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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 28.08.2000

O.A. No. 367/97

Heera Lal Purohit son of Shri Mohan lal Purohit Accounts Stock Verifier at Divisional Accounts Officer, Jodhpur, resident of Vyaparion Ka Mohalla, Chhanganio Ki Pol, Pungal Pada, Jodhpur.

... Applicant.

v e r s u s

1. The Union of India through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Financial Advisor and Chief Accounts Officer, Northern Railway, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Jodhpur Range, Jodhpur.
5. The Divisional Accounts Officer, Northern Railway, Jodhpur.

... Respondents.

Mr. N.K. Vyas, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the validity of Annexure A/1 date 21.5.97. By Annexure A/1, it has been clarified that on the basis of Railway Board's letter dated 21.05.96, three advance increments granted to the Stock Verifiers in the grade of Rs. 1400-2600 for passing Appendix-IV-A examination, could not be treated as part of basic pay and, therefore, the same was not to be reckoned for calculating the Dearness Allowance etc.

2. Learned counsel for the applicant contended that the order

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Annexure A/1 has been passed without giving any notice to the applicant. Therefore, the same is liable to be dismissed. On the other hand, the learned counsel for the respondents contended that similar orders passed in other Zones have been upheld by different Benches of the Central Administrative Tribunal. He brought to our notice the judgement/order rendered by the C.A.T, Hyderabad Bench, dated 16.04.97 passed in OA No. 961/96 [Shri MK Ramaswamy vs. UOI] and another judgement/order of C.A.T, Bombay Bench, dated 30.05.97 passed in OA No. 714/96 [Shri SV Malgi & Ors. vs. UOI], OA No. 740/96 [Z.L. Patel & Ors. vs. UOI] and in OA No. 854/96 [NT Devidas vs. UOI] and contended that there are no merits in this application in view of this consistent law declared. From going through the aforesaid judgements/orders, we find that the issue raised in this OA is similar to the issue involved in those case. In those cases, one of the Tribunals found that it was not mandatory for the department to give prior notice before modifying the incentive given to the Stock Verifiers. The order of the Railway Board dated 8.5.96 was a policy matter and it has been implemented by different Zones on different dates. We think it appropriate to extract the relevant paras of the judgement/order rendered by the C.A.T., Bombay Bench, in the applications referred to above:-



"20. Apart from these interpretational issues, circulars give rise to a policy issue of substantial importance. In the present case, there is a supervening public interest and we are of the opinion, that it is not mandatory for the department to give prior notice before modifying the incentive given to Stock Verifiers. Further, it is noticed that it is not a Presidential Notification and, therefore, the government can change the policy according to administrative exigencies. Therefore, we are afraid that we cannot accept the contention of the applicants that since the earlier Circular was issued with the sanction of the President subsequent modification will have to be issued by the sanction of the President. These orders did not authorise the authentication of Service Rules for they are made by the President and not as the Head of the Union of India. Authentication could only be of executive orders and instructions but not Rules, since Rules were legislative in character. Therefore, under Article 309 powers could not be delegated or entrusted to any other authority. Keeping in view of the aforesaid provision, it can be said that the order issued by the Respondents in 1989 was neither issued under Article 77 or under Article 309 of the Constitution, therefore, even the modification effected by the department subsequently without the authentication or sanction of the President that by itself does not vitiate the order of the Respondents.

21. In the result, we do not find any merit in the above three Original Applications and the same are hereby dismissed. Insofar as the recovery is concerned, if they have already paid Dearness Pay/Allowance prior to the impugned orders, the same is not liable to be reimbursed. After the impugned orders, if they are getting the Dearness Pay/Allowance by virtue of the interim order of the Tribunal, since we are dismissing the O.As, the interim orders automatically stands cancelled, whereby the applicants

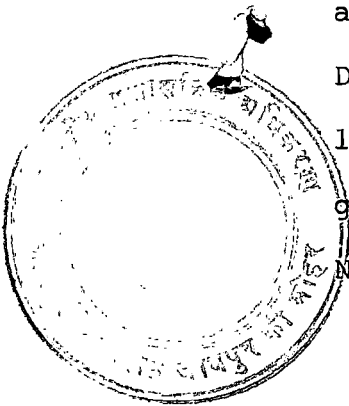
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3.

will not get any benefit after passing of the interim orders. With the above observations the O.As, are disposed of at the admission stage itself with no order as to costs."

3. By following the above judgements, we feel that in this case also, similar order is required to be passed. Accordingly, we pass the order as under :-

4. Application is dismissed. However, it is made clear that so far as the recovery is concerned, if the applicant has already been paid Dearness Pay/Allowance prior to the impugned order, the same is not liable to be recovered. After the impugned order, if the applicant is getting the Dearness Pay/Allowance, the same is liable to be recovered.
No costs.



Gopal Singh
(GOPAL SINGH)
Adm. Member

B.S. Raikote
(B.S. RAIKOTE)
Vice Chairman

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6/10/2000 (yes)

copy order sent to Applicant
Vide no 306 all 19.9.2000

AD Officer
with 8ish
per
24/11/12

Part II and III destroyed
in my presence on 19.9.2000
under the supervision of
section officer (1) as per
order dated 10.11.2000

Neeraj
Section officer (Record)