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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH, JODHPUR

Original Application No. 477/Jodhpur/2011.

Date of decision: 10.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Anil Kumar Dubey S/o Shri N.P. Dubey aged about 60 years, resident of Railway Quarter No. T/126, Old Loco Colony, Ratanada, Jodhpur, last employed on the post of Senior Section Engineer (Carriage and Wagon), Jodhpur, North Western Railway.

..... Applicant.

[By Mr. J.K.Mishra, Advocate]

Versus

1. Union of India through General Manager, HQ Office, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur.
2. Sr. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
3. Divisional Finance Manager, North Western Railway, Jodhpur Division, Jodhpur.

..... Respondents

[By Mr. Vinay Chhipa, Advocate]

ORDER (Oral)

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant was initially appointed as Apprentice Train Examiner in the pay scale of Rs. 455-700 w.e.f. 26.04.1981. Thereafter, he was transferred to Railway Electrification Organization, Allahabad on deputation and posted at Railway Electrification, Mathura vide order dated 26.03.1982 and joined there on 19.04.1982. While working in the said organization, he was promoted to the post of Head Train Examiner first on ad hoc basis in the scale of Rs. 550-750 w.e.f. 23.06.1983 and then on regular basis w.e.f. 28.10.1985. He was again promoted to the post of C.W.I. in the grade of Rs 2000-3200 w.e.f. 10.03.1988 and his basic pay as on 1.3.1995 was Rs. 2450/- per month.



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2. On 28.06.1995, he was transferred to his parent Division but continued to draw the pay at Rs. 2450/- per month. Later on he was promoted to the post of C&W Foreman in the scale of Rs. 2000-3200 (revised Rs. 6500-10500) with retrospective effect w.e.f. 1.3.1993 and then as Senior Section Engineer (C&W) in the scale of Rs. 7450 - 11500 w.e.f. 1.11.2003. His pay was accordingly fixed / revised from time to time. He was also granted the benefits under the 3rd MACP in the scale of pay of Rs. 9300-34800 + 5400 w.e.f. 26.4.1991 vide Anex.A/4 letter dated 8.8.2011. His last drawn pay was Rs. 24690/- + Rs. 5400 as Grade Pay in the scale of Pay of Rs. 9300-34800. Finally, he retired on superannuation on 31.8.2011 from the post of Senior Section Engineer (C&W), Jodhpur. However, just before his retirement, the respondents, vide the impugned letter dated 8.8.2011 refixed his pay retrospectively from the date he has been repatriated from the Railway Electrification Organization in the year 1995 and he has challenged the same in this O.A. on the ground that he has never been given any notice before such refixation. He has also stated that the departmental authorities themselves have fixed his pay from time to time and he never made any misrepresentation in the matter. He has also stated that the alleged mistake had happened while fixing his pay in the year 1995 on his repatriation from Railway Electrification Organization. However, the respondents, vide Annex. A/5 order dated 17.8.2011, gave him a show cause notice in the matter. As a result of the said refixation, his pensionary benefits have also been refixed / reduced and his complete DCRG amount has been with-held. He has, therefore, filed this OA seeking a direction to the respondents to declare that the impugned Annex.A/1 refixation order dated 8.8.2011 as illegal. He

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has also sought a direction to the respondents to revise his Pension Payment Order dated 30.08.2011, accordingly.

3. The respondents in their reply have submitted that the applicant, on his repatriation to his parent department, joined his parent cadre on 28.6.1995, refixation was to be due, but due to some administrative error, the required refixation of his pay was not made. Consequently, he was continuously drawing the higher pay w.e.f. 28.06.1995. However, when his service record was scrutinized prior to his retirement, the aforesaid error came to their knowledge. Therefore, the respondents, vide their Annex.A/1 letter dated 8.8.2011 re-fixed his pay at Rs. 2060/- with effect from 1.3.1993, in the scale of pay of Rs. 2000-3200. If his pay was fixed at 2180/- in the grade of Rs. 2000-3200 from 28.6.1995 when he joined his parent department then his pay would have been fixed at Rs. 6900/- in the grade of Rs. 6500-10500 from 1.1.1996, at Rs. 8800/- in the grade of Rs. 7450-11500 from 1.11.2003 and at Rs. 17210 + 4600 in Grade of Rs. 9300+34800+4600 from 1.1.2006. But due to non-fixation of his pay w.e.f. 28.06.1995, he was enjoying higher pay for which he was not entitled. Furthermore, the fixation in his case was wrongly done at Rs. 21390 + 4800 from 1.9.2008 (2nd MACP) and at Rs. 22990 + 5400 from 26.04.2011 (3rd MACP) and the same was also corrected vide the impugned letter dated 8.8.2011.

