

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

O.A.No.128/2004

Monday, this the 16th day of March 2009

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Veena Chhotray, Member (A)

Gyaneshwar Lal, aged about 60 years
Son of Sri Kuber Lal, retired JE-I
(Works), under Dy. CE (Const.)
NE Rly., Kanpur, resident of House No.50
Rampuram, Shyam Nagar, Kanpur

..Applicant

(By Advocate: Shri Praveen Kumar)

Versus

1. Union of India through the General Manager
Northern Railway, Headquarters
Baroda House, New Delhi
2. The Chief Administrative Officer (Construction)
N.C. Railway, Kanpur
3. The Dy. Chief Engineer (Construction)
NC Rly., Kanpur
4. The Divl. Rly. Manager
N. Rly., Hazratganj, Lucknow
5. The Senior Accounts Officer (Construction)
N. Rly., Allahabad
6. The Senior Divl. Accounts Officer
N. Rly., Lucknow

..Respondents

(By Advocate: Shri S. Verma)

ORDER (ORAL)

Shri Shanker Raju:

It is trite law that if no fraud or misrepresentation is attributed to a retiree, no recovery of arrears and wrong fixation could be made, as ruled by Apex Court in **Babulal Jain v. State**

of M.P., (2007) 6 SCC 180, which is reiterated in **Col. B.J. Akkara (Retd.) v. Government of India**, 2007 (1) SCC (L&S) 529.

2. Applicant, by virtue of this OA, challenges reduction of his pay fixation vide order dated 11.2.2003 without affording an opportunity and non-fixation of his retiral dues on the last pay drawn at Rs.8475/-.

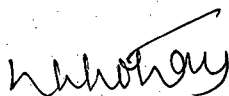
3. Learned counsel for respondents vehemently opposed the contentions and stated that the pay of the applicant was wrongly fixed without considering his lien in the parent organization while working in Construction Department.

4. Insofar as the fixation of pension is concerned, on our pointed query, it is stated that the pension is to be fixed on the last pay drawn. As reasonable opportunity has been deprived to the applicant before correcting his pay, that too after his retirement, when this wrong fixation has not been attributed to the applicant by any fraud or misrepresentation, any recovery made cannot be sustained in law as well as in the light of decisions referred to supra.

5. However, the pensionary benefits are to be fixed as per the last pay drawn and arrears and all other ancillary benefits are to be worked out accordingly.

6. Resultantly, OA is partly allowed. While setting aside the recovery made against the applicant, respondents are directed that no recovery be effected from the retiral dues of the applicant and if the recovery has already been effected, the same shall be refunded to him within a period of three months from the date of receipt of a copy of this order.

7. Insofar as the fixation of retiral dues is concerned, the same shall be done on the last pay drawn and re-calculation of pensionary benefits would entail difference of arrears with a simple interest of 9% from the date it is due till it is actually paid. The same shall be paid to the applicant along with other arrears within the aforesaid period. No costs.



(Veena Chhatray)
Member (A)



(Shanker Raju)
Member (J)

/sunil/

ok
copy of order
dated 16-3-09
filed
16-3-09