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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 744/93

Transfer Application No: --

DATE OF DECISION: 11-1-95

Shri K.S.Rao

Petitioner

Mr.V.N.Parlikar

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr.V.S.Masurkar

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri --

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
M(A))

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.744/93

Shri K.S.Rao,
Mathura Apartments,
Flat No.5-A,
265, Narayanpeth,
Opp. Vijaya Talkies,
Pune - 411 030.

.. Applicant

-versus-

1. Union of India
through
The General Manager,
Central Railway,
Bombay VT.

2. The Divisional Railway
Manager,
Bombay Division,
Central Railway
Bombay V.T.(Annexe Bldg.,)

3. The Station Superintendent,
Central Railway,
Pune Station,
Pune 411 001.

.. Respondents

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

Appearances:

1. Mr.V.N.Parlikar
Counsel for the
Applicant.

2. Mr.V.S.Masurkar
Counsel for the
Respondents.

JUDGMENT: Date: 11-1-95
(Per M.R.Kolhatkar, Member(A))

The applicant retired from the post of Head Parcel Clerk, Central Railway, Pune on 31-7-1992. Prior to retirement a letter was received in his office at Annexure-1 dated 4-9-91 from Senior DRM Bombay V.T. stating that the applicant should have drawn a pay of Rs.1800/- p.m. in the revised pay scale of Rs.1400-2300 w.e.f. 6-8-90 as against which he is being allowed a pay of Rs.1950 p.m.

Therefore the overdrawn wages were directed to be recovered. The applicant made representations on 31-12-91 and on 21-6-92. The same were not heeded. A recovery of Rs.1500/- @Rs.500/- per month was made from the pay bills of the applicant ~~course of~~ in the ~~in the~~ three months prior to the date of retirement. According to the applicant there was no overdrawal; if at all, it is under drawal. In case there is an overdrawl, the procedure as given in Rule 1013 and 1014 of the IREM is to be followed. It is not followed in this case. Rule 1014 reads as below :

"1014. 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 overpayment."

Therefore the applicant, in the first instance wants the impugned order dated 4-9-91 to be quashed.

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2. The applicant further states that he was promoted on two occasions; from 1-2-84 in the scale of Rs.425-640 and from 1-2-86 in the scale of Rs.455-700 and in the case of promotion, the railways are required to follow the procedure as given in Rule 1316 corresponding to FR 22C and Rule 1317 corresponding to FR 23. These rules envisage that the holder of a promotional post is to be given an option to draw an increment in the lower post before fixing his pay in the higher promotional post. If the department had followed this rule strictly, then according to the applicant his pay at the time of retirement should have been Rs.2050/- and not Rs.1850/- as was allowed by the respondents ^{after objection} or Rs.1950/- as was actually drawn by the applicant at the time of receiving objection. These calculations have been shown by the applicant at Annexure-5, page 19 and 20. The second prayer of the applicant is to allow pay scale of Rs.2050/- per month at the time of retirement and also to give arrears between the amount as claimed by him and the amount actually allowed (to the applicant).

3. The respondents have objected firstly that the applicant has not exhausted departmental remedies. He made his representation on 31-12-91 and 21-6-92 to DRM whereas he ought to have made his representation to the General Manager. Secondly the impugned order is dated 4-9-91

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and the application was filed on 27-7-93 and therefore the application is time barred. Thirdly, it is stated that the whole matter has been reviewed by the department; the original recovery was correct because the applicant was wrongly promoted on ad-hoc basis by order dt. 3-5-86 in the grade of Rs.455-700 without completing two years of regular service. The applicant was regularly promoted only on 10-2-1987. However, the respondents have further reviewed the applicant's case and his pay has been refixed p.m. at Rs.1900/- as on 1-3-92 as against Rs.1850/- p.m. ~~objection~~ as per the original ~~memo~~ and Rs.2050/- p.m. claimed by the applicant in his application. According to the respondents the respondents having reviewed the pay fixation the original recovery of about Rs.9,000/- has been reduced since to Rs.6392/- and Rs.1500/- have been already recovered the applicant is still required to make payment of Rs.4892/- The respondents have already revised the pension of the applicant accordingly.

4. The applicant has relied on the case of C.S.Bedi v. Union of India & anr., ATR 1988(2) C.A.T. 510. In that judgment relying on the observation of the Calcutta Bench in the case of Nilkanth Shah, 1987(2)SLJ(CAT)306, where recovery on account of detection of a mistake committed seven years back was disallowed, it was laid down that recovery of excess payment after such a long lapse of time is against the principles of natural justice and is liable to be quashed.

5. In our view the issue of recovery of overpayment on the basis of the reviewed pay fixation of the applicant is an issue which is **separate** from ~~xxxxxx~~ the further prayer of the applicant that his pay fixation is required to be further revised so that his monthly pay becomes Rs.2050/- as against Rs.1900/- after review p.m. as being permitted~~and~~ Rs.1850/-p.m. which was the pay scale which would have been allowed in case the impugned order **were allowed** to have its full effect. In our view following the ratio of C.S.Bedi's case the respondents are not entitled to make recovery of Rs.6392/- from the applicant in respect of wrong pay fixation done by them in 1986.

6. So far as the pay fixation claimed by the applicant is concerned that is a matter which we are not in a position to adjudicate because the detailed working sheet are not available to us. We would therefore like the matter of pay fixation to be left open. We are therefore of the view that the application partly succeeds and therefore dispose of the same by passing the following order :

O R D E R

The impugned order dated 4-9-91 ordering recovery from the applicant in respect of pay fixation of 1986 without issuing a showcause notice to the applicant is hereby quashed and set aside. The respondents are restrained from making recovery from the applicant's salary/pension

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in terms of this order. Since an amount of Rs.1500/- has already been recovered respondents are directed to repay the amount to the applicant.

So far as the balance recovery of Rs.4892/- is concerned, respondents are also restrained from making any recovery of the same. It is open to the applicant to make a further representation to the respondents in case he feels that the pay fixation which involves payment of Rs.1900/- p.m. to him at the time of retirement was wrongly done. The respondents are directed to dispose of the representation within three months of receipt of the same provided the applicant makes that representation within a fortnight of the communication of the order.

There would be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)