

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

1/8

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Date of Order : 27-3-2002

O.A.NO. 40/2001

Kishan Gopal S/o Shri Ram Gopal, Loco Instructor, Office of Divisional Mechanical Engineer, Northern Railway, Jodhpur (Retired), Resident of Chatanion Ki Gali Gancha Bazar, Jodhpur.

.....Applicant.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delh.
2. The Railway Board, through the Executive Director (M.P.P.) and Training, Railway Board, Rail Bhawan, New Delhi.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.

.....Respondents.

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CORAM :

Honourable Mr. Gopal Singh, Administrative Member

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Advocates present :

Mr. H.K.Purohit, present for the applicant.  
Mr. S.S.Vyas, present for the respondents.

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ORDER

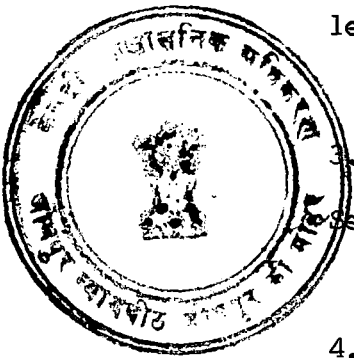
By the Court :

In this Application under Section 19 of the Administrative Tribunals Act, 1985, applicant Kishan Gopal, has prayed for quashing the impugned order dated 24.1.2001 (Annex.A/1) and to declare that the applicant was entitled to draw 30% allowance for performing the duties of the Inspector for the period from January, 1, 1990 to May 15, 1993 and further to direct the respondents to refund the amount recovered from the applicant.

*Gopal Singh*

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2. Applicant's case is that he was posted as Inspector in the Diesel Training Centre, Bhagat-Ki-Kothi, Jodhpur w.e.f. 1.1.1990 on payment of Teaching Allowance and the applicant was paid the Teaching Allowance @ 30% of the Basic Pay for the period from 1.1.1990 to 15.5.1993. Earlier, the respondents had issued letter dated September 28th, 1995, directing recovery on the basis of alleged over payment of 30% of basic pay as teaching allowance. The said order was challenged by the applicant in O.A. No. 498/1995 decided on 3.5.2000. Since the order dated 28.9.1995 directing recovery from the applicant was issued without any show cause notice to him, the said order dated 28.9.1995 was quashed and the respondents were given liberty to issue show cause notice to the applicant, after considering the representation, if any, filed by the applicant and pass appropriate order. The representation submitted by the applicant has since been rejected vide respondents letter dated 24.1.2001 (Annex.A/1). Hence, this application.



3. The applicant has since retired on superannuation on 30th September, 1994.

4. Notices were issued to the respondents and they have filed their reply.

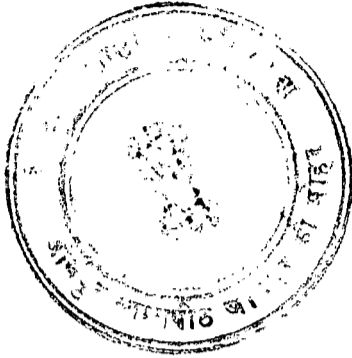
5. The case of the applicant is denied by the respondents and it is pointed out that during the period the applicant worked as Inspector in Bhagat-Ki-Kothi, he was not entitled to any teaching allowance. Hence, the applicant has no case and the application is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the record of the case carefully.

7. The question of recovery of over-paid amount had come up recently before Hon'ble the Supreme Court in Union of India and another Vs. R.

*(Signature)*

Sarangapani and others etc. etc., reported in AIR 2000 SC 2163 and Hon'ble the Supreme Court in their judgement dated 15.3.2000 observed as under :-



"23. We, therefore, direct that the extra increment given pursuant to any judgment of the Tribunal which has now been set aside be recovered by the Union of India. It would be open to the Government of India to recover the same or to absorb the same in the future monthly salary spread over, month by month.

24. But there is one exception to this direction for recovery. In case where any of these employees of the technical branch have received the benefit of the increment because of the judgment which we have now set aside, in case they have retired as of today, no recovery will be made from their retiral benefits on the basis of the judgment which we have pronounced today."

8. In the light of the law laid down as above, though, the Government is entitled to recover the over paid amount from the applicant, however, under exception provided in para 24 above, the respondents cannot recover the over paid amount from the applicant since he has already retired on superannuation on 30th September, 1994. Accordingly, we pass the order as under :-

"The Original Application is allowed. The impugned order dated 24th January, 2001 (Annex.A/1), is quashed and set aside and in case any recovery has been affected from the applicant, the same shall be refunded to him forth-with. No costs."

*Gopal Singh*

( Gopal Singh )

Administrative Member

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2011/6  
2011/2

Red copy  
2/2/07  
2/2/07

Part II and III destroyed  
in my presence on 10/17/07  
under the supervision of  
section officer [signature] as per  
order dated 11/17/07

Section officer (Records)