

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

Original Application No.386/97

Date of the order: 08.06.2004

The Hon'ble Mr. R.K. Upadhyaya, Administrative Member.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

Bisweswar Dutta, S/o late D.N. Dutta aged about 64 years retd
CTNL, SPJ, N.E. Railway, at present residing at 193,
Bandroni, Govt. Colony, Calcutta 700 070

: Applicant

rep. by Mr. B.R. Das Sr Counsel
with B.P. Manna : Counsel for the applicant

versus

1. Union of India, service through General Manager, N.E. Railway, Gorakhpur.
2. Chief Personnel Officer, N.E. Rly, Gorakhpur.
3. Chief Operations Manager, N.E.Rly, Gorakhpur.
4. Divisional Railway Manager, N.E. Rly, Izatnagar
5. Divisional Railway Manager, NE Rly. Samastipur.

: Respondents.

rep. by Mr. P.K. Arora: Counsel for the respondents.

ORDER

Mr. J.K. Kaushik, Judicial Member.

Shri Bisweswar ~~Dutta~~ has invoked the jurisdiction of this Tribunal in a very unusual situation in as much as he was given regular promotion with due fixation, but subsequently the fixation has been undone which resulted into recovery of the over payment as well as reduction in his pay.

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2. The factual matrix of the case is that the applicant while holding the post of Chief Controller in the pay scale of Rs. 840-1040/- he enjoyed his next promotion to the post of CTNL in the scale of pay of Rs. 840-1200 and was posted at Izatnagar Division vide order dated 10.03.86 and he joined duty on the promoted post on 07.04.86 and continued to discharge his duties satisfactorily till his retirement on super annuation in the year 1990.

3. The further facts of the case are that the recommendations of the 4th Pay Commission regarding the revision of pay scales came to be given effect to from 01.01.86. As on 01.01.86, the pay scale of Rs. 840-1040 and Rs. 840-1200/- were merged into single scale of pay i.e. 2375-3500/- and his pay was fixed at Rs. 3050/- Keeping in view of his option and the promotion granted to him the applicant's pay was raised to Rs. 3200/- per month with effect from 01.04.88. Subsequently the applicant's pay was reduced to Rs. 2900 as on 01.01.86 in the pay scale of Rs. 2375-3500 and as on 01.01.90 the same was fixed at Rs. 3200/- As a result of the revised pay fixation, a sum of Rs. 5269.53 was assessed as over-payment and the same was ordered to be recovered from the pension drawing bank. The impugned orders have been assailed on the ground that as per Rule 6 of the Notification of the Railway Services (Revised Pay) Rules, 1986, vide Board's endorsement dated 19.09.86. The applicant exercised his option to continue to draw pay in the existing scale. His pay was to be revised and fixed with effect from 07.04.86 in the pay scale of Rs. 840-1200/- at the basic pay of Rs. 1120/- and therefore thereafter the same was to be converted into Rs. 3050/- and subsequent progression thereof.

4. The respondents have contested the case and have filed counter reply to the same. It has been averred that on promotion to the post of CTNL, his pay was fixed at Rs.1120/-, but as per the recommendations of the 4th Pay Commission, the two scales of CTNL i.e. Rs.840-1040 and 840-1200 were merged and a corresponding scale of Rs.2375-3500 was introduced and the applicant's pay was to be fixed in the revised scale of pay with effect from 01.01.86. Therefore the fixation of pay done to him earlier was wrong and the impugned orders issued were in order. It has also been stated in the reply that the Original Application is barred by limitation since the cause of action has arisen as early as in 1990 and the OA has been filed only in the year 1997. Thus the Original Application deserves to be dismissed.

5. We have heard the learned counsel for both the parties and have very carefully perused the records of this case. The learned counsel for the applicant has reiterated the facts and grounds raised in the OA and have emphatically submitted that the applicant was was already promoted to the higher post on regular basis and he was given due fixation on the higher post which he joined on 10.04.86. The same cannot be taken away so as to prejudice the rights of the applicant. He has submitted that the pay fixation made on 01.01.86 has seriously prejudiced his case since he has not been allowed the pay fixation which is admissible on promotion and the whole episode has resulted the very promotion brushed aside. The learned counsel for the applicant has strived hard to persuade us that a grave injustice had been done to him by causing monetary loss in as much as

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a recovery has been made for an amount of Rs.5269.53 and there has been recurring pecuniary loss to the applicant even till date. He has also submitted that the Railway has issued specific instructions to deal with such controversies vide circular dated 27.01.89 and what should have been the action in such cases has been narrated thereunder. The Rules provide that in such situation, the Railway Board's circular dated 18.06.74 would hold the field, but it has not been found expedient for the respondents to adhere to the rules. It has also been contended on the part of the applicant that law relating to the recovery is well settled by now and no recovery could have been effected from the applicant but for the reasons best known to the administration, the recovery was ordered and the amount has been already recovered from the salary/relief on the pension of the applicant. Thus the complete action of the respondents is contrary to the rules in force.

