

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1091/94

(9)

Transfer Application No.

Date of Decision 13.10.95

A.K. Ravi

Petitioner/s

Shri.S.N.Pillai

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri.V.G.Rege

Advocate for  
the Respondents

CORAM :

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

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)  
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(10)

O.A. 1091/94

A. K. Ravi .. Applicant

Vs.

1. Union of India  
through  
The General Manager  
Central Railway  
Bombay V.T.
2. The Sr.D.E.E (TRS)  
Curla Carshed,  
Central Railway,  
Bombay 400 070.
3. The Sr.D.A.O  
Central Railway  
Bombay V.T .. Respondents

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

Appearance

1. Shri.S.N. Pillai  
Advocate  
for the applicant.
2. Shri. V.G.Rege,  
Advocate  
for the respondents

JUDGMENT

DATED : 13-6-95

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

In this Original Application under Section 19 of the Administrative Tribunals Act, the facts are as below :

The applicant while working as Chargeman 'A' Grade Rs.550-750, was transferred as Electrical Inspector Gr.Rs.550-750 with 15% Special Pay in the Production Control Organisation on 22-3-1986. He was subsequently selected as Apprentice Assistant Electrical Foreman Gr.Rs. 700-900 with effect from 2-7-1986. On implementation of IVth Pay Commission recommendations, the pay of the applicant was fixed by including the element of 15% special pay. On 15-6-1994 he was informed that his pay has been wrongly fixed in grade Rs.1,600-2,660 (RPS) by taking

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into account the 15% special pay and pay fixed to Rs.2,480 on 22-03-86 erroneously involves over payment. He was advised that it is proposed to fix his pay afresh and over payment will be recovered in suitable instalments in regular paysheet. The applicant represented on 9/8/94 and he was informed in detail vide letter dated 6/10/94 as to how the over payment occurred and what was the extent of over payment from 22-3-1986 to 30-9-1994 to be recovered in suitable instalments. The applicant has impugned this letter dated 6-10-1994. He has first of all questioned the method of refixation and secondly he has questioned the recovery after a considerable lapse of time. The respondents have opposed the application and have contended that the pay fixation has been done correctly in accordance with the Railway Board instructions and secondly, the Railway Board administration is within its rights to make recovery on account of over payment. It is first of all contended that the applicant has relied on a Circular of the Railway Board which does not apply to his case. That circular is the circular dated 29-10-86, at Exhibit 'A6' read with the subsequent circular dated 30-1-1987. The circular dated 29-10-86 states that the existing quantum of special pay granted to Group 'B', 'C' and 'D' staff should be doubled subject to a ceiling of Rs.500/- per month. Circular dated 30-1-87 states that where special pays were being drawn prior to 1-1-86 as a percentage of basic pay, only the actual quantum of special pay drawn by incumbents on 31.12.85 will stand doubled in accordance with Board's instructions of 29-10-86 and not the percentage. It is also stated that this clarification will also be applicable to special pay payable to staff of

Production Control Organisations in terms of Board's instructions dated 13-9-84. According to the respondents since the applicant was working under the Railway administration prior to 1.1.86, he cannot be considered to be a selectee on or after 1.1.86 nor ~~had~~ he ~~been~~ retained the existing scale of pay on or after 1.1.86. Hence, the provisions contained in Board's letter dated 30.1.87 are not applicable to the facts of the case of the applicant. Moreover, the special pay which was granted to the applicant while he worked in the production control organisation was not the special pay as understood in the ordinary sense of the said term, but it was a special kind of special pay in lieu of incentive bonus. Such special pay is not to be reckoned for the purposes of fixation of pay on promotion within the production control organisation or for protection of pay on reversion to the shop floor. In such cases, the pay is to be fixed under the normal rules excluding the element of special pay. According to the respondents, they have clarified the position fully to the applicant and <sup>there</sup> cannot be stated to be any violation of principles of natural justice. The over payment is in the region of Rs.80,000 and these are public funds and in accordance with the Code for the Accounts Department, when erroneous payments have been passed through oversight, payments made less than twelve months ago should be recovered and the orders of competent authority obtained with regard to previous overpayments. In terms of Schedule of Powers on Establishment Matters, a Senior Scale Officer has full power to order recoveries of over payments in instalments in respect of non-gazatted railway servants. If over payment is made, the accounts department is required to take all possible action and therefore

the action ordering full recovery has rightly been taken.

