

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 19/2005

Date of order: 17-2-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Hanuman Singh son of Shri Idan Singh, aged about 47 years, resident of Sarvodaya Public School, Vishvakarma Nagar, Bhadasia, Jodhpur.

Post: The applicant is presently holding the post of Turner-III in the Diesel Shed, Bhagat Ki Koti, Jodhpur.

...Applicant.

Mr. Kuldeep Mathur, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, Northern Western Railway, Jaipur.
2. The Senior Mechanical Engineer (Diesel), Diesel Shed, N.W. Rly., Bhagat Ki Koti, Jodhpur.
3. The Assistant Personnel Officer, Northern Western Railway in the office of Divisional Rail Manager, Jodhpur.

... Respondents.

Mr. Salil Trivedi, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant is aggrieved by the recovery of excess payment arising out the re-fixation of his pay consequent to his notional promotion with effect from 13.07.1984. The pay fixation is made by order dated 27.10.2003 (Annex. A/1) which is under challenge in this Original Application. On 13.01.2005, this Tribunal issued an interim order restraining the respondents

from making any further recoveries in pursuance of the order dated 27.10.2003.

The applicant was promoted as Turner Khalasi Helper in the pay scale of Rs.800-1150 by order dated 08.10.1991. Subsequently on the basis of his representation as well as representation from the trade union the issue of his eligibility for promotion from an earlier date was examined and the respondents ante-dated the promotion of the applicant with effect from 13.07.1984 and refixed his pay by order dated 27.10.2003 with the condition that the actual benefit of re-fixation will be available only from 09.10.1991 i.e. the date of actual promotion and that for the period between 13.07.1984 and 08.10.1991 only notional benefit will be given. On the basis of the re-fixation the respondents have also started recovery of the alleged excess amount paid to the applicant because the re-fixation had the unexpected result of recovery rather than a positive benefit of arrears. It is contended by the applicant that he should have been promoted with effect from 01.01.1984 and that there can be no justification for recovery of the alleged excess payment because he has not made any misrepresentation of facts.

2. The respondents have filed a reply. It is stated in the reply that the applicant was promoted as Turner Khalasi Helper after passing of trade test with effect from 08.10.1991. Subsequently, at the request of the applicant as well as the Union, the issue of the applicant's eligibility for promotion from an earlier date was examined. It was found that as a result of the restructuring of the cadre and the ante-dating of promotion

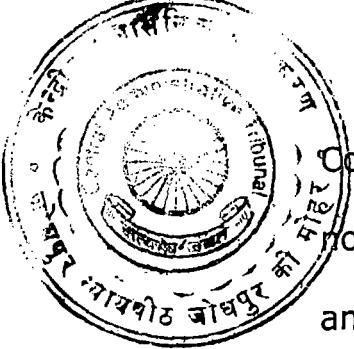
to some employees, two posts were actually available as on 13.07.1984, only one of which was actually filled up as on that date. It was therefore decided to give the other vacant post to the applicant on a notional basis with effect from 13.07.1984. Employees who received promotion after 01.01.1986 (IV Pay Commission date) had the benefit of adding an extra increment or Rs.25 whichever is more, for the purpose of pay fixation. Such benefit is not available to employees getting promotion prior to 01.01.1986. The applicant received the said benefit on the basis of promotion effected in 1991. But when his promotion is antedated to a date prior to 01.01.1986 the said benefit was not available, and as a result the new pay fixation resulted in excess payment. There is no illegality in recovery of any excess payment. The persons promoted with effect from 01.01.1984 are senior to the applicant, and therefore the applicant cannot claim promotion with reference to that date.

3. We have heard the learned counsel for the applicant Shri Kuldeep Mathur and the learned counsel for the respondents Shri Salil Trivedi. We have also perused the records carefully. During the course of the arguments the counsel for the applicant did not press for the relief No.(ii) relating to promotion with effect from 01.01.1984 because the issue of applicant's seniority vis-à-vis one Muni Lal has been decided by this Tribunal in OA No. 304 of 2004.

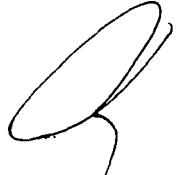
4. The limited issue left for consideration in this O.A. is whether the respondents are justified in recovering the alleged excess payment arising out of the re-fixation of pay by order dated 27.10.2003. Admittedly, the pay fixation was done to give

the notional benefit of promotion with effect from a prior date. Normally such a re-fixation should have led to a positive benefit to the employee. But in the present case, as per the reply of the respondents it has resulted in excess payment. Be that as it may, the issue of recovery of any excess payment arising out of an administrative action has been the subject matter of many judicial pronouncements. The learned counsel for the applicant has relied on the following judgments of the Hon'ble Supreme Court:

1. Shyam Babu Verma & Ors. vs. Union of India & Ors. -
(1994) 2 SCC 521.
2. Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. -
(2009) 3 SCC 475.

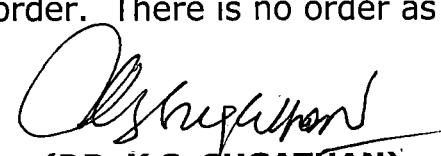
 In citation No.1 (supra), it was held by the Hon'ble Apex Court that since the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. In citation No.2 (supra) the Hon'ble Supreme Court held that :

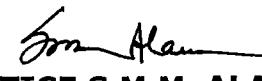
"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. xxxxxx"

 The central principle underlying the aforesaid citations is that recovery of excess payment will not be justified (a) if the excess amount was not on account of any misrepresentation or

fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculation. In the present case, the excess payment was not on account of application of any wrong principle, but at the same time it was not on account of any misrepresentation on the part of the employee. In all fairness it must be said that the employee expected a positive benefit out of the ante-dating of his promotion. This is a rare example where it has resulted in a negative benefit. Considering the peculiar circumstances of this case and keeping in mind the pronouncements of the Hon'ble Apex Court on the subject we are of the considered opinion that it will not be just and proper to recover the excess amount arising out of the re-fixation of pay by order dated 27.10.2003.

For the reasons stated above, the Original Application is partly allowed. The respondents are restrained from recovering the excess amount arising of the pay fixation order dated 27.10.2003 (Annex. A/1). The interim order in that respect is made absolute. The respondents are also directed to refund the excess amount already recovered from the applicant, within a period of three months from the date of receipt of copy of this order. There is no order as to costs.


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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