6. Per contra, the learned counsel for the respondents has reiterated the defence as set out in the reply and has strenuously opposed the contentions submitted by the learned counsel for the applicant. He has contended that the whole episode has arisen due to the implementation of the 4th Pay Commission's recommendations from a retrospective date and no fault can be fastened with the action of the respondents.

7. We have considered the rival submissions putforward on behalf of both parties. As far as the factual aspect of the matter is concerned, there is hardly any quarrel. The genesis of the whole episode is that there was a merger of a feeder post as well as that of the promotional post, to which the applicant was promoted and paid earlier to the date of merger of two scales.

recommendations of the 4th Pay Commission were given effect to. Unfortunately, after merger of both the grades there remained no post for promotion as per the avenue of promotion in the normal channel, since the applicant was promoted to the highest grade meant for Group 'C' posts. Thus after 01.01.86, it was impracticable to extend any benefit of the promotion to the applicant and on this count no fault can be found with the respondents.

8. As far as the question of hardship which is faced by the applicant is concerned, the same is well protected by the Railway Administration itself and the order dated 27.01.89 came be issued to meet similar situation, wherein it has been specifically provided that while introducing new scales of pay, orders issued already on 18.06.74 would apply and in those orders the following provision has been made in para 2 (ii) which reads as under:

" In respect of persons promoted from a lower to a higher existing scale, where the two existing scales have been merged into a single revised scale, the pay in the revised scale may, on the written request of the employees concerned made within three months of the date of issue of these orders or the notification of the revised pay scale of the post, whichever is later, be re-fixed on the date of promotion at a stage which is equal to the existing emoluments as defined in sub-para (i) above, in the higher existing scale on that date, and if there is no such stage in the revised scale, at the stage next below in the scale and the difference allowed as personal pay to be absorbed in future increases in pay. The next increment in the revised scale will be allowed on the date it would have been drawn in the higher existing scale had the revised scale not been introduced. This protection will, however, be allowed only in cases where the Railway servant had been continuously officiating for a period of not less than one year on the date of issue of the notification revising the scale of the higher post or in case he has not completed one year's service on that date, the appointing authority certifies that the Railway servant would have continued to officiate in the higher post for the period by which the service rendered in it fell short of one year on that date, had the revised scale not been introduced. "

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A mere perusal of the aforesaid would reveal that the Railway itself have provided certain protection in such cases and the pay of the applicant was to be protected by drawing the personal difference as ~~in~~ pay, which was to be absorbed in future increments in pay and this document is relied upon by the learned counsel for the applicant himself. Thus there is no reason to take a different view and we hold that the applicant would be entitled to the protection of pay as per the said provisions and to that extent there would be no difficulty in extending the benefits to the applicant. However, since the respondents have acted according to the rules and as there was no promotional post in existence after 01.01.86, the applicant could by no stretch of imagination can get the higher rate of pay obviously on promotion and we are not impressed with the submission of the learned counsel for the applicant that his promotion cannot be done away in an unceremonious way, especially we are giving this finding since no promotional post existed after 01.01.86.

9. As regards the question of recovery the law is well settled that no recovery can be made from the employee concerned until there was no mis-representation on the part of the employee. This proposition of law is evident from a recent decision of the Apex Court rendered by a Three Judges Bench in P.H. Reddy & ors vs. National Institute of Rural Development and others (2002 (2) ATJ-208). Their Lordships have held that authorities entitled to refix the pay if the same is erroneously fixed earlier but no recovery can be made from the employee concerned. We would like to extract the precise

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observation:

".... the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled."

Thus in the instant case there would be no question of any recovery on account of over payment since admittedly there was no mis-representation on the part of the applicant in fixation of his pay.

10. The upshot of the aforesaid discussion is the Original Application has force and the same is partly allowed. As far as the recovery part of the matter is concerned, we hold that the impugned orders in so far they relate to making any recovery of over payment as a result of pay fixation done on account of promotion, the same stand quashed to that extent. The respondents are further directed to give protection of pay to the applicant in accordance with their circulars dated 27.01.89 read with order dated 18.06.94 (supra) and revise the fixation of pay of the applicant accordingly. The applicant is entitled to all consequential benefits including revision of pension and pensionary benefits. The recovered amount of Rs. 5269.53 shall be refunded to the applicant. This order shall be complied with within a period of three months from the date of communication of this order. No costs.

J.K. Kaushik

(J.K. Kaushik)
Member (J)

R.K. Upadhyaya

(R.K. Upadhyaya)
Member (A)