

**Central Administrative Tribunal Lucknow
Bench Lucknow**

Original Application No. 391/2008

This, the 1st day of December, 2009.

Hon'ble Dr. A. K. Mishra, Member (A)

Shamim Ahmad aged about 69 years son of Late Khaliludden Khan Ex SS/Chief Instructor of Railway PSTS Charbagh N. Railway, Lucknow and resident of House No. 721 Sector 4 LDA colony Jail Road, Post Dilkusha, City Lucknow.

Applicant

By Advocate Sri A.C. Mishra.

Versus

1. The Union of India through General Manager, Headquarter Office Baroda House, Northern Railway, New Delhi.
2. The Chief Works Manager, Northern Railway, Loco Work shop Charbagh, Lucknow.

Respondents.

By Advocate Sri Praveen Kumar for Sri M.K. Singh.

ORDER


By Hon'ble DR. A. K. Misra, Member (A)

This application is for refund of Rs. 9,834/- withheld from the DCRG of the applicant along with interest. The respondents had raised preliminary objection to the maintainability of the application on the grounds of (a) limitation, (b) *res-judicata*. The applicant in his reply to the preliminary objection has brought out that the final rejection of his representation was issued on 6.8.2008 and

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the application was filed within the period of limitation. Secondly, though the subject of recovery from DCRG towards payment of Teaching Allowance was included in the previous O.A. 167/1996, but this issue was excluded from the order passed in that O.A. on 20.2.2004. The applicant explains that this was done primarily to protect that application for the challenge of plural reliefs and it was suggested to the applicant to pursue his claim for refund on account of Teaching Allowance separately. For these reasons, I do not find that the preliminary objections have any justification. Besides, the learned counsel for the respondents did not press these grounds at the time of hearing. Hence, they are overruled and the application is considered on merit.

2. The short point involved in this case is whether the respondent authorities were justified in recovery of Rs. 9,834/- from the DCRG of the applicant towards allegedly irregular payment of Teaching Allowance to him. The applicant was appointed as Instructor at PSTS training Center of the Northern Railway, Loco Workshop, Charbagh, Lucknow. He was paid a special allowance of 30% of basic pay for the teaching work in terms of Northern Railway PS No. 9862. He retired from Railway service while working on this post on 30.1.1996. In the impugned order, an amount of Rs. 9834/- was withheld from the DCRG of the applicant on the ground that the Teaching



Allowance was not sanctioned by the competent authority in favour of the applicant. It is the admitted case of the respondents that no show cause notice was issued to him; neither the amount was paid to him on account of any misrepresentation on his part.

3. The settled law is that the respondent authorities are not entitled to recover any payment made to an employee and received by him as his bonafide dues. In case of irregularity noticed about the payment at a subsequent stage, it could be stopped prospectively, but no recovery could be made for bonafide payments already made unless misrepresentation on the part of the employee is established.

4. Therefore, there is merit in this application. The respondent No. 2 is directed to release Rs. 9834/- deducted from the DCRG. The applicant is also entitled to payment of simple interest at applicable GPF rates during the period, i.e. from the date of recovery till the payment is made.

5. The O.A. is disposed of with the above directions. No costs.

Dr. A. K. Mishra 11/12/09
(Dr. A. K. Mishra)
Member (A)