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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 38/2005
Date of Decision: 11.09.2006

CORAM

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.

HON'BLE MR. J P SHUKLA, ADMINISTRATIVE MEMBER.

Kameshwar Singh son of Sh. Yadvendra Singh, Ex. O. S/I, Mechanical, C/o Deputy C.M.E.(W), Office of North Western Railway, Workshop, Jodhpur. Presently residing in Panchwati Colony, Ratanada, Jodhpur.

: Applicant.

Rep. by Mr. D. C. Sharma, Counsel for the Applicant.

VERSUS

1. Union of India Through : General Manager, North Western Railway, Jaipur.
2. Chief Workshop Manager, North Western Railway, Jodhpur.

: Respondents.

Rep. by Mr. Manoj Bhandari, Counsel for the respondents.

ORDER

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Rameshwar Singh has filed this O.A. under section 19 of the Administrative Tribunal Act wherein he has assailed the validity of order dated 10.5.2004 and has sought for quashing the same with a further direction to the respondents to grant the special pay of Rs. 35/- w.e.f. 1.1.84 at par with his next junior amongst other reliefs.

2. We have heard the arguments advanced by the learned counsel representing the contesting the parties and have very carefully perused the pleadings and records of this case.

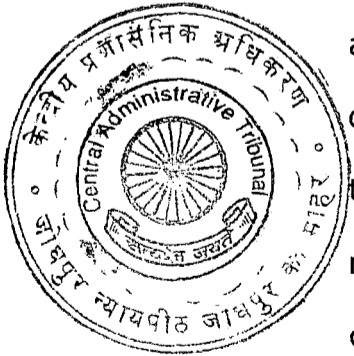


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3. Though the paper book contains plethora of the pleadings but controversy is at a very narrow compass. The pleadings of both the parties indicate that while holding the post of Upper Division Clerk(for brevity UDC), certain percentage of UDCs in the pay scale of Rs. 330-560 was upgraded and they were granted Rs. 35 as a special pay. Such UDCs were required to be handling the work of complex nature. The applicant came to be promoted to the post of Head clerk w.e.f. 1.1.84. His junior Shri Satya Narayan was allowed to enjoy the special pay in exclusion of applicant on the post of Senior Clerk w.e.f. 1.1.84 with actual benefits vide order dated 4.9.97 (Annex. A/3). The applicant was therefore granted the stepping of pay at par with his said junior and paid due arrears thereof w.e.f. 1.1.84 vide communication dated 24.12.97 Annex A/5. The further facts of the case are that the applicant retired from service on 31.7.1996. An amount of Rs. 8867/- was deducted from the due amount of Leave encashment in the year 1999. Various representations in the matter culminated into issuance of the impugned order dated 10.5.2004. The impugned order has been assailed on multiple grounds mentioned in para 5 and its sub-paras.

4. The respondents have resisted the claim of applicant and have filed a detailed counter reply to the OA. It has been averred that the applicant was wrongly paid salary on stepping up from 1.1.84 instead of from 14.2.1995. This is reason that the recovery had to be made in the year 1999. A preliminary objection of limitation regarding maintainability of this OA has been adduced. The applicant has not challenged the order of recovery. The applicant was granted the difference of pay w.e.f. 1.1.84 and he retired from service w.e.f.



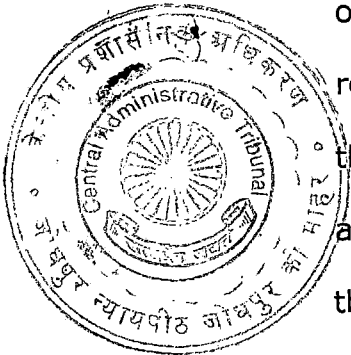
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31.7.1996, on attaining the age of superannuation. Thereafter the mistake was revealed and recovery was made in the year 1999. The pay was made to the applicant on account of administrative error which came to be corrected in the year 1999. The grounds mentioned in the OA have been generally denied. The same is followed by a short rejoinder.

5. The learned counsel for the applicant has reiterated the facts and grounds enunciated in the pleadings made on behalf of applicant. He has submitted that if the illegally recovered amounts, from the leave encashment, were allowed to be refunded, the applicant would forgo the other claims. He has contended that there no mis-representation on the part of applicant and even if any overpayment has been made to the applicant due to wrong pay fixation or administrative error, the same cannot be recovered and this proposition has been settled by the Apex court in catena of judgments.

