

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Original Application No. 452/2004.

Lucknow; this the day of 01st November, 2004.

HON'BLE SHRI KULDIP SINGH, VICE CHAIRMAN.

HON'BLE SHRI S.K. MALHOTRA, MEMBER (A).

Daljeet Singh, aged about 25 years, son of late Sardar Baldev Singh, resident of House No. 563/64-A, Chitragupta nagar, Alambagh, Kanpur Road, Lucknow.

... Applicant.

By Advocate:-Shri H.P. Srivastava.

Versus.

Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.

2. General Manager, North Eastern Railway, Gorakhpur.

3. General Manager (Personnel), North Eastern Railway, Gorakhpur.

4. Divisional Railway Manager (Personnel), North Eastern Railway, Ashok Marg, Lucknow.

5. Senior Divisional Engineer (Coordination), North Eastern Railway, Lucknow.

... Respondents.

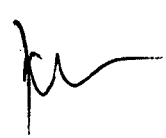
By Advocate:- Shri Bhupendra Singh for
Shri N.K. Agrawal.

O R D E R (O R A L)

(BY HON'BLE SHRI KULDIP SINGH, V.C.)

The applicant has filed this O.A. assailing Annexure-1 vide which the pay of the applicant has been reduced from 5000-8000 to 4500-7000. The main grievance

...2...



of the applicant is that the same has been done without issuing any show-cause notice. The Learned counsel for applicant has relied upon the judgment of Hon'ble Allahabad High Court reported in 1994 (14) LCD - 1004 in the case of SRI HARISH CHANDRA SRIVASTAVA VS. STATE OF U.P. AND OTHERS. Counsel for applicant relied on para 18 and 19 of the aforesaid judgment which reads as under:-


Para-18 " No doubt where any order is passed without affording reasonable opportunity of being heard which entails serve consequences including financial one, the said order suffers from the 'violation of the) principle of natural justice rendering the same a nullity. The rule of audi alteram partem mandates that the decision makers should afford to the person concerned a reasonable opportunity of being heard (See Km. Neelima Misra Vs. Dr. Harinder Kaur O Others (AIR 1990 SC 1402). Besides this, in the decision rendered in Shyam Babu Verma & others V. Union of India & Others (1994) 2 SCC 621) the Apex Court dealing with similar situation ruled that since the petitioner received the higher pay scale due to no fault of his own, it shall not be just and proper to recover the salary already paid to him.

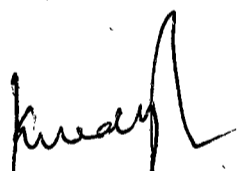
Para-19 The order impugned to this writ petition is, therefore, liable to be quashed not only on the ground of want of affording reasonable opportunity of being heard to the petitioner but also on the ground that the petitioner cannot be held responsible for securing promotion on the higher scale cannot be recovered as has been held in Shyam Babu Verma's case (supra). Besides this, the petitioner has discharged his duties efficiently after promotion till the date of his superannuation and if payment of salary has been made at the fault of the Department for year together for which the petitioner cannot be blamed, the same is not liable to be refunded on the principle of equal pay for equal work as othe persons who have been

promoted on higher pay scale were also given the same pay scale. Therefore, it would be just and proper to recover the so called excess salary from the petitioner."

2. ^{Reduced to}
~~recovered~~ In this case also since the pay has been ~~recovered~~ without issuing any show-cause notice, prima-facie the order has been passed without affording any opportunity of hearing to the applicant in gross violation of the principle of natural justice. Learned counsel for respondents is unable to show any show cause notice issued to the applicant prior to passing of the impugned order.

3. Keeping in view the facts and circumstances of the case, we quash the impugned order and direct the respondents to restore the pay of the applicant. However, it is open for the respondents to issue ^a ~~fresh~~ show cause notice in accordance with law. No costs.


(S.K. MALHOTRA)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN.

Dated:-01.11.2004.
Lucknow.
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