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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 182/2007

Date of order: 08.04.2010

CORAM:

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

Virendra Deo Upadhyaya S/o Late Shri P.D. Upadhyaya, aged about 46 years, working as Typist under Divisional Office, North-Western Railway, Bikaner Division, Bikaner. R/o 3/246 Mukta Prasad Colony, Bikaner.

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Personnel Officer, North-Western Railway, Bikaner.

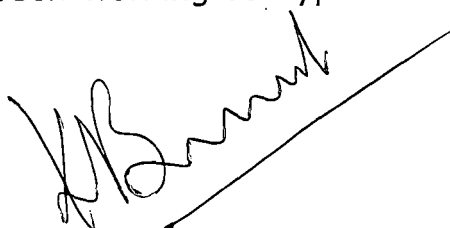
... Respondents.

Mr. Manoj Bhandari, counsel for respondents.

ORDER

(Per Hon'ble Dr. K.B. Suresh, Judicial Member)

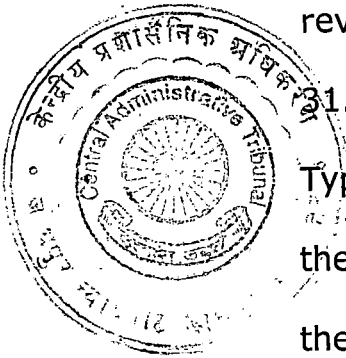
The applicant claims that there seems to be a bias against him as he was earlier appointed as casual labourer on 06.01.1984 but since then he has been working as an adhoc typist. He had apparently filed an O.A. No. 231/1992 seeking relief for regularization of his services against the post of Typist as he had been working as Typist since 06.01.1984. It is seen





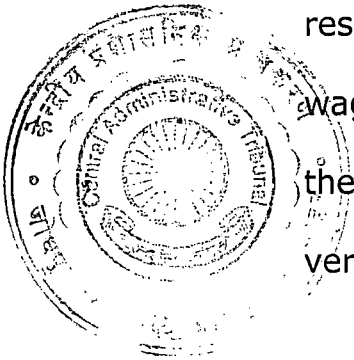
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that the said O.A. was allowed on 03.12.1992 and in that O.A. this Tribunal had held that the applicant shall be treated as adhoc typist and shall be eligible to appear in the selection test that may be held for promotion to the post of Typist and he shall be entitled to regularization after he passes such test. It is apparent that the respondents filed a review petition No. 15/1993 but the same was dismissed vide order dated 06.01.1994. It would appear that the applicant was subjected to suitability test for the post of Typist vide order dated 20.02.1993 and the applicant was declared successful in suitability test vide result dated 22.05.1993. But even then, the respondents reverted the applicant on the post of Khalasi vide letter dated 31.01.1996. The applicant had challenged his reversion from Typist to Khalasi by filing O.A. No. 81/1996 before this Bench of the Tribunal and apparently this Tribunal passed an order that the reversion order dated 31.01.1996 passed by the respondents should not be implemented. Thereupon, the Deputy Chief Engineer (C), Bikaner promoted the applicant in the higher grade w.e.f. 29.12.1995 in the grade of Rs. 4000-6000 vide order dated 19.03.1999. Thereafter, the Divisional Personnel Officer, North Western Railway, Bikaner has issued a show cause notice to the applicant vide order No. P-1/847-E/Seniority/Typist/x dated 17.05.2007 that date of promotion of his junior Shri Pankaj Goswami in the scale of Rs. 4000-6000 is 13.01.1998 and the date of promotion of the applicant in the scale of Rs. 4000-6000 is also to be 13.01.1998 but while extending the



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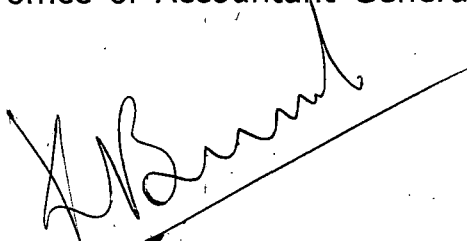
benefit of scale of Rs. 4000-6000 from the date of promotion of junior Shri Pankaj Goswami under NBR, erroneously shown as 29.12.1995 instead of 13.01.1998 which is the date of promotion of his junior Shri Pankaj Goswami. Therefore, his date of promotion was deferred to 13.01.1998 instead of 24.12.1995 from the date of promotion of his said junior and his pay was also re-fixed accordingly. Therefore, the decision was taken to scale down the applicant and also decided to recover excess payment which had been paid to the applicant. The applicant represented against the said action of the respondents but the applicant did not receive any reply of his representation and the respondents started a recovery of Rs. 1856/- per month from his wages. He has approached this Tribunal. It is to be noted that the applicant was not afforded proper forum to dispute the veracity of dates 29.12.1995 and 13.01.1998.



