

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 111/95

Date of Decision: 22.4.1997

P. Markus

.. Applicant

Shri L.M.Nerlekar

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. 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)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 1111/95

Dated 22nd this the 1 day of April 1997

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

Prabhakar Markus  
R/at Karpe Wadi,  
Room No. 10, Kate Manovali,  
Kalyan (East) Bombay.  
By Advocate Shri L.M.Nerlekar  
V/S. ... Applicant

1. Union of India  
Through General Manager,  
Central Railway, Bombay V.T.

2. Divisional Railway Manager,  
Central Railway, Bombay V.T.

By Advocate Shri V.S.Masurkar  
C.G.S.C. ... Respondents

O R D E R (ORAL)

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

The applicant was appointed as a Pointsman in the Railways in the year 1953        was promoted as Guard 'C' in the pay scale of Rs.330-530 on 10.9.1980 when his pay was fixed at Rs.362/- and after drawal of increments, his pay on 1.10.1984 was Rs.400/-. The applicant has contended that his pay was Rs.410/- as on 1.10.1984 in Para 4.1 but the respondents in Para 10 have stated that it was Rs.400/- and this contention out a the of the respondents is borne by perusal of Service Book. In any case, the material point is not in relation to the level of the pay scale as on 1.10.1984 but the pay fixation on same relates to his subsequent promotion as Guard 'A' in the pay scale of Rs.425-600. According to the applicant, he had received two simultaneous promotions, first as Guard 'B' in the pay scale of Rs.330-560 and

thereafter, <sup>as</sup> Guard 'A' in the pay scale of Rs.425-600 and it is the contention of that the applicant in such a case of simultaneous promotion, according to rules as to fixation of pay and in particular Railway Board's Circular No. PC-67/PP/13 dated 27.7.1967, the procedure being followed in further fixation is as below :-

"(17) Simultaneous Promotion to two posts :- If a Railway servant happens to be promoted to two different posts carrying higher responsibilities on the same date, his pay should be fixed as under :-

Suppose he is holding the scale of Rs.455-700 (R.S.) and is promoted simultaneously to scale of Rs.550-750 (R.S.) and Rs.700-900 (R.S.).

(a) He should be deemed to have been promoted first to the lower post (Rs.550-750) and pay fixed under Rule 2018-B (R-II) provided it is certified that he would have held this post for a period not less than 22 days but for his promotion to the higher post.

(b) He should subsequently be promoted to the higher post (Rs.700-900) and pay fixed under Rule 2018-B (R-II) with reference to the pay arrived at in (a) above. (R.B.'s. NO. PC-67/PP/13 of 27.7.67) (N.R., S.N.4039)."

2. The applicant, therefore, contends that he would ~~not~~ get the benefit of fixation under Rule 2018-B of Railway Establishment Manual twice ~~as~~ as a result of which ~~his~~ his pay was correctly fixed in the Service Book as Rs.1640/- on 1.1.1986. A perusal of the Service Book, however, shows that it was actually fixed at Rs.1600/- as on 1.1.1986 and this discrepancy of one increment is relateable to the earlier discrepancy noticed by me. According to the applicant, however, just before retirement he came to know regarding initiated down-ward revision of his pay scale to Rs.1520/- as on 1.1.1986 and on that basis an amount of Rs.15,000/- was with-held from

his settlement dues which was later on adjusted was effected and recovery of Rs.11548/- from his settlement dues and his pension was also fixed down-ward. According to the applicant, the respondents have failed to notice the Railway Board Circular dated 27.7.1967 reproduced above regarding pay fixation in the case of simultaneous promotion in two posts and therefore the down-ward revision of the pay scale is against the rules. He has, therefore, sought the relief of fixing the pay at Rs.1900 as on 1.1.1992 which I noticed above has to read as Rs.1850/- as per Service Book. Secondly, the prayer is that the recovery of Rs.11548/- made from the applicant's settlement dues should be declared as illegal and the amount may be refunded to the applicant with 18% interest. Thirdly, the prayer is that the respondents should be directed to fix the pension as on 1.1.1992 as mentioned above and pay the arrears with 18% interest thereon on refixation of his pension.

3. Respondents have opposed the OA. According to them, the contention of the applicant that he was promoted first to Guard 'B' and thereafter to Guard 'A' is not correct. They have enclosed at Exh.'R-1' the order dated 8.1.1985 showing that the applicant was Guard 'C' in the pay scale Rs.330-530 was promoted directly as Guard 'A' in the pay scale Rs.425-600. The applicant is not able to show any document evidencing his simultaneous promotion, first to Guard 'B' and thereafter to Guard 'A'. I am, therefore, required to accept the document produced by the respondents at Exh.'R-1' dated 8.1.1985 and I am required to hold that the applicant was directly promoted

to Guard 'C' in the pay scale of Rs.330-530  
to Guard 'A' in the pay scale of Rs.425-600.  
There is no dispute regarding the Railway Board  
Circular dated 27.7.1967 but in the circumstances  
narrated by me, the same is not applicable to the  
case of the applicant.

