

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA 176/2000

MUMRAT, THTS THE 15<sup>TH</sup> DAY OF JUNE, 2001

Hon'ble Mr. Shanker Raju, Member (J)

Shri P.V.Dalimbe  
Retired Guard 'A'  
Special, under DRM  
C.Rly. Mumbai, CST  
C/o Shri K.B.Talreja  
Advocate High Court  
Phulwadi, Plot No. 16  
Dev Samaj Road, Ulhasnagar - 421004

...Applicant

(By Advocate Shri K.B. Talreja)

V E R S U S

1. The Union of India,  
Through the General Manager  
Central Railway, Mumbai CST.
2. The Divisional Railway Manager  
Central Railway, Mumbai, CST

...Respondents

(By Advocate Shri Suresh Kumar)

O R D E R

By Hon'ble Shri Shankar Raju, Member (J)

In this OA the applicant who is a retired Special Guard 'A' Mail Trains of Central Railways assails an order dated 9.12.89 whereby a recovery of Rs.54,000/towards wages for 256 days for the broken period from 8.9.84 to 7.12.96 has been recovered from his retiral benefits and also non grant of transfer and packing allowance. The applicant has prayed for refund of the recoveries made and payment of allowances, revised retiral benefits as per the recommendations of the Fifth Pay Commission alongwith penal interest.

The applicant states that the recoveries had been effected from him without according him a reasonable opportunity to show cause and the packing as well as transfer of allowances have been denied to him despite

issuing him complementary passes. It is contended that the complementary passes are given itself indicates that the applicant had applied for packing as well as transfer allowances. It is a grievance of the applicant that no calculation sheet has been provided to him by the respondents and his retiral benefits have not been properlyt worked out in view of the Vth Central Pay Commission's recommendations. Placing reliance on para 1014 (B) of the JREM, it is stated that in case of erroneous payment due to oversight payment made less than 12 months ago could be recovered only. The learned counsel for the applicant has placed reliance in the ration of the apex Court judgement in Shayam Babu Verma Vs. UOI reported in 1994 (27) ATC 121 to contend that in the event of access payment due to administrative error, recovery of the same cannot be made from the pay of the petitioner and has also placed reliance on the decision of this Tribunal in Kanta Rathore Vs. UOI (OA 829/91) decided on 2-7-1996 to contend that recovery of over payment cannot be affected after a long time without a show cause notice.

The respondents in their reply rebutted the contention of the applicant and stated that the retiral benefits of the applicant have been worked out correctly, Keeping in view the recommendations of the Vth CPC. It is stated that as the applicant has not submitted his application for grant of transfer and packing allowance stating his change of address, he could not be paid the same. As regard the payment of leave salary, it is contended that the same has no relation with the recovery of over drawn salary and as the applicant was paid full wages without having leave on average pay to his credit inadvertently

it has been mentioned in the order that Rs. 54,000/have been recovered on account of over drawn wages for 256 days whereas Rs. 52,650/- have been recovered on account of overdrawan wages of 402 days for non-broken period from 8-9-84 to 7-12-96. The respondents have also annexed R-1 as Calculation Sheet to demonstrate that the overdrawn wages have been recovered correctly from the applicant. It is lastly contended that as the applicant has been called in the office to attend, but had not reported and also attended the Pension Adalat, which suggested him to contact the respondents on 29-12-1999, but he had not complied with the same.

The applicant in his rejoinder reiterated his contentions taken in the OA and further disputed the Calculation Sheet of the respondents pertaining to the leave account and over drawn wages and stated that the applicant has never been called by the respondents with regard to settlement of retiral dues. I have carefully considered the rival contentions of the parties and perused the material on record. As regard the question of packing and transfer allowance, I find that the applicant has although not submitted his application for grant of transfer and packing allowance, but yet by according him passes the respondents have themselves acknowledged the requirement for grant of these benefits and as such denial of the same would not be legally tenable.

As regard the recovery towards overdrawan wages for 256 days to the tune of Rs. 54,000/- which was subsequently stated to be Rs. 52,650/- for 402 days. I find that the facts are disputed by the parties. The calculation sheet annexed by the respondents showing the details is denied by the applicant and rather he has shown his own

calculation whereby the leave account is different from what the respondents have calculated. It is an admitted fact that before issuing the order dated 9-12-1999 whereby the recoveries have been ordered against the applicant and his gratuity etc. have been withheld by the respondents, the applicant has not been afforded a reasonable opportunity to show cause. This in my view is violative of the principles of natural justice, as on account of the impugned order and pursuant recovery the applicant has been visited with civil consequences after his retirement but he has been deprived of an opportunity to present his case before the authorities and to show cause against the proposed action of the respondents. In this view of <sup>mine</sup> I am fortified by the ratio laid down by the Apex Court in D.K. Yadav v. J.M.A. Industries, 1993 (L&S) 723. In my confirmed view the applicant has been greatly prejudiced by the non-issuance of show cause notice before effecting recovery against him as he could not present his case to the respondents by giving his own calculation.

The contention of the applicant that in view of para 1014 (b) of TREM recovery cannot be effected beyond 12 months is not tenable in view of the provisions of Rule 15 of the Railway Service (Pension) Rules, which provides assessment of Government dues after retirement and consequent recovery from the gratuity and other retiral benefits pertaining to dues of over-payment of pay and allowances, leave salary etc. and also in view of the ratio laid down by the Apex Court in V. Gangaram v. Regional Joint Director and Others, 1997 (6) SCC 139,

where it has been held that excess amount is to be recovered from pension in instalments to be distributed proportionately so as not to cause any undue hardship.

Having regard to the discussion made above and the reasons recorded the OA is allowed. The impugned order dated 9.11.1999 is quashed and set aside. The respondents are directed to accord a reasonable opportunity to show cause to the applicant by furnishing him the details of the recovery and affording him a reasonable opportunity to make a representation by giving his own calculation and version. The respondents thereafter shall pass a detailed and speaking orders. It is, however, made clear that the retiral benefits withheld by the respondents shall be kept in abeyance and a decision shall be taken on the basis of the reply of the applicant. The aforesaid directions shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

S. Raju

(Shanker Raju)  
Member (J)

24/11/2005-27.

None for the parties.  
Adjourned to 12/1/2005.

*A.K. Agarwal*  
(A.K. Agarwal)  
V.C

alp

for R  
20/11/05

12/1/2006-37.

Shri K.B. Takeja for Applicant.  
Shri K.B. Takeja for Respondents.  
Shri R.R. Shetty for Respondents.  
The learned counsel for the  
Respondents stated that case  
has already been decided  
on 15/6/2001. It is also  
recorded in the order sheet  
dated 19/8/2003 that OA has  
been disposed, yet appears to  
have been wrongly listed.  
Let the record be consigned  
to the record room.  
Thereafter Registry has again  
listed the case for hearing.  
Let the Registry submit a report  
now the case is again listed  
as it has already been  
disposed of.

*Shri  
Mugaffar Husain*  
(Mugaffar Husain)  
m(J)

alp.

*L(AJL)  
16/11/05*