IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,JODHPUR

DATE OF ORDER :24.5.1999

O.A.NO. 242/1998

Ghanshyam Dass S/o Shri Shiv Kumarji, aged about 36 years, R/o Bhaskar Bhawan, Opposite Police Lined, Ratanada, Jodhpur, at present employed on the post of Section Engineer (Works)/Construction in the office of Dy.Chief Engineer (Const-I), Northern Railway, Jodhpur.

.....APPLICANT.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. Chief Administrative Officer/Construction, Northern Railway Headquarters Office, Kashmiri Gate, Delhi.

3. Dy,Chief Engineer (Const-I),Northern Railway,Jodhpur.

.....RESPONDENTS

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CORAM

HONOURABLE MR. A.K.MISRA,JUDICIAL MEMBER

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Mr. J.K.Kaushik, Counsel for the applicant.
Mr. S.S.Vyas, Counsel for the respondents.

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BY THE COURT

The applicant had filed this O.A. with the prayer that the impugned order dated 19.3.1998,Annex.A/1 so far it relates to

the applicant, may be declared illegal and the same may be quashed. The applicant be allowed all consequential benefits. In the same application the applicant had prayed for interim relief requesting that the respondents be restrained from making recovery from the applicant in pursuance of impugned order Annex.A/1.

2. After hearing the learned counsel for the applicant, Dasti Notices were ordered to be issued to the respondents, however, the prayer relating to interim relief remained pending and O.A.had been heard finally.

3. I have heard the learned counsel for the parties and gone through the case file.

4. It is alleged by the applicant that the applicant was initially appointed to the post of Apprentice, IOW Grade-III on 12.5.1987 and was imparted requisite training. On successful completion of the training, the applicant was appointed on the post of IOW Grade-III. The applicant was allowed ad hoc promotion to the post of IOW Grade-II in the scale of Rs. 1600-2660 w.e.f. 28.8.1991. It is further alleged by the applicant that Railway Board had issued incentive scheme vide Circular dated 19.8.1966 for grant of incentive to the Railway employees on acquiring the additional scientific/technical/accounts qualification. The Scheme was continued to be extended from time to time with certain modifications up to 30.8.1988, as indicated in letter dated 29.5.1989. As per letter dated 29.5.1989 (Annex.A/3) Para (d) of Board's letter dated 14.5.1966 was substituted and it was provided that for passing part (i) or 'A' or Intermediate or pre-final examinations two advance increments would be granted and for passing part (ii) or 'B' or final examination four advance

increments would be granted. The applicant was granted four advance increments vide letter dated 14.5.1989 w.e.f. 1.7.1988 since he passed part 'B' of AMIE examination during the service. This incentive scheme was based on recommendation of IV Central Pay Commission. Similar benefits were extended to group'B' officers for acquiring higher qualifications. It is further alleged by the applicant that the applicant was served with an order dated 19.3.1998 (Annex.A/1) in which respondent No. 3 had ordered recovery of alleged over payment to the applicant on account of incentive. The applicant has challenged this order on the ground that no prior notice was given to the applicant for the proposed recovery and no opportunity was given to the applicant before passing the aforesaid order relating to recovery. It is also challenged on the ground that payment was made more than a year ago and as per Para 1014, 1015 and 1016 of the Indian Railway Establishment Manual, Vol.I, no recovery can be made which is more than one year old. For this reason also, the proposed action is bad in law. Consequently, the applicant has prayed for quashing the same.

5. The respondents have filed their reply to which no rejoinder was filed. Facts as alleged by the applicant are more or less admitted by the respondents but it is contended by the respondents that the applicant was wrongly granted the benefit of four advance increments on his having passed part 'B' examination. It is also stated by the respondents that the benefit of four advance increments was to be given to the employees in pursuance of order dated 29.5.1989,Annex.A/3 from the date of the letter. In fact, no such benefit was to be given to the applicant from any date prior to the date of the letter and the case of the applicant in respect of such benefit was required to be regulated as per the

earlier circular dated 19.8.1966 which was extended up to 30.6.1988 and should be taken to have been extended up to the date Annex.A/3 dated 29.5.1989 was issued by the Railway Board. Since the benefit was wrongly given, therefore, the amount is required to be recovered from the applicant and similarly situated other candidates. No pre-decisional hearing or notice was required to be given to the applicant. The OA deserves to be dismissed.

6. From the foregoing facts it appears that the applicant was extended the benefit of four advance increments which is said to be wrongly given by the respondents. It is also clear from the facts of the case that no notice was given to the applicant or no opportunity of predecisional hearing was provided to the applicant before the proposed action of recovery. In my view, such action of the respondents amounts to denial of natural justice. There is no dispute in respect of such benefit of advance increments being available to the employees only from the date of Railway Board's order (Annex.A/3) dated 29.5.1989 but the question of recovery of such amount affects the civil rights of the applicant, therefore, the authorities should have given notice to the applicant for the proposed action of recovery.

7. The learned counsel for the applicant has cited a decision of the Principal Bench, Central Administrative Tribunal, rendered in O.A.No. 1442 of 1997 on 24.3.1998 - Prakash Kumar Mulwani Versus Union of India and Others, and has argued that it was held in that case that the amount of such over payment cannot be recovered from the applicant, ~~over from a date~~ Subsequent to the order. The respondents may not pay the similar benefit to the applicant. He has further argued that similar benefits should also be extended to the applicant.

8. I have given my anxious consideration to the matter. As per the list attached to Annex.A/1, it appears that recovery relating to over payment is given affect to against as many as 26 persons. Cumulatively the amount may be a big one. The case of Prakash Kumar Mulwani is factually different than the facts of the present case, therefore, the rule propounded therein cannot be made applicable in the instant case. If recovery can lawfully be made from the applicant, it cannot be directed that such recovery be not made. Because that would cause loss to the public exchequer. The authorities should be provided some time to examine the case afresh so that justiciability of recovery of over payment can be examined with the help of the affected person i.e. the applicant and similarly situated other employees as mentioned in Annex.A/1.

9. In view of the foregoing discussion, I would like that the applicant should make a representation against the proposed recovery and further direct the respondents to examine the matter and pass a reasoned order. The O.A. therefore,deserves to be partly accepted and the proposed action of recovery (Annex.A/1) deserves to be quashed so far as it relates to the applicant.

10. The O.A. is,therefore, partly accepted. The order dated 19th March,1998, Annex.A/1 is hereby quashed.

11. The applicant is directed to make a representation against the order dated 19th March,1998 (Annex.A/1) to the concerned authority within a period of one month from today. The respondents are directed to dispose of applicant's representation made in this respect, within a period of three months from the date of its receipt by a speaking order and communicate the same

to the applicant without any loss of time. It is further ordered that the applicant would be free to file a fresh O.A. against the decision of the respondents in this behalf, if he is not satisfied by the order passed by the respondents on his representation.

12. The parties are left to bear their own costs.

24/5/99.
(A.K.MISRA)
Judicial Member

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MEHTA

Rcd
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5.7.06

R/Copy
23/6
23/6

Copy of order
Sent to Counsel for
Pet ~~to Counsel for~~
~~Resp~~ by Regd AD
vide no
dt

3/6/5

Part II and III destroyed
in my presence on 5.7.06
under the supervision of
section officer ( ) as per
order dated 16-5-2006

Section officer (Record)