

**CENTRAL ADMINISTRITIVE TRIBUNAL
LUCKNOW BENCH**

O.A.No.165/2006

This the ^{8th} day January 2007

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

Munna Singh aged about 64 years. Son of Late Ram Bali Singh, R/o Village Chauharpurwa, Post Office-Jahangirwa, District-Gonda.

... Applicant.

By Advocate:-Shri S.D. Srivastava.

Versus.

1. Union of India through Secretary, Railway Central Civil Secretariat, New Delhi.
2. Divisional Rail Manager, N.E. Railway, Ashok Marg, Lucknow.
3. Divisional Rail manager (Karmik) N.E. Railway, Ashok Marg, Lucknow.
4. Assistant Regional Engineer/Line, N.E. Railway, Ashok Marg, Lucknow.

... Respondents.

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

ORDER

BY M. KANTHAIAH, MEMBER (J)

This is the Original Application filed by the applicant with a prayer to quash the impugned order dt. 6.2.2006 (Annexure-1) issued by Respondent No.4, under which he deducted paid salary of an amount of Rs. 137688/- from retrial benefits and also to issue direction to the respondents for refund of the same and also for payment of salary from 1st Feb 2005 to 15th Feb 2005 and with consequential reliefs.

2. The applicant who was appointed on the post of Gangman on 23.1.1973 under P.W.I. Section Engineer of Station Jarwal Road, subsequently promoted as Painter Helper under J.O.W. 4th respondent has issued a letter on 15.2.2005 (Annexure-2) indicating

that the applicant was retired w.e.f. 30.7.2003 on the ground that his date of birth was recorded as 3rd July 1943 in the service register and further indicated that the applicant worked excess from 1st August 2003 to 10th Feb 2005 and accordingly sought recovery of the paid salary of that period from his retirement payments. He states that he is an illiterate person and it was not his duty to inform his date of retirement as the service book was with the respondent department. Further, the respondents have paid the salary for the period 1.8.2003 to 10.2.2005 as he worked and discharged his duties and as such the deduction made from his retrial benefits under the impugned order is illegal and as such he is entitled for return of such amount as there was no fault on his part. Hence filed this application challenging the impugned order dt. 6.2.2006 (Annexure-1) under which the respondents deducted an amount of Rs. 138.688/ which is the paid salary for the period from 1.8.2003 to January 2005 and also for payment of salary of Rs. 3233/- for the period of 1.2.2005 to 10.2.2005 and also to pay pension in accordance with the service rules.

3. The respondents have filed their Counter Affidavit admitting that the applicant who was appointed on 24.1.1970 on the post of Gang man , promoted as Painter Khalassi and, his date of birth was recorded in service book as 3.7.1943 and as such he attained the age of superannuation on 30.1.2003. But they content that the applicant has irregularly continued in service beyond the age of superannuation and as such they have issued a letter dated 15.2.2005 in order to settle his post retrial benefits as per rules. They further stated that as the applicant stayed in service beyond the age of service, the period of over stay was treated wholly irregular for which he was responsible and thus they are entitled for recovery of such amounts as per the provision contained in

Advanced Correction Slip No.44 of Indian Railway Establishment Code Vol 2 vide Rule 1801 sub Rule D (Annexure R-2). Thus they have justified for recovery of paid salary from the applicant and opposed the claim of the applicant.

4. Heard both side advocates.
5. The point of consideration is whether the applicant is entitled for the relief as prayed for.
6. The admitted facts of the case are the applicant who joined on the post of Gang man on 23.1.1970 worked till 15.2.2005. The date of birth of the applicant was recorded in the service book as 3.7.1943 and basing on the same he attains the age of superannuation on 31.7.2003. Even after the said date of superannuation on 31.7.2003, he continued in service and worked till 15.2.2005 for which the respondents have paid his salary up to January 2005. In the month of Feb 2005, the respondents have issued a letter on 15.2.2005 (Annexure-2) indicating that applicant was retired w.e.f. 31.7.2003 as his date of birth was recorded as 3rd July 1943 in the service book. Thereafter when there was a show cause notice dated 22.2.2005 making allegation against the applicant that he did not inform his retirement and further continued excess from 1.8.2003 to 10.2.2005 and accordingly ordered for recovery from his pensionary benefits. He also issued reply to the said show cause notice and also made representations to the Respondents and subsequently filed O.A. 382.2005 which was disposed of on 17.11.2005 with a direction to the Respondents to pass a reasoned order on the representation of the applicant. Annexure-7 is the copy of order in O.A. 382/2005 on the file of this Tribunal dated 17.11.2005. In pursuance of the said direction of the tribunal, 4th respondent has passed the impugned order dt.6.2.2006 substantiating his claim for recovery of the paid salary from 1.8.2003 to January 2005 to an amount of

Rs.1,37688/- from the pensionary benefits of the applicant. Aggrieved by the said order, the applicant has preferred this application.

7. The short question involved in this application is whether the respondents are justified in recovery of paid salary of the applicant from 1.8.20003 to January 2005 during which he worked after attaining superannuation .

8. As per the service register of the applicant, he attained superannuation on 30.7.2003 but when there was no orders of superannuation of the applicant w.e.f 30.7.2003 from the respondents , he continued to work till 10.2.2005 for which the respondents have paid salary and other allowances up to the end of January 2005 . It is also not in disputed that the applicant never disputed his date of birth as 3.7.1943 as recorded in his service register and also not informed his date of superannuation to the Respondents department and continued in service from 1.8.2003 to 10.2.2005, when the Respondents have issued notice coved under Annexure-2, intimating his retirement w.e.f. 30.7.2003.

9. It is the main contention of the respondents is that as per rules i.e. RBE No. 139/1999 and Advance Correction Slip No.44 Indian REC Vol.2, the Railway department is entitled for the recovery of the pay and allowance paid to the employee after the date of superannuation and thus justified their deductions of the paid pay and allowances of the applicant from the date of superannuation. The Advance Correction Slip No.44 reads as follows:-

**ADVANCE CORRECTION SLIP NO.44
INDIAN RAILWAY ESTABLISHMENT CODE , VOL II
(1987 Edition)**

"In the absence of specific orders to the contrary, every Railway servant shall demit service on the due date of superannuation. In case, for whatever reason other than specific orders to that effect, a Railway servant continues in service, beyond such due date, the period of over-stay be treated as irregular and the pay/allowances etc. drawn during the said period

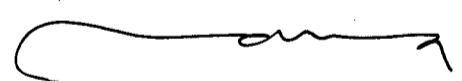


shall be recovered."

10. But the learned applicant counsel argued that claiming refund of the amounts paid for the period after the date of superannuation is not at all equitable and relied on the following decision reported in **(2005) 6 Supreme Court Cases 49 State of U.P. And Another Vs. Shiv Narain Upadhyaya.**

11. The citation relied by the applicant is in respect of an employee working under Executive Engineer, Sharda Saghayak Khand 36, Jaunpur U.P., but the applicant herein was an employee of railway department and as per their Railway Establishment Code, when there is such clear provision, entitlement of the respondents department for recovery of paid pay and allowance for the period of working after superannuation, there is no justification in the claim of the applicant either to challenge the impugned order or for claiming refund of recovered pay and allowances relating to the period of working after attaining superannuation. As such, there are no merits in the claim of the applicant and thus his application is liable for dismissal.

In the result, O.A. is dismissed. No costs.


(M. KANTHAIAH)
MEMBER (J)

8-1-07

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