

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. No. 76 of 1997
M.A. No. 77 of 1997
(O.A. No. 194 of 1997)

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

UNION OF INDIA & ORS.
(Eastern Railway)

-VS-

ARDHENDU LAL LAHIRI & ORS.

For Union of India : Mr. P.K. Arora, counsel
(Eastern Rly)

For respondents : Mr. B.C. Sinha, counsel
(Applicants in O.A.)

Heard on : 7.3.1997 - Order on : ~~14.3.1997~~ ²⁴⁻³⁻¹⁹⁹⁷

O R D E R

A.K. Chatterjee, VC

O.A. No. 194 of 1997 was filed by certain Accounts Staff, ~~who had been~~ granted pay scale of Rs.2000-3200/- w.e.f. 1.4.87, ~~but~~ an order was made by the Principal Bench of the Tribunal to grant the pay scale w.e.f. 1.1.86 instead of 1.4.87. Accordingly, the said pay scale was granted w.e.f. 1.1.86 but ultimately, the Hon'ble Supreme Court made an order on 15.7.94 on an application filed by the Railway Board that the said pay scale should be granted w.e.f. 1.4.87. After about two years, the Railway Board issued an order, inter alia, to recover the excess payments/ arrears already made to serving employees, against which O.A. 194 of 1997 was filed and an interim order was made ex-parte on 20.2.97 directing that no recovery shall be made from the

petitioners till the next date fixed which was 6.3.97. In the meantime, on 3.3.97, two Misc. Applications were filed by the respondents-Eastern Railway being M.A. 76/97 and M.A.77/97, both of which in substance seek modification of the interim order dated 21.2.97. These Misc. Applications are now under disposal.

2. We have heard the Ld. Counsel for both the parties and perused the records before us. Mr. Arora, Ld. Counsel for Union of India & Ors. ^{petitioners herein} has drawn our attention, particularly to the order of the Hon'ble Supreme Court, which specifically provides that the arrears, if any, paid to the employees on account of fixation with effect from 1.1.86 may be recovered from the future salaries but no such recovery shall be made from the employees, who have already retired. Thus, it has been urged on behalf of the railwayxxxx that the recovery has to be made from the future salaries of the petitioners, all of whom ^{being on} are serving employees. It appears that an order has been made by the Railway Board on 24.9.96 i.e. to say about two years after the above order of the Hon'ble Supreme Court dt.15.7.94, which, inter alia, directed for effecting recovery immediately ~~for~~ ^{from} the excess payments/arrears, which have been made, from the serving employees, but no such recovery ^{should} be made from the employees, who had retired on or before 31.8.96. Thus, it was contended on behalf of the ^{Union of India} petitioners that recovery from serving employees like the petitioners was being made in terms of the order of the Hon'ble Supreme Court and there should not be any interference by this Tribunal by way of an interim order and accordingly it has got to be suitably modified. The Ld. Counsel for the original petitioners, on the other hand, has urged that by the order dt.15.7.94, the Hon'ble Supreme Court had no doubt passed an order for recovery from serving employees and not to make such recovery from the employees, who had already retired. Thus, it is argued that according to the order of the Hon'ble Supreme Court, no recovery should

be made from the employees who had retired before 15.7.94, but the Railway Board in its order dt.24.9.96 has extended the benefit and directed that no recovery should be made from the employees who had retired on or before 31.8.96. The Ld.Counsel for the original petitioners has contended that the Railway Board deliberately took time for more than two years to pass an order in terms of the judgment of the Hon'ble Supreme Court and extended the benefit of non-recovery to favoured employees, who had retired on or before 31.8.96. Undoubtedly, there was considerable delay in passing the order of the Railway Board whether deliberately or otherwise but so far as serving employees ~~like the petitioners~~ are concerned, the time taken by the Railway Board cannot be a ground to resist the recovery according to the direction of the Hon'ble Supreme Court. Therefore, normally, we would recall the interim order made on 20.2.97 restraining the respondents from making any recovery from the ~~salary of the~~ petitioners but we find that in M.A. 76/97 the respondents have stated that to avoid any further complication regarding realisation of a sum of Rs.3771/- from one of the petitioners R.K.Acharya, who has retired on 28.2.97, he may be directed to furnish an Indemnity Bond to this extent. In view of this submission made by the respondents themselves, settlement dues of the petitioner No.5, R.K.Acharya may be released as may be admissible to him subject to his furnishing an Indemnity Bond of Rs.3771/-. So far as other petitioners are concerned, who are in service, the recovery as ordered by the Hon'ble Supreme Court from their salary cannot be ~~settled~~ ^{settled} on the ground that the Board by its letter dt.24.9.96 has directed that no recovery should be made from the employees, who had retired on or before 31.8.96 even if it is not strictly in accordance with the order of the Hon'ble Supreme Court, which does not cease to be

operative despite Board's order dated 24.9.1996.

4. The Ld.Counse for the opposite parties has submitted only yesterday a written argument which practice must be deprecated as the Ld.Counsel for the petitioners had no opportunity to reply to it even though copy of the written argument was served upon him. There is hardly any explanation why the written submission could not be made earlier. However, in the written argument, four decisions have been cited, which, in our opinion, do not come to the aid of the present opposite parties in the facts and circumstances of this case. It has been stated that fixation of a cut-off date is arbitrary and a benefit having once been given to the employees cannot be taken away from a few while along others to continue to enjoy the said benefit as it would amount to ingredious discrimination. Now a cut-off date has been fixed and recovery has been ordered from serving employees leaving retired employees untouched by the Hon'ble Supreme Court itself after due consideration of all relevant factors and we do not think and indeed it is not open to us to think that such order passed by the Hon'ble Supreme Court offends any law of the land. Indeed, whatever the Hon'ble Supreme Court orders, it must be regarded as the law of the land. The Railway Board might have shifted the cut-off date but it is not within the scope of the present proceeding to decide whether it should have been done or not, but there cannot be any doubt about the position that if the interim order as passed is allowed to survive, it would clearly offend the order passed by the Hon'ble Supreme Court and, therefore, this Tribunal has no option but to vacate it.

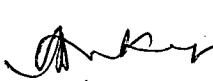
5. In the written argument, it has also been stated that the case of the present opposite parties and their colleagues, who had retired prior to 31.8.95 being similar according to differential

treatment to these two categories, would militate against the guarantee of equality and thus violate Articles 14 & 16 of the Constitution. This is, in substance, the same contention that fixation of a cut-off date, ^{is arbitrary as this date is not} which results in the differential treatment. Therefore, for reasons already indicated in the preceding paragraph, we are unable to accept the contention of the Learned Counsel for the opposite parties that there has been any contravention of the provision of Articles 14 & 16 of the Constitution.

6. Equally unsustainable in the facts and circumstances of the present case that unconstitutional discrimination has been made as similar cases have been treated in ~~de~~ similar way because such treatment has been meted out on the basis of an order passed by the Hon'ble Supreme Court.

7. For reasons indicated above, both the Misc. Applications are disposed of with this order that the settlement dues of petitioner No.5, R.K.Acharya may be released subject to his furnishing an Indemnity Bond of Rs.3771/-. The interim order dated 20.2.1997 is vacated.

8. O.A. No. 194 of 1997 be listed for hearing regarding admission on 25.6.97. Reply to be filed by the respondents atleast a week before the date fixed.


(M.S. Mukherjee)
Member (A)


A.K. Chatterjee
21.3.87
A.K. Chatterjee
Vice-Chairman