 1.1.1984. Having worked on the post of Head Clerk for almost a year and a quarter, the applicant represented his case regarding promotion w.e.f. the back date in comparison to Shri Vadwani. In our opinion, at that time the applicant fully knew that his pay fixation was done taking into consideration the special pay. Having derived all the advantages of special pay till his promotion as Head Clerk, the applicant preferred to claim yet another benefit of back dated promotion and when he was given back dated promotion with consequential fixation, he has raised this dispute which according to us, is not based on sound footings.

10. The learned counsel for the applicant has argued that the applicant has now retired and amount paid to the applicant due to wrong fixation for some mistake, cannot be allowed to ^{be} recovered ^{ed} from the applicant or deducted from his DCRG as that would put the applicant to grave financial difficulties. The learned counsel in support of his argument has cited SLJ (CAT) 1996,436, Mahaveer Singh V. UOI and 1994(27)ATC,121, Shyam Babu Verma Vs. UOI & Ors. On the otherhand, the learned counsel for the respondents has argued that as per the provision contained in the Indian Railway Establishment Manual ('Manual for short') any amount

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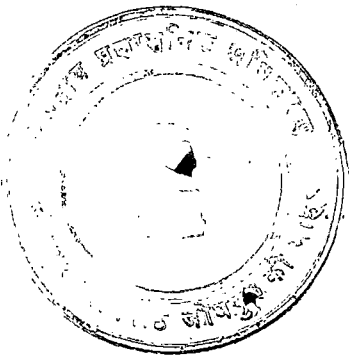
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which is found due from the applicant either on account of over payment due to wrong fixation of pay or some clerical mistake, the same can be recovered.

11. We have given our serious consideration to this argument. So far as the rule propounded in the Ruling cited by the learned counsel for the applicant, there cannot be two opinions. But the cases are distinguishable on facts. In (1994) 27 ATC 121, applicant was erroneously given higher pay scale in the year 1973 which was ordered to be reduced in the year 1984. It is in these circumstances it was held that higher pay scale was given to the applicant because of not fault on the part of the applicant and in view of the matter excess amount paid was ordered not to be recovered from the applicant but in the instant case fixation of pay of the applicant initially was correctly done by taking into account the special pay payable on the pin pointed post but revised pay came to be fixed only on the representation of the applicant when he claimed back dated seniority vis-a-vis Shri Vadwani. When the applicant prayed for his seniority he ought to be prepared to pay fixation as per that seniority. He cannot be allowed to have only advantages and refuse to accept the disadvantages. He has to accept both, the advantages and accompanying disadvantages.

12. In 1996(2) SLJ(CAT) 434, the stepping up of pay of the applicant was done with reference to an employee of Bombay Division whereas the applicant was posted in Rajkot Division. Subsequently, it was discovered that pay fixation was wrongly done comparing an employee of different unit. In this case, the over payment was not allowed to be recovered because it was held that while stepping up the pay of the applicant, the Department ought to have been vigilant in respect of stepping up of pay



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vis-a-vis an employee of a different unit, but that is not the case here. The applicant's pay in the instant case has been refixed consequent to acceptance of his representation relating to fixation of his seniority and demand of consequential pay fixation. Had the Railway done subsequent fixation at their own, the applicant could have argued that pay fixation was not at his instance and, therefore, no recovery can be made. But here the applicant himself has prayed for proforma fixation of his pay after seeking revision in the seniority list and claiming himself to be senior than Shri N.R.Vadwani. Thus, these rulings do not help the applicant.

13. In our opinion in the instant case, the Railways have correctly withheld part of the amount of Death-cum-Retirement-Gratuity as that amount was found to have been over paid to the applicant. In our opinion, the applicant deserves no relief and the OA is liable to be dismissed.

14. The OA is, therefore, dismissed with no order as to costs.


(A.K.MISRA)
MEMBER(J)


(S.C.VAISH)
MEMBER(A)

Dated: 21st May, 1997

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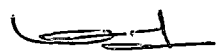
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4. Copy of order sent to
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Reg. Aid. Filed his kind reb
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Part II and III destroyed
in my presence on 22/5/03
under the supervision of
section officer () as per
order dated 4/3/03


Section officer (Record)
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