2. According to the applicant, the interpretation placed by the respondents on the Railway Board's circular is wrong and the applicant is entitled to as well as non-recovery. protection of special pay. In this connection, the applicant has relied on Krishna Naayan Basu Vs. Union of India & Ors. (O.A. 944 of 1989) decided by the Calcutta Bench of the Tribunal on 26-6-90. That case was decided on the short point of ordering recovery of over payment on account wrong fixation of pay after a lapse of 11 years from 1974 to 1985 when the applicant superannuated. That case has also given a series of case law in which similar view was taken, as under :

1. C.S.Bedi v. UoI ATR 1988(2) CAT 510
2. Smt.Pushpa Bhide v. UoI ATR 1989 (1) CAT 397
3. T.R.Sundaraja Iyengar v. PMG SLJ 1989(1) CAT 238
4. Smt.Krishna, widow of R.K.Kapoor v. UoI 1988(3)SLJ 599 CAT
5. N.N.Baidya v. UoI - OA 428 of 1989 (unreported) of Calcutta Bench.

3. The Circular dated 14-8-1987 from the Railway Board at Exhibit '31' reiterates that special pay in lieu of incentive bonus admissible in PCO should not be reckoned as pay for purpose of fixation of pay on promotion within the PCO or for protection of pay on reversion to the Shop Floor. In our view, therefore, there is no manner of doubt that there was an erroneous pay fixation and that the applicant is not entitled to any relief on the ground that the pay fixation was wrong.

4. The next question, however is whether after a lapse of time, the railway administration is entitled to make recoveries from the salary of the employee. In this connection, we also take note of the Supreme

14

-5-

Court judgment quoted by the counsel for the applicant vide Bhagwan Shukla vs. Union of India (1994(6)SCC 154). That was a case in which pay fixation was done in 1970 and it was sought to be corrected and recoveries sought to be made in 1991 i.e. after a lapse of 21 years. The Apex Court set aside the order of recovery and pay fixation on the short ground that principles of natural justice were not followed. In our view, this case has no applicability to the present case. The lapse of time is very short, namely about 7 to 8 years and it cannot be said that the applicant had no notice as to circumstances under which correction in pay fixation has been ordered. So far as the case of Krishna Naayan Basu vs. Union of India and other cases referred to therein are concerned, we note that those cases proceeded on the basis that the over payment was sought to be recovered after several years. While term 'several years' has not been defined, it appears that the ratio of various judgments would be that the period lasting over a decade would be regarded as a long period which will disentitle the government from making recovery. Secondly, several of these cases relate to payment of pension and gratuity and especially recovery sought to be enforced from out of death-cum-retirement gratuity. This is not so in the present case. In the instant case, the applicant is very much in service and over payment after detection of error has sought to be enforced after due notice by instalments, to be recovered from his regular salary. We must also note that the aspect of public interest involved in over payment of money to a government servant, which aspect has been codified in the Code for the Accounts Department has been

15

-6-

successfully brought to the notice of the Tribunal, which was not the case in the case law cited.

Considering all these facts and circumstances, we are of the view that the O.A has no merit and we dismiss the same accordingly, with a direction however, to the Department to see that the monthly instalments in respect of recovery should be reasonable and should be fixed in such a manner that the applicant is able to make both ends meet on the basis of his carry home pay after deducting instalment of over payment. There is no orders as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER (A)

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33/0/Apr.  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
MUMBAI

REVIEW PETITION NO. 29/96 IN O.A. 1091/94

Signed this, the 4<sup>th</sup> day of APRIL 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

A.K.Ravi

.. Review Petitioner

-versus-

Union of India & Ors.

.. Respondents

ORDER (BY CIRCULATION)  
(Per M.R. Kolhatkar, Member(A))

In this review petition the petitioner has sought review of my judgment dtd. 4/3/95 in O.A.1091/94 by which the prayer of the applicant for non recovery of the arrears ~~of~~ over payment on account of wrong pay fixation was rejected.

2. The applicant has relied on case laws which were cited earlier before me. All these cases were considered and the case was decided. No new grounds relatable to rules under Order 47 of CPC for review of the judgment have been made out. The R.P. has therefore no merit and is therefore dismissed. It is being dismissed by circulation as is permissible under rules.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)

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dt. 4/4/96  
order/Judgement despatched  
to Applicant/Respondent(s)  
on 11/4/96

*Q*  
19/4/96