

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, BOMBAY 400 001.

O.A. Nos. 403/95, 404/95

Dated this 28th day of December 1995.

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

Shri S.B. Kale in O.A. 403/95
Shri I.K. Hanfee in O.A. 404/95
By Advocate Shri P.G. Zare ... APPLICANTS

v/s

General Manager,
Central Railway & Others

By Advocate Shri V.S.
Masurkar, Central Govt.
Standing Counsel

... RESPONDENTS

O R D E R

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

1. In these two O.As, the facts are identical and therefore, we are disposing of the same by a common judgement. For the purpose of illustration, we refer to the facts in O.A. 403/95. The Applicant retired from railway service on 31-10-1993 as Chief Telegraphy Traffic Inspector, Nagpur. The last pay drawn by him was Rs. 2600/- per month and the average emoluments for pension ought to have been Rs. 2562/- but yet it was refixed at Rs. 2487.24 ps. for purpose of calculation of pension. There has thus been recurring loss in terms of monthly pension and related benefits. Based on this, ^{1/2} difference comes to about Rs. 75/- per month. Secondly, an amount of Rs. 14,482/- was

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deducted on account of overpaid wages by way of set off from settlement pensionary dues. The Applicant made first representation even prior to the retirement namely on 20-7-1993 at page 10, 19-8-1993 at page 12 and 5-10-1993 at page 14. But there appears to be no reply to all these representations. Thus a deduction/set off/recovery of Rs. 14,482/- and reduction in the level of average emoluments from Rs. 2562/- to Rs. 2487.24 ps was a fait accompli. Even after retirement, he made representation to the General Manager, Central Railway as well as Railway Board on 13-10-1994 at page 17 by means of a lawyer's notice to which also there was no reply. The Applicant approached this Tribunal on 25-2-1995. The relief sought is to refund to the Applicant the amount of Rs. 14,482/- and also refixation of the pension on the basis of the last pay drawn i.e. Rs. 2600/-. The Applicant contends that the recovery which has been made from his pensionary benefits is relatable to the counting of special pay of Rs. 15/- which he drew during the period 1971 to 1982. According to the Applicant, this special pay is required to be countered towards fixation of pay and two employees in Nagpur have also received the same benefit of fixation of pay relatable to special pay drawn. The Applicant relies on the case decided by this Tribunal - Shri Chamel Singh v/s Union of India reported at 1992 (1)(CAT) p.315 All India Services Law Journal. In this case, the

Tribunal after reviewing a catena of cases decided by the Tribunal held that the recovery of overpayment after a lapse of years was not justified. The Tribunal quashed the letter refixing the pay of the Applicant in that case and restrained the Respondents from recovering the said amount. However, no interest was allowed on the retirement benefits *and no vicious expression pay fixation*

2. The counsel for the Respondents has argued that the special pay of Rs. 15/- is in the nature of special pay granted for specific addition to duties or for arduous nature of duties as prescribed in the Weekly Gazette No. 23113-R/Rule dated 1-10-1963, that special pay came to be included for the purpose of fixation of pay from 1982 onwards, even after the applicant ceased to perform the duties for which special pay was permissible. According to the Respondents, para 1019 of IREM laid down procedure for recovery of overpayment and in the case of railway servant due to retire on account of superannuation, the recovery of overpayment should be spread in such a manner that the recoupment in full is made within the period available. According to the Respondents, being a Government servant, it is the duty of the Applicant to intimate about the wrong fixation of pay to the Department but since he did not do so, it was always open to the Government to make recovery of overpayment at the time of retirement as a set off which caused minimum hardship. The Respondent has also raised a point regarding representations having been made

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to higher authorities through lawyer's notice without writing to authority directly concerned viz. DRM, Nagpur.

3. We have considered the matter and so far as the overpayment of recovery amounting to Rs. 14,482/- is concerned, we are bound by the ratio in the case of Shri Chamel Singh v/s Union of India. In this particular case, the overpayment is sought to be recovered after a lapse of 11 years by way of set off in the settlement of dues at the time of superannuation on 31-10-1993. In the Nilkantha Shah's case to which Chamel Singh had made a reference, even 7 years' delay was held to be sufficient to preclude the recovery of overpayment. In this particular case, the delay involved being longer viz. 11 years, we are of the view that it is not open to the Respondents to make recovery of Rs. 14,482/- after a lapse of so many years. The Applicant is, therefore, required to be given relief in the above deductions made from settlement dues.

4. So far as re-fixing of pension is concerned, we make a reference to the decision of this Bench vide (1995) 29 ATC 739 P.M. Samuel v/s Union of India. In that case, relying on Supreme Court judgement in Divisional Superintendent, Eastern Railway Dinapur v/s L.N. Kashri AIR 1974 SC 1889, it was held that the mistake which was committed could be rectified but the Government department could not reduce the pay without giving reasonable opportunity to the Government employee. In that

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judgement, we observed that Government employee has no vested right to draw wrongly fixed higher scale merely because he has drawn it for a long time. It is always open to the Government to correct the pay scale of the Government employee in accordance with the rules.

However, before any such re-fixation the Government department ought to give an opportunity to the Government servant to be heard. In this particular case also we would like to adopt the same approach.

5. We, therefore, dispose of this O.A. by passing the following order :-

O R D E R

That the Respondents are restrained from making the belated recoveries of Rs. 9213/- + Rs. 5269/- = Rs. 14,482/-. This amount should be refunded to the Applicant but without any interest within 3 (three) months from the communication of this order.

So far as the fixation of pension with reference to average emoluments of Rs. 2487.24 rather than Rs. 2562/- as desired by the Applicant is concerned, the Respondents are directed to give opportunity to the Applicant to show cause as to why his pension should not be fixed with reference to the average emoluments at Rs. 2487/-. At that stage, it would be open to the Applicant to take all the

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pleas in his representation including that of discrimination. The Respondents may dispose of the representation of the Applicant to the show cause notice, by means of a speaking order and take action in terms of the order to fix the pension. Till that is done, however, pension should be paid on the basis of average emoluments of Rs. 2562/-. Arrears of pension only but not any other items like dearness relief etc. should be paid to the Applicant within 3 (three) months of the communication of order. There would be no order as to costs.

(M.R. Kolhatkar)
Member (A)

ssp.

Date : Office Report

Orders

D.C.P. filed by applicant is under objection

Applicant has not mentioned the contemner's name.

objection already informed the counsel, notification also issued on 10.11.97, but objection not removed till to-day, hence the C.P. filed before the Tribunal on 4/5/98 is order.

C.P. along with drawing sheet placed below the perusal of

30/11

4/5/98-43

Applicant and Counsel Absent. Shri V.S. Masurkar for Respondents.

Adjourned to 13/7/98.

(P. P. Srivastava) (R. G. Vaidyanatha)
M(A) V.C.

13/7/98-38

Applicant and Counsel absent. Shri V.S. Masurkar for Respondents.

In spite of the long date, the applicant and his counsel has not removed the office objection. The un-numbered C.P. is rejected.

Order/Judgement despatched to Applicant/Respondent (s) on 28.7.98

28.7.98

slp.

(D. S. Bawale) (R. G. Vaidyanatha)
M(A) V.C.