4. The learned counsel for the respondents has therefore submitted that there was no illegality in refixing of his pay as well as the recovery of the over payment of salary and allowances paid to the applicant from his retirement benefits. In support of his aforesaid

submissions, he has relied upon the judgment of the Apex Court in ***Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors.*** (Civil Appeal No. 5899 of 2012 decided on 17.8.2012). The relevant part of the said judgment reads as under :

"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy."

5. We have heard the learned counsel for the applicant Mr. J.K.Mishra and the learned counsel for the respondents Mr. Vinay Chhipa. The learned counsel for the applicant has conceded that refixation of the applicant's pay should have been done when he was repatriated from the Railway Electrification Organization, Allahabad and joined his parent cadre on 28.6.1995. He has, therefore, not insisted his claim against the refixation of his pay from the said date made vide the Annex.A/1 letter dated 8.8.2011. However, he has stated that the recovery of arrears are in violation of the principles of natural justice as the applicant has never been given any show cause notice before ordering such recovery and the pre-decisional notice given to him on 17.8.2011 was only a mere formality and it was against the principles of natural justice. Secondly, he has stated that the alleged overpayment has been made to the applicant not because of any of his misrepresentation or any fault on his part.

6. We have considered the submissions of the learned counsel for the parties. As conceded by the learned counsel for the applicant

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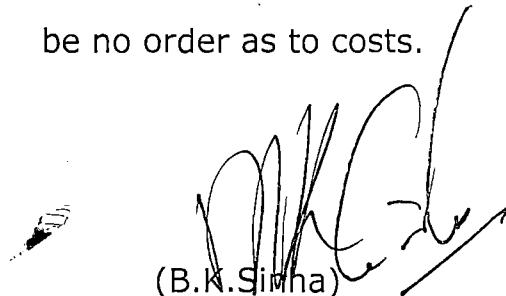
himself, refixation of the pay of the applicant from 28.6.1995 on his repatriation, to parent cadre, cannot be faulted. However, admittedly the refixation was done at the fag end of the service of the applicant and about the time he was going to retire. The delay on the part of the respondents in rectifying their mistake is over 15 years. The applicant had no role in the matter as he did not make any misrepresentation or aided the respondents in committing the mistake. Therefore, the Apex Courts judgments in **Shyam Babu Verma Vs. Union of India** (1994) 2 SCC 521, Sahib **Ram Vs. State of Haryana** 1995 Supp. (1) SCC 18, State of Bihar Vs. Pandey Jagdiswar Prasad (2009) 3 SCC 117 and **Yogeshwar Prasad and Ors. Vs. National Institute of Education, Planning and Administration & Ors.** (2010) 14 SCC 323 would apply in this case. The Apex Court in the case of **Chandi Prasad Uniyal and Ors.** (supra), also do not say that recovery could be made in cases of retired persons or the persons who are at the verge of retirement. Admittedly, the impugned refixation order was issued on 8.8.2011 and the applicant retired on superannuation on 30.08.2011.

7. In view of the above position, while we find no fault with the respondents in refixing the pay of the applicant w.e.f. 28.06.1995, we hold that the recovery of overpayment made by the respondents cannot be justified. We, therefore, partly allow this O.A. and direct the respondents to release all the with-held retiral benefits of the applicant forthwith and refund the entire amount recovered from his pay and allowances and the retirement benefits including DCRG within one month from the date of receipt of a copy of this order. They shall also pass appropriate orders within the aforesaid period

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under intimation to the applicant. In case, they fails to do so, they will be liable to pay interest at the rate of 9% per annum from the date of recovery of the amount till the date of its re-payment.

8. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs.



(B.K. Sinha)
Administrative Member



(G. George Paracken)
Judicial Member

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26/09/12



R/C
Qayyim
25.09.12