4. The next contention of the respondents is that there was a genuine mistake on the part of Railway administration in transferring the pay fixation card of the applicant to the Service Book. The pay fixation is reproduced at page 10 of the written statement and the original was also shown, the same is dated 20.2.1987.

The Service Book  
was also produced and from this it is seen that instead of transferring the pay fixation statement as in the pay fixation card the applicant's pay came to be shown as Rs.1600/- as on 1.1.1986 instead of Rs.1520/- as on 1.1.1986. This came to the notice of the respondents on 27.8.1992 (Exh.'R-II') just prior to the date of retirement of the applicant, viz. 31.10.1992 and hence action to withhold the amount and action of pension and hence action to withhold the amount and action of pension for downward revision on the basis of downward pay fixation was taken. According to the respondents, a genuine mistake can always be corrected and the applicant should not be allowed to profit from such a genuine mistake.

5. Counsel for the applicant contends that even assuming that there was some mistake, it was not open to the respondents to make a recovery and make a down-ward revision of pay for the purpose of pension fixation of (L) without giving an opportunity to the

with applicant to show cause in consonance ~~of~~ principles of natural justice. In this connection, he relies on Supreme Court judgement in H.L.TREHAN & ORS. vs. UNION OF INDIA & ORS. 1989 SCC (L&S) 246. In Para 11 of the judgement the Supreme Court has observed that :-

"It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard."

6. Considering the ratio of H.L.Trehan, ~~an~~ the case could be decided by giving ~~an~~ opportunity to the respondents to give a show cause notice to the applicant and thereafter to make a recovery. However, this course of action ~~would not appear to~~ ~~be in order~~ in view of the further observation of the Supreme Court in the above decision, viz.

"The post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity."

7. My attention was also invited by the counsel for the applicant to the decision of this Bench of ~~the Tribunal~~ in CHAMEL SINGH vs. UNION OF INDIA & ORS. 1992 (1)SLJ 315, in which it was held that "recovery of overpayments after long years of payment cause hardship" and reference was made to the Division Bench judgement of Calcutta Bench of

the Tribunal in C.S.BEDI vs. UNION OF INDIA & ANR. ATR 1988 (2) CAT 510, in which a view has been taken which is crystallized that a period of 7 years is to be considered as a long period for holding that recovery after such a long period is unjust and illegal. In the instant case, the promotion of the applicant to the post of Guard 'A' was ordered consequent on 8.1.1985 and it was in respect of      pay fixation that the recovery was decided to be effected by the order dated 27.8.1992. Apparently, the 7 year rules in Bedi case laid down by the Calcutta Bench is fulfilled in the present case. I am, therefore, of the view that accepting that

     there was a genuine mistake in the pay fixation of the applicant consequent to his promotion as Guard 'A') recovery of the overpayment especially when the applicant stands retired and especially when action for recovery is initiated just two months before the date of retirement would be unjust and illegal and will be opposed to the ratio of the case law discussed by me above. I am, therefore, of the view that the applicant is entitled to the minimum relief of non-recovery of Rs.11548/- from the settlement dues.

8. The next question therefore is whether the fixation of pension on a down-wardly revised pay should be     upheld or     the applicant is entitled to the relief of a higher pension based on wrongly drawn higher pay. I am of the view that it is open to the respondents to correct a genuine mistake especially when it has financial implications and it causes loss to Government exchequer and is opposed to public policy of avoiding enrichment according to well known doctrine unjust because of     bona fide     mistake.

9. I am, therefore, of the view that Government employee is not entitled to a pension based on wrongly fixed higher pay. So far as the question of principles of natural justice is concerned, it is clear that in relation to pension, Government employee was well aware of the action contemplated and he made representations and the same were considered and, therefore, in relation to fixation of pension, ratio in H.L.Trehan would not apply.

10. In the light of the above discussion, I dispose of the OA. with the following order :-

- (i) Respondents are directed to refund the amount of Rs.11548/- to the applicant withheld from his settlement dues.
- (ii) As far as claim of interest on the refund of the amount is concerned, I am of the view that since the amount was illegally withheld, the applicant is entitled to interest @ 12% from the date of withholding till the date of refund.
- (iii) No interference regarding pension fixed.
- (iv) Action to refund the amount withheld with interest to be taken within two months from the date of receipt of this order.
- (v) No orders as to costs.

*M.R.Kolhatkar*

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(M.R.KOLHATKAR)  
MEMBER (A)

mrj.