6. Per contra, the learned counsel for the respondents has vociferously opposed the contentions made on behalf of the applicant. He has stressed the objection regarding the maintainability of this OA on the ground of limitation and reiterated the defence of the respondents as set out in their reply. He also tried to demonstrate that the recovery was on account of overpayment made due to administrative error and there is absolutely no illegality in the action of the respondents. The detailed reasons have been mentioned in the impugned order itself.



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7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. Before advertng to the merits of this case, we would clear the peripheral issue regarding the objection of limitation. We find that in this case the subject matter relates to stepping up of pay and its withdrawal/change of effective date. The recovery is only the consequential. The final order came to be passed only on dated 10.5.2004 and the OA filed within time i.e. on dated 11.1.2005 as per section 21 of A T Act 1985. In any case pay fixation matter gives rise to recurring cause of action, which does not attract the law of limitation. This proposition of law on this point has been laid down by the Apex Court in case of **M R Gupta Vs. Union of India** AIR 1996 SC 669, wherein their Lordships of Supreme court have held pay fixation matter give rise to recurring cause of action and law of limitation is not attracted. Otherwise also, no provision was brought to our notice under which any recovery could be made from the due amount of leave encashment. The recovery of overpayment is envisaged in Rule 15 of R S Pension Rules 1993 and that too only from Gratuity amount with further condition of time limit three months from the date of retirement. The relevant portion of the rule is extracted as under:

"15. Recovery and adjustment of Government or railway dues from pensionary benefits

1. to 3 : xxx

4. (i) A claim against the railway servant may be on account of all or any of the following: -

a. xx

b. Other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,



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c. xx

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(ii) A recovery on account of item (a) of sub- para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

(iii) xx

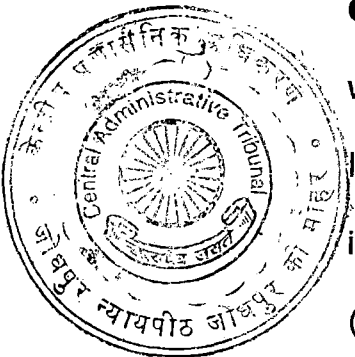
(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are with held from the gratuity payable to them shall not be disproportionately large and that such amount are not with held or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities: -

a. xx

b. Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

c. Xx

Thus the recovery from leave encashment itself would be without jurisdiction and order to that effect would be void ab initio which need not be challenged as well as does not attract law of limitation as held by a constitution bench of the Apex Court in case of The State of **Madhya Pradesh Vs. Syed Qamarali 1967** SLR page 228. The action results in withholding of retrial dues of an employee and the plea of limitation in such matter was held to be improper by Apex court in case of **S R Banerjee V. Union of India & ors 1996** SCC (L&S) 1384. Therefore, the preliminary objection of limitation stands repelled and overruled.



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8. Now adverting to the merits of this case, the only question that boils down for adjudication is as to whether the recovery towards overpayment of salary from the leave encashment could be justified or not. Admittedly, there was no misrepresentation from the side of applicant. The law on the points of the recovery is by now well settled by the various courts including the Apex Court. No recovery can be affected even for the overpayments made under the mistake so long as there was no misrepresentation on the part of the individual concerned. This proposition of the law is evident from one of the elaborate decision of Chandigarh Bench of the Tribunal in the case of **Ram Parkash Bhatti vs. Union of India and others**, 2002 (3) A.T.J. 430, wherein it has been held that:-

"10. The recent decision of the Apex Court rendered by a Bench of Hon'ble three Judges in the case of P.H. Reddy and others vs. National Institute of Rural Development and others, 2002 (2) A.T.J. 208 clinches the issue. The Apex Court found that on facts the authorities were entitled to refix the pay if the same is erroneously fixed earlier, but, no recovery can be made from the employee concerned. To be precise and accurate we would do better to extract the observations of the Apex Court, which runs as follows: -

".....the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and, therefore, that part of directions of the appropriate authority requiring reimbursement of the excess amount is annulled".

9. In view of what has been said and discussion above, the Original Application has substantial merits and force. The same is partly allowed. The respondents are hereby directed to make payment/refund the amount of Rs. 8867/- deducted from the due amount of leave encashment of the applicant, forthwith and in any case not later than two months from today, failing which interest @ 8% p.a. shall be payable after the said period. No costs.



(Signature)
(J P SHUKLA)
ADM. MEMBER

(Signature)
(J.K. KAUSHIK)
JUDICIAL MEMBER

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