

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.257/86

Shri Vithal Dagdeo Marathe,
"Baba Gujarati Chawl",
Sardar Patel Road,
At & Post: Manmad,
Dist. Nashik.

.. Applicant

vs.

1. The General Manager,
Central Railway,
GM's office, D.N.Road,
Bombay - 400 001.
2. Dy.Chief Engineer(E/W),
Central Railway,
Engineering Workshop,
At & Post: Manmad,
Dist.Nasik.
3. Workshop Accounts Officer,
Central Railway,
Matunga.

.. Respondents

Coram: Hon'ble Member(J) Shri M.B. Mujumdar
Hon'ble Member(A) Shri P.S. Chaudhuri

Appearances:

1. Mr.E.K.Thomas,
Advocate for the
Applicant.
2. Mr.V.G.Rege,
Advocate for the
Respondents.

JUDGMENT:
(Per P.S.Chaudhuri, Member(A))

Date: 28.3.1989

This application was filed on 28.8.1986 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays for a direction that the amount of Rs.22,883/- recovered from the total Death-cum-Retirement-Gratuity of Rs.30,531.10 sanctioned in his favour be paid to him immediately together with interest thereon @ 12% p.a. with effect from the due date of payment, i.e. from 21.3.1986.

2. The applicant was originally recruited on 28.6.1950 as a skilled Fitter in the scale of Rs.55-130(PS) in the Survey and Construction Organisation of the predecessor to the present Central Railway. He was promoted in the same Survey and Construction Organisation first on 19.2.1951 as

Works Mistry in the scale of Rs.80-160(PS) and, thereafter, on 14.11.1962 as Chargeman 'C' in the scale of Rs.205-280(AS).

3. When a Production Control Organisation was formed in the Central Engineering Workshop, Manmad the applicant was selected for the post of Chargeman 'C' in that Organisation and transferred to that workshop and posted to that Organisation as Chargeman 'C' on 4.9.1964.

4. It may be noted that in the Central Engineering Workshop, Manmad, there are various constituent units, each with its own cadre of supervisory staff, such as the applicant. In addition, there is a Production Control Organisation, the posts in which are deemed to be ex-cadre posts. Thus a Supervisor has a 'parent' cadre in one of the constituent units of the workshop but is also eligible for consideration for posting in the ex-cadre organisation known as the Production Control Organisation. When the Production Control Organisation was set up the posts in it were initially filled by inducting volunteers such as the applicant, but these ex-cadre posts are now filled by drafting candidates from the other cadres of the Central Engineering Workshop. The applicant's parent cadre in the Central Engineering Workshop, Manmad is the Fabrication Shop cadre of the workshop.

5. After coming to the Central Engineering Workshop, Manmad the applicant was selected and promoted on 5.7.1965 to the post of Chargeman 'B' in the scale of Rs.250-380 in the Production Control Organisation. Thereafter, on 21.1.1968 he was repatriated as Chargeman 'B' to his parent cadre, on temporary basis, and worked in that cadre till 10.9.69. He was then brought back to the Production Control Organisation on 11.9.1969 in the same grade of Chargeman 'B' in the scale of Rs.250-380(AS). He was again promoted in the Production Control Organisation as Chargeman 'A' in the scale of Rs.335-485(AS)

w.e.f.10.4.1973. With the coming into force of the revised scales of pay w.e.f. 1.1.1973 the pay of a Chargeman 'B' was revised from the scale Rs.250-380(AS) to the scale Rs.425-700(RS) and his pay was fixed at Rs.560 in the scale Rs.425-700(RS). In the revised scales of pay, the pay of a Chargeman 'A' was revised from Rs.335-483(AS) to Rs.550-750(RS). On the basis of the normal rules regarding fixation of pay on promotion his pay as Chargeman 'A' was fixed by first adding one increment in the lower grade and then fixing his pay at the next stage above in the higher grade. On this basis his pay as Chargeman 'A' in the Production Control Organisation was fixed at Rs.590/- in the scale of Rs.550-750(RS).

6. The post of Chargeman 'A' in the Production Control Organisation that was occupied by the applicant was withdrawn in 1976 and as a result the applicant was reverted to the post of Chargeman 'B' in the Production Control Organisation itself w.e.f. 6.7.1976. Thereafter, he was again promoted as Chargeman 'A' in the Production Control Organisation w.e.f. 19.10.1977 and eventually retired on superannuation from that post on 31.10.1985.

