

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 717 of 2005

Date of order : 31.1.07

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Nawal Kishor, S/o Late Bhagwat Singh, r/o Chakhu Saini,
P.O.& P.S. - Mansi, District – Khagaria.

....Applicant

By Advocate : Shri Abdul Hakim.

Vs.

1. The Union of India through the General Manager, E.C. Railway, Hazipur.
2. The General Manager, E.C. Railway, Hazipur.
3. The Divisional Railway Manager, Sonepur.
4. The Divisional Railway Manager (Personnel) Sonepur Division, Sonepur.
5. The Divisional Railway Manager (Engineering), Sonepur.
6. The Section Engineer (Works), Khagaria, E.C. Railway, Khagaria.
7. The Financial Advisor and Chief Accounts Officer (Pen), N.F. Railway, Gorakhpur.
8. The Financial Advisor and Chief Accounts Officer (Pen), E.C. Railway, Hazipur.
9. Sr. Divisional Finance Manager, Sonepur Division, Sonepur.

....Respondents

By Advocate : Shri S.K. Singh



ORDER

By Sadhna Srivastava, M (J) :-

This petition involves two points for adjudication, firstly refund of Rs. 50,044/- recovered from the gratuity on account of over payment of salary and secondly, fixation of pensionery benefits on the last pay drawn.

2. The facts are that the applicant joined as Blacksmith in Railways on 1.6.1964 and retired on 31.12.2001 as Blacksmith Grade I in the pay scale of Rs. 4500-7000/- drawing basic salary of Rs. 5625/-. The authorities, while preparing the pension papers of applicant, determined his pensionery benefits on the basis of salary at Rs. 5250/-, contrary to Rs. 5625/- which the applicant was drawing at the time of retirement. The applicant was informed , after his representation during the pension Adalat (Annexure A/8) and subsequently, as well by Annexure A/9 dated 12.11.2003 that his pay was wrongly fixed during service period. The same has been corrected. He has been overpaid. Therefore, the amount of Rs. 50,044/- which was



overpaid to him has been recovered from his gratuity. The applicant feeling aggrieved has approached the Tribunal. He has sought two reliefs:- (i) to refund amount of Rs. 50,044/- , and (ii) fixation of pension and pensionery benefits on the basis of last pay drawn i.e. Rs.5625/-.

3. Heard learned counsel for the parties and perused the pleadings.

4. There are catena of decisions which lay down that the excess payment made to an employee without there being any misrepresentation or inducement on the part of the employee, it is not open to the employer to recover the same. I may at this stage only refer to three decisions on this point.

(a) Mahendra Prasad & Others vs. State of Bihar; 2006 (1) PLJR 139, (b) Gupteshwar Prasad Vs. State of Bihar; 1999 (3) PLJR 572, and (c) Sahib Ram Vs. State of Haryana , 1995 Suppl. (1) SCC 18. Therefore, I have no hesitation to hold that the applicant is entitled to refund of Rs. 50,044/- recovered from pensionery benefits on account of excess payment of salary during his service period.



5. The second question is about fixation of pension and pensionary benefits on the basis of the pay for last 10 months @ Rs. 5625/- or Rs. 5250/- or any other amount. It is settled proposition that the pensionary benefits have to be calculated and paid on the basis of average emoluments drawn by an employee during the last 10 months of service as per Rule 50 of the Railway Service Pension rules, 1993. However, the respondents have proceeded to fix the salary of the applicant at the lower stage with effect from 1.3.1993. It was done without any show cause to the applicant. It came to notice of the applicant only on receipt of pension papers. It is settled law that no order bearing civil consequences can be passed without opportunity of hearing.

6. Therefore, the respondents have to grant an opportunity to the applicant to make submission by way of writing or orally and then pass reasoned and speaking order, determining the average emoluments of last 10 months for fixation of pensionary benefits. The applicant has already known what the respondents have done in the matter

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of fixation of pension. Therefore, he can exercise the option of making written submission forthwith to avoid delay.

7. The OA is disposed of with the following directions:-

(i) The respondents will refund the amount of Rs. 50,044/- with interest @ 6 % per annum within one month from the date of receipt of copy of this order.

(ii) The respondents shall pass reasoned and speaking order regarding the fixation of pay for the purpose of pensionary benefits in the light of observations made above in the body of the judgment, after due opportunity to the applicant, within a period of 45 days from the date of receipt of copy of this order. The OA stands disposed of, accordingly. There shall, however, be no order as to the costs.


[Sadhna Srivastava] M [J]

/cbs/