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CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 04/2004

DATE OF ORDER: 30th May 05

CORAM:

**HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER**

Shri Bhanwar Lal Jangid, S/o Late Shri Devidutt Jangid, aged about 61 years, resident of Sad Chowk, Bhojraj Vas, Sujangarh, District Churu (Raj.), last employed on the post of P.W.I. (J.E.-II) under Dy. C.E. Ist, Bikaner (Raj.).

...Applicant.

Mr. B. Khan, Counsel for the applicant.

**V E R S U S**



1. Union of India through General Manager, North Western Railway, Jaipur (Raj.).
2. The Financial Advisor and Chief Accounts Officer, North Western Railway, Jaipur (Raj.).
3. The Chief Administrative Officer (Construction), North Western Railway, Jaipur (Raj.).
4. The Dy. Chief Engineer (C), North Western Railway, Bikaner (Raj.).

...Respondents.

Mr. Manoj Bhandari, Counsel for the respondents.

**O R D E R**

[ Per Mr. G.R. Patwardhan, Adm. Member ]

O.A. No.4/2004 has been preferred by Bhanwar Lal Jangid against four officials of the North Western Railway led by the General Manager who is posted at Jaipur. An order dated 03.05.2003, placed at Annexure A-1 was passed by the fourth respondent, Dy. Chief Engineer (C) of North Western Railway, Bikaner. Through this the applicant has been informed in May 2003 that the applicant was getting more than the admissible pay from 15.02.1979 till his date of retirement, which is 31.10.2002 -

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meaning thereby for nearly 23 years. This needs to be noted at this stage itself because the applicant has made much noise about the inordinate delay in the discovery of this excess payment by the respondents in his pleadings and arguments.

2. The application was filed on 05.01.2004 and its reply on behalf of the respondents on 25.10.2004. There is no rejoinder. Briefly stated the position as admitted by both the parties is as follows:

The applicant began his career as a Gangman on 08.09.1961 and retired from the post of P.W.I. on 31.10.2002. He seems to have got promotions in between, at times on ad hoc basis. What is not stated in his application but which has been submitted by the respondents and not controverted subsequently by the learned counsel for the applicant is that the applicant was given ad hoc promotion of ex-cadre post in the construction organisation which did not give him any prescriptive right in the parent cadre (Railway Division). The applicant's case is that he was drawing a basic salary of Rs.6,800/- at the time of retirement, but was paid only the Provident Fund and the insurance money on retirement and other benefits are withheld. He admits that an increment was wrongly allowed to him which was subsequently recovered having been found in excess. While he was waiting for other retiral benefits, he was informed by the impugned letter that his pay has to be refixed which resulted in excess payment of Rs.1,88,083/- and that needed to be adjusted. He therefore seems to have filed the representations and this

sum of excess payment according to him, has been recovered through the dues that were payable to him.



3. Following grounds have been taken to support the prayer that the impugned order be declared illegal and the respondents directed not to recover the excess amount as also to release all the benefits on the basis of his last pay of Rs.6,800/- per month. (However on the date of last hearing learned counsel for the applicant submitted that he is not pressing this particular part of the prayer.) Detailed reply has been filed which is on record and the main grounds taken to oppose the relief is that as the applicant was working in ex-cadre post and got also promoted to another ex-cadre post, his pay fixation done on the basis of promotion from one ex-cadre post to another ex-cadre post was irregular in view of Railway Board's letter of 07.08.1986 which necessitated re-fixation of his pay at the time of retirement and thus the applicant having been paid in excess of what was due to him, the respondents had the right to recover the same. The respondents have cited a case decided by the Hon'ble Supreme Court of India - Inderpal Yadav Vs U.O.I. & Ors. in Writ Petition No.548/2000 wherein the issue of regularization in the substantive post vis-a-vis provisional promotion in the construction projects has been decided and it has been held that the provisional promotions (and other) granted in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre or to enjoy a higher promotion merely on the basis of the provisional promotion granted to them in the project.

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4. Learned counsel for the applicant has relied on number of authorities and ATJ 2004(2) 353\* and also a decision of this Bench in O.A. No.10/2001 and 109/2001 dated 09.04.2002 to prove his point that when he is not responsible for the excess payment no recovery can be effected against him.

In *Shiv Kumar Vs State of Punjab*, the Lordships of the Punjab and Haryana High Court have observed as follows:



"The petitioner was inducted into the service of the respondents as a Constable. He came to be promoted first to the post of Head Constable and thereafter to the post of A.S.I. While holding the post of A.S.I., the pay of the petitioner was fixed at par with the pay being drawn by his juniors. While reviewing the aforesaid order, the authorities have arrived at a conclusion by an order dated 30.06.2003 that the petitioner has been granted benefits of higher fixation in pay erroneously. It is in the aforesaid circumstances that the pay of the petitioner has been refixed and the excess payment made recovered.

2. Learned counsel for the petitioner states that the petitioner does not desire to press his claim against the re-fixation of his pay by the impugned order dated 30.6.2003. He, however, wishes to impugne the said order to the extent that it orders recovery of the excess amount already paid to him.
3. On our asking Mr. Ashok Aggarwal, Additional A.G., Punjab, accepts notice on behalf of respondent Nos.1 to 3.
4. Learned counsel for the respondents states the so far as the limited plea of the petitioner relating to recovery is concerned, the same may be disposed of today itself.
5. We have heard learned counsel for the parties. We are satisfied that the sole issue relating to recovery of excess amount paid to the petitioner stands determined in favour of the petitioner in view of the judgment rendered in *ASI Amrik Singh v. State of Punjab and others* (C.W.P. No.15762 of 2003, decided by this Bench on 5.12.2003), specially on

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account of the fact that the said excess amount is not alleged to have been paid to the petitioner on account of some misrepresentation made by him.

6. In view of our aforesaid conclusion, the limited prayer of the petitioner is accepted, the order dated 30.6.2003, where by recovery has been sought to be made from the petitioner, is set aside.

Allowed in the aforesaid terms."



5. The respondents have not clarified how for all the 23 years that the applicant enjoyed a particular pay to which he was not entitled, no one detected the same although departmental instructions require that the service records of the individual servant need to be verified after a fixed period of time. This provision among others is also meant to detect such irregularities which crop up because of lack of attention to the instructions by the subordinate offices.

6. Even at this late stage, the respondents have not indicated if those responsible for this excess payment are to be dealt with for their mistakes, especially when the applicant has not been shown to be a party in the wrong fixation of pay. Considering that a period of twenty three years has intervened it appears a bit harsh to make him refund the same.

7. In so far as fixation of pay by the respondent authorities is concerned, there seems to be no cause of action on that issue as they are well fortified in this exercise by virtue of their own circulars as also of the judgment of the Hon'ble Supreme Court.

The prayer to consider the pay of the applicant at the level of Rs.6,800/- has therefore no justification. The respondents can therefore proceed on the basis of the revised pay fixation order that they have issued and calculate the admissible amount for all his dues. Such exercise should be done by them in a period of 90 days from the date of receipt of the copy of this order and payment made to the applicant along with a calculation sheet within another 30 days ~~and~~ O.A. accordingly partly allowed as per paras 6 & 7. No order as to costs.

— SP —  
**( G.R. PATWARDHAN )**  
**Administrative Member**

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Part II and III destroyed  
in my presence on 17/11/14  
under the supervision of  
Section Officer (1) as per  
order dated 18/12/13

All  
Section Officer (Record)  
17/11/14