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Date of Order : 20th March, 2002.

Original Application No. 95/2001

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Brij Mohan Sharma S/o Shri Tek Ram, aged 60 years, resident of 87, Near Pashuhar, Indira Gandhi Mazdoor Colony, Salawas, Jodhpur, retired Trimmer Gr. I, Carriage and Wages, N. Railway, Jodhpur.

.....Applicant.

**versus**

1. Union of India through the General Manager, N. Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, N.Railway, Jodhpur.
3. Divisional Mechanical Engineer, Carriage and Wages, N.Railway, Jodhpur.

.....Respondents.

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Mr. Vijay Mehta, Counsel for the applicant.

Mr. Salil Trivedi, Counsel for the respondents.

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C O R A M :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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O R D E R

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Per Mr.Gopal Singh :

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant, Brij Mohan Sharma, has prayed for quashing the impugned order dated 22.11.2000 (Annex.A/1) and to refund the amount of Rs. 4,885/- recovered from him in terms of the impugned order dated 22.11.2000.

*Gopal Singh*

2. Applicant's case is that while he was working on the post of Trimmer Grade II, his pay was fixed w.e.f. 1.1.1986 vide respondents order dated 2.11.1993 (Annex.A/2). He was further promoted to the post of Trimmer Grade I in the year 1996. The applicant retired on 30.11.2000. The respondent-department vide impugned letter dated 22.11.2000, revised the pay fixation of the applicant w.e.f. 1.1.1986. This refixation has resulted into recovery of Rs. 4885/- from the applicant which has since been recovered by the respondent-department from the salary of the applicant for the month of November, 2001. Contention of the applicant is that pay fixation done vide respondents letter dated 2.11.1993 (Annex.A/2), was not as a result of misrepresentation on the part of the applicant. Secondly, refixation has resulted into civil consequences to the applicant and this has been done without giving a notice to the applicant. Hence, this application.

3. In the Counter, the case of the applicant has been denied by the respondents and it is stated by them that the pay of the applicant was initially fixed wrongly and when it came to notice, the correct pay fixation was done vide order dated 22.11.2000. It is also pointed out by the respondents that they were within their rights to recover the over paid amount from the applicant. It has, therefore, been urged by the respondents that the application is devoid of any merit and is liable to be dismissed.

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

5. The learned counsel for the applicant has cited the case of N. Ram Sahib Versus State of Haryana and Others, 1995 SCC (L&S) 248, in support of his contention that no recovery could have been made by the respondents in the instant case. In that case, the appellant was given upgraded pay scale due to wrong construction of relevant order by the authority concerned without any mis-representation by the employee. In

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those circumstances, respondents were restrained from recovering the payment already made. In the instant case also, there has been no mis-representation on the part of the applicant. The respondent-department had themselves fixed the pay of the applicant w.e.f. 1.1.1986 vide Annex. A/2. In terms of the law laid down by Hon'ble the Supreme Court in the above cited case, the respondents cannot recover the amount over paid to the applicant without any show cause notice. In these circumstances, the action of the respondents in recovering the amount of Rs. 4,885/- from the salary of the applicant, cannot be sustained in law.

6. In the light of the above observations, the O.A. is allowed to the extent that the amount which has been illegally taken without adopting the procedure by the respondents, shall be refunded to the applicant within a period of one month from the date of this order, which has been passed in the presence of Shri Salil Trivedi, learned counsel for the respondents.

7. There is no order as to costs.

Gopal Singh  
( Gopal Singh )  
Adm. Member

O.P.Garg  
( Justice O.P.Garg )  
Vice Chairman

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Part II and III destroyed  
in my presence on 9.7.1977  
under supervision of  
Section Officer (J) as per  
order Ad. 11/151/29

Section officer (Recorder)

2, 2009  
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26.2.02

Alfredo Vizcay