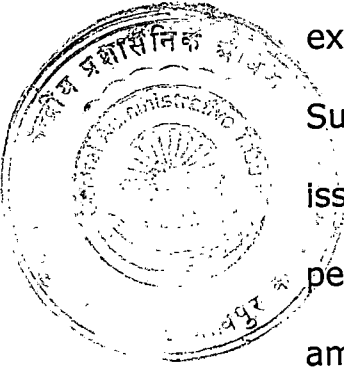
2. The applicant relied on two judgments of the Hon'ble Supreme Court in the case of **Sahib Ram vs. State of Haryana and others** reported in 1995 SCC (L&S) 248 and another in the case of **Shyam Babu Verma & Ors. vs. Union of India & Ors.** reported in 1994 SCC (L&S) 683 : 1994 (27) ATC 121. In **Shyam Babu Verma's** case (supra), the Hon'ble Supreme Court has held that higher pay scale was erroneously given to the appellant since 1973 and reduced in 1984 which was received by him due to no fault of his, it shall only be just and proper not to recover any excess amount already paid to him. In **Sahib**

Ram's case (supra), the Hon'ble Supreme Court has held that "admittedly the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant." Therefore, the dictum of these judgments is that any excess amount, if at all paid to the employee due to no fault on his part and unless it shows that the same has been made on the basis of any misrepresentation made by the employee and fraud committed by the employee, cannot be recovered from the employee. Thus even if granted erroneously, since it is done without juncture of the applicant, he cannot be penalized.

3. Learned counsel for the respondents would also rely on the judgment of the Hon'ble Supreme Court in the case of **Union of India and others vs. Smt. Sujatha Vedachalam and another** reported in AIR 2000 SC 2709. In this case, the employee, for personal reasons, who was working as a Senior Accountant in the office of Accountant General, Maharashtra at



Nagpur, sought transfer to the office of the Accountant General, Karnataka at Bangalore. Her request for transfer was accepted on certain terms and conditions stipulated by the employer and the same were accepted by the employee. One of the conditions of the transfer was that the employee has to technically resign from the post which she was holding and she was to join as direct recruit to a lower post of Clerk. After the transfer to a lower post her pay was erroneously fixed at higher level. Subsequently, when the mistake came into light, her pay was re-fixed. The authorities therein took steps to recover the excess payment made to the employee and the order for recovery of excess pay to the employee was also passed. The Hon'ble Supreme Court after having discussed the facts of that case issued a finding that grant of such benefit is unwarranted and permitted the appellants therein to recover such excess amount/pay paid to the respondent therein in easy instalments which may be spread over for fifteen years or till the date of retirement whichever is earlier.

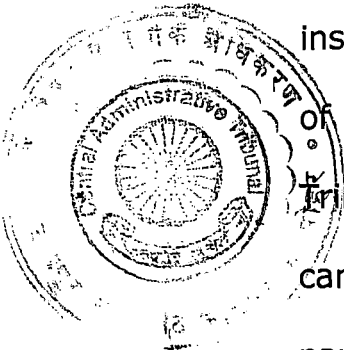


4. We have considered the matter carefully. The facts of the case of **Smt. Sujatha Vedachalam** (supra) relied by the learned counsel for the respondents is not similar to the present case, hence, the same is not applicable to this case. The case of **Shyam Babu Verma & Sahib Ram** (supra) cited by the learned counsel for the applicant is quite identical to the facts of the present case, which is fully applicable to this case. In the case

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of **Smt. Sujatha Vedachalam** (supra), the employee was transferred from one unit to another with certain conditions, which were accepted by the employee. One of the conditions of the transfer was that the respondent therein has to technically resign from the post which she was holding and she was to join as direct recruit to a lower post of Clerk. After having resigned from the post, by direct recruitment the employee becomes a new employee, which is not in continuation of earlier employment and therefore, the mistake was erroneously committed at the time of fixation of her pay on the reverted post. Subsequently, it was found that the pay of the respondent therein on reversion ought to be fixed at lower stage. In the instant case, the applicant had pointed out that there is rationale of malice against him for the reason that he had approached the Tribunal for his regularization and obtained the relief earlier. It cannot be said that due to any fault or misrepresentation on the part of the applicant, besides no opportunity seems to have been given to him to contest the dates, the respondents granted him the excess payment. Therefore, the following directions are given in this matter:

- (a). The applicant may have been given promotion from a wrong date in comparison with that of his next junior Shri Pankaj Goswami but then the applicant seems to have not been given an opportunity of defending such date of promotion. Therefore, he shall be given a fresh show cause notice based on such date and a speaking



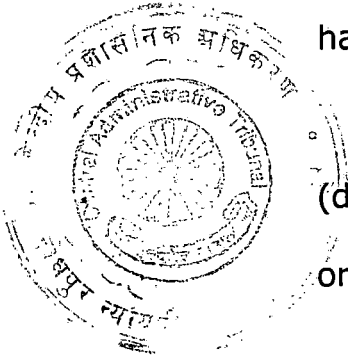
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order shall be passed thereto after giving opportunity of defending his case.

(b) If it is found that the date of promotion as given in 1995 is wrong, then it is proper to say that the same was not due to fault or misrepresentation on the part of the applicant and therefore, the excess payment cannot be recovered from the applicant in consonance with the judgments of the Hon'ble Supreme Court as stated above.

(c). But at the same time prospectively from the date of order, to be made as stated above, the applicant will have the right to have the revised pay scale only.

(d). The Original Application is allowed as above without any order as to costs.



(DR. K.B. SURESH)
JUDICIAL MEMBER

(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

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दिनांक 17/11/15 के आदेशानुसार
मेरी कार्यालय में दिनांक 10/11/15
को भाग-II व III लट्ट किए गए।

अनुभव अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

R/C
13/11/15

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13/11/10