7. Two events took place during this period from 1977 to 1985. A departmental selection for the post of Chargeman 'B' in the applicant's parent cadre, viz. the Fabrication Shop cadre, was held on 25.5.1981. The applicant was one of the employees in order of seniority who were called to appear for the written test. The applicant did appear for the written test but he did not qualify in it. Hence, he was not called for the viva voce test and was not placed on the panel. Being aggrieved at this the applicant filed Regular Civil Suit No.325/84 in the Court of the Civil Judge, Junior Division, Nandgaon praying for rechecking the answer papers and other consequential reliefs. This Suit was transferred to this Tribunal on 10.2.1986 and taken on its file as Tr.No.150/87. It was decided on 20.12.1988 when the application was dismissed.

8. The second event was that on 2.7.1980 the letter reproduced below was sent to the applicant.

"Sub: Grant of increment from 19.10.78 and arrears thereto -

It is advised that your increment raising your pay from Rs.725/- to Rs.750/- from 19.10.1978 in Gr.Rs.550-750(RS) as C/man'A' has been allowed under clear understanding to you.

- 1) that the grant of increment is purely provisional and may be withdrawn and recovered in the event your case is decided otherwise by HQR or Rly.Bd.
- 2) that no arrears will however be worked out and paid until the case is finally decided.

Please acknowledge receipt."

9. It is the respondents' submission that this letter was issued as all the posts in the Production Control Organisation were ex-cadre posts and hence the applicant's promotion from the post of Chargeman'B' in the Production Control Organisation to the post of Chargeman'A' in the Production Control Organisation was a promotion from one ex-cadre post to another ex-cadre post and thus the applicant's pay on this promotion had to be fixed in accordance with the Railway Board's instruction dtd. 23.9.1971. These instructions are reproduced below:

"Recommendation of the Jagannadha Das Pay Commission - Grant of at least one increment on appointment to a higher post.

Reference Railway Board's letter No.PC-64/PP/2 dated 9.9.64 clarifying that the orders contained in their letter No.PC-60/PP/1 dated 28.3.1961 are applicable even in cases of promotion from one ex-cadre post to another ex-cadre post.

The Board have since reviewed the matter and have decided that orders contained in their letter No.PC-64/PP/2 dated 9.9.64 may be treated as cancelled with immediate effect. In cases of appointment/promotion

from one ex-cadre post to another ex-cadre post where the Railway servant opts to draw pay in the scale of the ex-cadre post, the pay in the second or subsequent ex-cadre posts should hereafter be fixed under the normal rules with reference to pay in the cadre post only. Orders regarding the past cases which arose between 1.4.1961 and the date of issue of this letter and were regulated in terms of the orders contained in Board's letter No. PC-64/PP/2 dated 9.9.64 will follow.

This has the sanction of the President."

10. After his retirement on superannuation on 31.10.1985, the applicant wrote to the Deputy Chief Engineer E/W), Manmad on 2.4.1986 requesting that the following payments be arranged within a month:

- "1) Arrears of Regular Increment from 19.10.78 to 31.3.80 + D.A. increasing from time to time + interest thereon uptill now.
- 2) Arrears of Stagnation Increment of Rs.25/- + various D.A. increased from time to time and Interest thereon uptill now.
- 3) Final settlement, DCRG, Pension and etc. to be re-drawn on the basic pay of Rs.775/- + interest thereon uptill now."

The applicant received no reply to this request otherthan the remark contained in the Deputy Chief Engineer(E/W), Manmad's letter dtd. 1/4/8/1986 to the Workshop Accounts Officer(Settlement Section), Matunga saying that the issue in respect of the deduction of payment of Rs.20,883=00 (over drawn wrongly) and Rs.2,000/- towards future debit was under correspondence.

11. Being aggrieved at this, the applicant filed the present application on 28.8.1986. The respondents have opposed it by filing their reply. We heard the oral submissions of Mr.E.K.Thomas, learned advocate for the applicant and Mr.V.G.Rege, learned advocate for the respondents. We also went through the record brought by the respondents.

12. It is the respondents' submission that in terms of the Railway Board's letter dated 23.9.1971 mentioned above, the pay of the applicant on his promotion from Chargeman 'B' in the Production Control Organisation to Chargeman 'A' in the same organisation w.e.f.10.4.1973 was required to be regulated in terms of the pay drawn by him in his parent cadre, viz. Structural Yard. The pay of the applicant was, however, fixed with reference to the pay drawn by him as Chargeman 'B' viz. Rs.560/- in the scale of Rs.425-700(RS). His pay as Chargeman 'A' in the scale of Rs.550-750(RS) was accordingly fixed at Rs.590/- as under:

Pay in lower grade	Rs.560/-
Add one increment in lower grade }	Rs. 15/-
Total:-	<u>Rs.575/-</u>
Next stage above in higher grade }	Rs.590/-

