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CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 182/2013

Jodhpur, this the 23rd September, 2013.

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)

Hon'ble Ms. Meenakshi Hooja, Member (A)

Jamta Ram S/o Shri Vaja Ram aged 39 years, Ticket No. 10616, Shop No. 4, Technician, Grade II (Milright), North Western Railway, Jodhpur, Reg. Old Loco L 49 B, Ratanada, Jodhpur.

..Applicant.

(Through Adv. Deepak Kanojiya)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Chief Workshop Manager, North Western Railway, Jodhpur.
3. The Deputy Chief Mechanical (Personnel), North Western Railway, Workshop, Jodhpur.

...Respondents.

(Through Adv. Mr. Kamal Dave)

ORDER

Per K.C. Joshi, Member (J) :

The applicant has prayed that the order of recovery dated 20.04.2013 at Annex.A/1 passed by the Chief Workshop Manager, North Western Railway, Jodhpur be quashed.

2. Briefly stated the applicant Jamta Ram vide OA No. 164/2009 approached this Tribunal for certain relief and during the pendency of the said application an order dated 03.01.2012 was passed suo moto by the respondents giving ante dated proforma promotion of Technician Grade I from 27.06.1998 i.e. from the date his immediate junior was promoted, to the applicant, and thereby the application was rendered infructuous. In the said OA the arrears of salary were also prayed which

were declined on the basis of Para 228 of the Indian Railway Establishment Manual wherein it has been provided that in such cases of correction of seniority earlier accorded, the enhanced pay may be allowed only from the date of actual promotion and no arrears on this account shall be payable in such cases as the incumbent did not actually shoulder the duties and responsibilities of the higher post. A copy of the order dated 14.02.2012, passed in the earlier O.A. has been filed with this OA as Annex.A/5. On passing of the order by the Tribunal the respondent-department released payment of arrears to the applicant. The respondents, thereafter, again passed an order dated 20.04.2013 for recovering Rs. 1,48,980/- from the salary of the applicant. The applicant in his present OA has averred that respondents authorities granted arrears to the applicant voluntarily admitting their fault of non assignment of appropriate seniority and there was no misrepresentation of facts by the applicant. It is further stated that applicant is agitating the matter right from 1998 and respondents ultimately acceded his request and passed order on 03.01.2012 granting his due promotion. Hence denial of arrears of salary and passing orders of recovery were totally against all canons of justice. The applicant has relied upon and supported his arguments by citing the case of *Purshottam Lal Das vs. State of Bihar* reported in (2006) 11 SCC 492 of Hon'ble Supreme Court and prayed for the relief as stated above in para No. 1.

3. The respondents in their reply have submitted that the applicant has no case much less prima facie case as he previously invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals act, by way of OA No. 164/2009 challenging the order dated

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12.03.2009. This Tribunal on 24.02.2012 disposed of the OA in view of the fact that the copy of the order dated 03.01.2012 was passed by the Railways extending antedated proforma promotion as Technician Grade I from 27.06.1998 vis-à-vis his junior, and at the same time prayer of the applicant for actual monetary benefits including arrears of salary was rejected in view of the statutory provision under Para 228 of the Indian Railway Establishment Manual, and thus the question of back wages on proforma promotion stood rejected. The error committed by the respondents in allowing the real monetary benefits was rectified by order dated 20.04.2013 by which recovery was ordered in instalments. Further, in the case referred to by the applicant in his OA, the Hon'ble the Supreme Court stopped recovery because the applicants therein were allowed to work on promotional posts erroneously and the instant case is altogether on different footings hence the ruling is not at all applicable. On the other hand, in view of a recent judgment of Hon'ble Supreme Court in *Chandi Prasad Uniyal Vs. State of Uttarakhand* reported in 2012 (8) SCC 417, while examining the question of recovery of amount paid in excess, it has been held that the same can always be recovered holding that the law imposes an obligation on the payee to repay the money lest it would amount to unjust enrichment. It has also been stated that payment of erroneous payment was well within knowledge of the applicant as the judgment in his earlier case specifically declined arrears of the salary but he intentionally failed to make reference of his knowledge

