

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1236/96.

Date of Decision: 26-03-98

N.B.Shaikh,

.. Applicant

Shri G.S.Walia.

.. Advocate for  
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ?

*M.R. Kolhatkar*  
(M.R. KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1236 /96.

Profoundly, this the 26<sup>th</sup> day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

N.B.Shaikh,  
C/o.G.S.Walia,  
Advocate, High Court,  
16, Maharashtra Bhavan,  
Bora Masjid Street, Fort,  
Mumbai - 400 001.

... Applicant.

(By Advocate Shri G.S.Walia).

V/s.

1. Union of India, through  
General Manager,  
Western Railway,  
Head Quarters Office,  
Churchgate,  
Mumbai - 400 020.
2. Divisional Railway Manager,  
Mumbai Division,  
Western Railway,  
Bombay Central,  
Mumbai - 400 008.

... Respondents.

(By Advocate Shri V.S.Masurkar)

ORDER

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged the letter of the Headquarters Office, Western Railway dt. 2.4.1996 (at page 10). The relevant portion of the order is as below :

"Prior to your retirement, your service record & leave record was checked and found that the period of absence from 16.7.1984 to 30.9.1985 i.e. 442 days is treated as without pay, without affecting the pensionary benefit, but the same has been considered for granting annual increment. Your 442 days without pay should not have been taken into account for granting annual increment. You remained on leave "without pay" for the period of granting annual increment. This mistake has been rectified and your pay revised by putting back, your increment. Your revised fixation has been made after adjusting 442 days leave without pay.

According to revised position your pay as on 31.10.1994 Rs.2,375/- and over payment due to granting of increment erroneously in 1984 and subsequent fixation of pay from time to time worked out to Rs.17,171/- has been recovered from your DCRG at the time of retirement."

The applicant is challenging the action of the respondents of deducting Rs.17,171/- on account of over payment from DCRG <sup>and</sup> also refixing the pay of the applicant from Rs.2,525/- to Rs.2,375/-.

2. The applicant contends that after his retirement on 31.10.1994 on superannuation, since there was delay in release of his DCRG, he made a representation on 30.12.1994 to the Divisional Safety Officer,                      Mumbai Central, Western Railway who was the controlling and leave sanctioning authority of the applicant, stating therein that the applicant was sick from 16.7.1984 to 30.9.1985 i.e. for a total period of 442 days and the Divisional Safety Officer passed a remark as under on his application granting extraordinary leave to the applicant :

"LWP in case of Shri N.B.Shaikh is sanctioned without affecting the pension and qualify for all purposes and benefits. There is no question of retaining the gratuity. The same should be released immediately."

The applicant, therefore contends that his absence for the period of 442 days in 1985 stands regularised and there can be no question of withholding increment during this period and on that basis reducing his pay and ordering recovery of alleged overpayment. The contention of the applicant is that even assuming that leave was not regularised, no opportunity was given to him to show cause why his pay should not be fixed by way of rectification of mistake and action of respondents is violative of the principles of natural justice. According to applicant, as per Rule 2022(b) R II extraordinary leave taken on account of illness covered by medical certificate counts for increment. Further in accordance with item 8

in Appendix XXX II - R - II, power has been delegated to the Competent Authority to allow at their discretion, the counting of extraordinary leave as per Rly. Board's letter No.F(E)III-71 PNI/28 of 7.3.1972. Lastly, the applicant relies on the Railway Board's letter No.E(G) 83LE 1-3 dt. 8.3.1985 from the Desk Officer, Establishment, Railway Board, New Delhi to the General Managers All Indian Railways and Ors.is as below:

" Sub: Maintenance and verification of leave accounts and qualifying service for pension.

...

Reference instructions contained in Board's letter No.E(G)7OLE1/4 dt. 20.8.70 and 2.1.71 wherein it has been provided that at the time of retirement/termination of service of employees, the scrutiny of leave accounts should be restricted to the last three years of their service in all cases.

Instances have been brought to the Board's notice that the above instructions are still not being followed strictly on the railways and in a number of cases, the scrutiny of leave account has been extended to a period beyond the limit of 3 years before retirement which has resulted in recovery of over payments having been made to the employees thus causing hardship to them. Since this is a deliberate decision, it may be reiterated that the scrutiny should be restricted to the last three years of the retiring employees as provided in the instructions referred to above."

3. The respondents have opposed the O.A. Firstly, preliminary objection <sup>(15)</sup> taken that the O.A. is barred by limitation since it relates to the grievance of the applicant relating to the period of 84-85. Secondly, the Divisional Safety Officer has not been made a party respondent to the O.A. On merits, it is contended that the Divisional Safety Officer was not competent to regularise the absence of the applicant. The leave record itself <sup>that</sup> ~~evidences~~ the applicant was shown as absent during the relevant period viz. 16.7.1984 to 30.9.1985 and the same has not been regularised. ~~that~~ Since the applicant was

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absent during this period, he ought not to have<sup>been</sup> granted increments in terms of Rule 1320 of the IREM corresponding to F.R. 26, but the increment was wrongly allowed and the matter was required to be rectified and the same was done before releasing the DCRG and the action of the respondents in deducting over payment from DCRG and reducing the pay is perfectly valid. So far as the Circular of the Railway Board relied on by the applicant viz. dt. 8.8.1985 is concerned, it is contended that the same is not applicable to the case of the applicant.

4. In my view, the Divisional Safety Officer's order relied on by the applicant is not an order of the Competent Authority to regularise the absence of the applicant. However, the fact remains that no action was taken by the administration for 9 years to rectify the mistake and the mistake was rectified only at the time of retirement of the applicant. It is well settled by a series of Judgments of the Tribunal that recovery of over payment on the ground of rectification of mistake beyond a period of 7 years is not permissible. The applicant, therefore, is entitled to the refund of the over payment of the amount of Rs.17,171/- from the DCRG of the applicant. The counsel for the applicant, however, would rely on the Railway Board circular dt.8.8.95 referred to above. This circular refers to the earlier instructions that at the time of retirement of the employee, the <sup>of leave accounts</sup> scrutiny of the employee should be restricted to the last three years of the service. These instructions are directory and not mandatory. The public interest in correct maintenance of record and avoidance of unjustified drain on the exchequer must

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over ride such directory instructions issued in the interest of the welfare of the employees. If inspite of the direction of the Railway Board not to scrutinise leave accounts beyond three years, the leave account was in fact scrutinised and it came to notice that the pay fixation of the applicant was done by taking account of increments which were not warranted by rules. ~~then~~ the Railway administration is entitled to correct their mistake and act thereon. In view of this consideration, I am not inclined to grant the relief of quashing the refixation of pay of the applicant from Rs.2,525/- to Rs.2.375/-.

5. The O.A. is therefore partly allowed and the respondents are directed to refund the amount of Rs.17,171/- with 12% interest to the applicant within three months from the date of communication of the order. There will be no orders as to costs.

*M.R. Kolhatkar*  
○ (M.R. KOLHATKAR)  
MEMBER (A).

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