It was the respondents' submission that the applicant's post in his parent cadre was that skilled ~~d~~ Fitter in the scale of Rs.260-400(RS) and that the applicant had failed to qualify in the departmental **selection** that was held in 1981 for the post of Chargeman 'B' in his parent cadre, viz. the Fabrication Shop cadre, as mentioned earlier. It was their contention that thus, in terms of the above mentioned Railway Board's letter dtd. 23.9.1971, his pay should have been fixed at Rs.550/- which is the minimum of the scale for Chargeman 'A' viz. Rs.550-750(RS)

13. A number of submissions were made on behalf of the applicant. The first was that at no time during his service or after his retirement had he been informed that his pay was liable to be refixed in terms of the Railway Board's letter dtd. 23.9.1971. The respondents countered this by submitting that they had written to the applicant on 2.7.1980. We have quoted that letter earlier and all that it does is to inform the applicant that the increment raising his pay

from Rs.725 to 750 in the scale of Rs.550-750(RS) from 19.10.78 was in dispute. This letter does not inform the applicant that in fact his pay fixation right from 1973 was in dispute.

14. The second submission was that had he refused his promotion as Chargeman 'A' on 10.4.1973 and, instead, continued as Chargeman 'B' he would have continued to draw more pay right upto 1.10.1984. It was his submission that had he received proper information he might well have refused this promotion. It was his contention that it was only from 1.10.1984 that his pay as Chargeman 'A' would at last have equalled his pay in the lower post of Chargeman 'B' and it was only from 1.10.1985 that he would have benefitted financially from the promotion as Chargeman 'A'.

15. The third submission on behalf of the applicant was that the alleged error in pay fixation took place on his promotion as Chargeman 'A' in 10.4.1973 and recoveries were undertaken only after his retirement on superannuation on 31.10.1985 i.e. after a lapse of over 12 years. The respondents sought to counter this by saying that the issue was under correspondence. But they had not even informed the applicant that the matter was under correspondence, let alone informing him that some of authorities concerned were advocating a course of action which would have resulted in its settlement in his favour. Had they done so the applicant might well not have had to take recourse to this litigation. But, be that as it may, the applicant was not in the know of what was happening and he was not informed that a view might be taken that he was being overpaid.

16. The next submission on behalf of the applicant was to cite Section 'B' of Chapter XII of the Indian Railway Establishment Manual. Para 1214 thereof is reproduced below:

"1214. An erroneous payment may be either due to a wrong interpretation of financial rules or to oversight. The following procedure should be observed in regard to either :-

- (a) when a wrong interpretation of a financial rule has been followed in an Accounts Office, the new interpretation should be given effect to from the date which the competent authority may decide when giving the correct interpretation. If no date is specifically fixed, the correct interpretation should be given effect to from the date it is stated by the competent authority; and
- (b) when erroneous payments have been passed through oversight in the Accounts Office, payments made less than twelve months ago should be recovered and orders of competent authority obtained with regard to previous overpayments."

It was the applicant's submission that in his case there had been no wrong interpretation of a financial rule inasmuch as the respondents had initially taken no action in his case on the basis of the Railway Board's letter dtd.

23.9.1971. It was his contention that the only view that the respondents could take was that erroneous payments had been made. Had this been their view, this rule required that the orders of the competent authority should have been obtained with regard to overpayment more than 12 months old. It was the applicant's contention that no such orders had been obtained. The respondents also did not show us any such orders from the competent authority.

17. The final submission on behalf of the applicant was that this recovery on account of alleged overpayments had resulted in serious civil consequences to the applicant and that it is now settled law that this could not be done without issuing him a showcause notice setting out all the circumstances and affording him an opportunity of hearing to state his case as one of the basic requirements of the

principles of natural justice. Without any doubt that had not been done in this case.

18. A similar matter was decided in C.S.Bedi v. Union of India and another(ATR 1988(2)CAT 510). In this judgment there is also a reference to Nilkantha Shah (1987(3) SLJ (CAT) 306). Para 15 of the judgment in C.S. Bedi's case is reproduced below:

"15. I will even assume that there was a mistake in the fixation of pay of the applicant and that mistake came to the light of the authorities only in 1986 and that mistake is even rightly sought to be corrected by them. Whether in such circumstances, recoveries should be permitted or not came up for consideration before a Division Bench of the Calcutta Bench of this Tribunal in Nilkantha Shah's case where the delay was only 7 years as against 16 years in the present case. In upholding the claim in that case that in such cases recoveries should not be permitted, the Division Bench expressed thus:

"7. We have, however, taken into account the fact that the respondents took more than seven years in detecting their mistake regarding wrong fixation which resulted in overpayment of more than Rs.13,000/- and even after waiver of 50% on compassionate ground, the applicant is required to pay back more than Rs.6,000/- from his salary. When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years."

On this ratio which is binding on me, the applicant in this case is also entitled to succeed."

We are in respectful agreement with this view and are of