4. We have heard the learned counsel for the parties.

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5. The counsel for the applicant contended that the recovery of Rs. 1,48,980/- from the salary of the applicant is arbitrary and against the principles of natural justice and it is the respondents themselves who rectified their mistake regarding his seniority and promotion by promoting him vide order dated 03.01.2012. He had been agitating the matter right from 1998, therefore, the denial of arrears of salary and passing order of recovery, are against all canons of justice. The applicant supported his arguments by citing the case of *Purshottam Lal Das (supra)*.

6. Per contra, the counsel for the respondents argued that in this case the judgment in the previous OA No. 164/2009 clearly disentitled any arrears of salary to the applicant.

It was categorically held by this Tribunal vide order dated 14th February, 2012 in paras 3 and 4 as under :-

"3. The learned counsel for the applicant however submits that even though ante-dated proforma promotion has been accorded by the order now produced by the respondents, the case of the applicant for being allowed arrears of salary, atleast from the date of filing of this original application on 23.07.2009, may be considered. However, we have gone through the provisions of Para 228 of the Indian Railway Establishment Manual Vol. I 1989 Edition, in pursuance of which the respondents have suo moto passed the order dated 03.01.2012 . The paragraph concerned specifically stated that in such cases of correction of seniority earlier accorded, the enhanced pay may be allowed only from the date of actual promotion, and no arrears on this account shall be payable, as the incumbents did not actually shoulder the duties and responsibilities of the higher post in the meanwhile.

4. In view of the categorical provision in this regard in Para 228 of the Indian Railway Establishment Manual, we are constrained not to allow the prayer made today by the learned counsel for the applicant during arguments. The ante-dated proforma promotion to the applicant having been allowed w.e.f. 3.1.2012, as per Para 228 of the Indian Railway Establishment Manual, his salary and entitlement in the higher grade vis-à-vis his junior has been fixed by the respondents to be effective from the earlier date, but payable from the date of such order. "

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7. It was further argued that if any amount has been paid in excess of what was allowed in the order of the Tribunal as it was based on the provision of IREM that cannot be allowed and if the respondent – department has committed any mistake or error in doing so in the form of arrears that can be recovered being well supported by the judgment delivered by the Hon'ble Supreme Court in the *Chandi Prasad Uniyal's* case in which it has been held as under :-

"14. We are concerned with the excess payment of public money which is often described as "taxpayer" money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bonafide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reason like negligence, carelessness, collusion, favoritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."


8. Considered the rival contentions of the learned parties and perused the record.

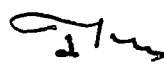
9. The judgment in OA No. 164/2009, given by this Tribunal on 14th February, 2012, clearly rejected the prayer of the applicant for back wages/arrears. However, the same were paid to him erroneously and thereafter recovery was to be made as per communication dated 20.04.2013 (Annex.A/1). The said letter clearly states that the payment of Rs. 1,48,980/- was made in excess and is to be recovered. It has also been stated in Annex.A/1 that the applicant, aware of the excess

payment, made no effort to either inform the office to give back the said amount. In view of the ruling of the Apex Court in *Chandi Prasad (Supra)* *Uniyal's* case, the recovery of excess amount paid erroneously, cannot be said to be arbitrary or unjust and the applicant cannot be allowed the benefit of the excess amount paid from the taxpayers' money which would tantamount to unjust enrichment.

10. In view of the above position and the law as upheld by the Hon'ble Supreme Court in the aforesaid case, the O.A. is dismissed being bereft of merits. However, the respondents may consider any representation which may be filed by the applicant for making recovery in easy instalments from the salary of the applicant.

11. With the aforesaid observations, the O.A. is disposed of with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C. Joshi]
Judicial Member

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