

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 422/95/199

Date of Decision: 04-10-96

Chintaman M.Tajane

Petitioner/s

Mr.L.M.Nerlekar

Advocate for the  
Petitioner/s

V/s.

U.O.I.

Respondent/s

Mr.R.R.shetty

Advocate for the  
Respondent/s

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)  
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.422/95

Pronounced this, the 4<sup>th</sup> day of October 1996

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

Chintaman M.Tajane,  
147 H, Parishram Building,  
2nd Floor, Room No.61,  
Bhandar Galli, L.J.Road,  
Mahim Bombay - 400 016.

(By advocate Shri L.M.Nerlekar)

.. Applicant

-versus-

Union of India  
through  
Divisional Railway Manager,  
Central Railway,  
Bombay - 400 001.

(By advocate Shri R.R.Shetty)

.. Respondent

ORDER

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

The applicant was working as Suburban Guard 'A' under Divisional Railway Manager, Central Railway, Bombay V.T. and retired on superannuation w.e.f. 31-7-1994. At the time of his retirement his basic pay was Rs.2100/- in the pay scale of Rs.1350 - 2200. The applicant has not enclosed copy of the impugned order but Ex. R-1 which is enclosed to the first written statement of the respondent shows <sup>is</sup> that by letter dt. 8-6-94 he was advised that his pay <sup>was</sup> required to be drawn @ Rs.1900/- instead of Rs.2100/- The applicant made a representation on 24-10-94 in which he had also stated that Guards junior to him with less service than himself was drawing more pay as well as pension. The applicant states that he had made a representation <sup>(a)</sup> in this much earlier viz. connection <sup>on</sup> 12-9-86. The representation was acknowledged <sup>by</sup> but no further action was taken. The applicant has therefore

sought the relief of directing the respondent to restore the pay of the applicant to Rs.2100/- and to pay him difference in pensionary benefits and Gratuity on restoration of his pay to Rs.2100/- with 18% interest thereon.

2. Respondents have contended that the mistake occurred from 1-12-86 when his pay was passed at Rs.1760/- erroneously instead of Rs.1600/- This was the stage when the applicant was promoted from the post of Guard 'B' in the scale of Rs.1200-2040 to the post of Guard 'A' in the scale of Rs.1350-2200. His pay in the lower post was fixed at Rs.1530/- and when he was promoted he was given one increment of Rs.30/- taking his pay to Rs.1560/- He was given fixation in the higher stage of Rs.40/- at Rs.1600/- in the new pay scale. On page 3 of the additional written statement the respondents have given the calculation of the pay of the applicant from 1-12-86 which shows that the applicant was entitled to Rs.1900/- w.e.f. 1-12-93. According to the respondents there was a clerical mistake and the same was required to be corrected and it was done by writing a letter to him on 8-6-94. Regarding the case of his juniors cited by the applicant it is stated that in the case of juniors S/Shri A.G. W.M.Bhise, Sonawane, R.R.Tiwari and V.G.Hunnur there was overpayment and action for recovery has been taken. In the case of other colleagues cited by the applicant vis. S/Shri Y.V.Karanjekar, M.R.Mishra, G.D.Chavan, S.N.Prabhu, S.Y. Malavankar, M.Y.Shaikh and P.G.Joshi it is contended that correct pay fixation has been done and wherever recovery is there <sup>the</sup> same has been done in instalments.

3. The applicant has filed a rejoinder, in which he has stated that pursuant to the representation on 12-9-86 the pay of the applicant was stepped up from Rs.1680/- to Rs.1800 in August, 1988 and thereafter he drew the normal increments and accordingly he was drawing Rs.2100/- correctly at the time of retirement. The applicant, however, has not produced any order allowing him the stepping up of the pay. He has again enclosed copy of the letter dt. 12-9-86 which was already annexed with the O.A. Therefore the respondents were directed to produce the personal file and the service book of the applicant. These documents did not contain any order granting him stepping up of the pay nor was there any reference to memorandum under which stepping up was allowed. The Tribunal also wanted to peruse the pay sheets but the same could not be produced by the respondents as they were not readily available because of shifting of the record. In any case any stepping up of the pay to the applicant would be only in terms of an order passed by the respondents and since the applicant has not been able to produce any such order, which he was bound to do, it is difficult to accept the contention that there was no clerical mistake but that the applicant was drawing a higher pay because he was given stepping up. The story of any orders regarding stepping up having been passed also appears to be implausible because the department has pointed out that some juniors who drew more pay than the applicant have already been asked to make a refund of the overpayment.

4. I am therefore of the view that the correct pay of the applicant at the time of retirement was Rs.1900/- as contended by the respondents.

5. The next question, however, is whether the department can, because of its own mistake, subject the applicant to a hardship entailed by such a re-fixation. There are two aspects of hardship. First of all the department may seek to recover the overpayment made after a lapse of a period. So far as this aspect is concerned the applicant has not brought anything on record to show that the department has sought to make recovery of overpayment made to him. All the same the relief is required to be moulded to the finding and the possibility of the department trying to recover the overpayment cannot be ruled out. The position is well settled that when recovery is sought to be made from a Government employee who has retired or who is on the verge of retirement by way of correction of mistake for which the employee was not responsible then if the recovery is sought after a long period of time generally in excess of seven years then the employee is entitled to the relief of restraining the department from making the recovery. I, therefore, consider it just and proper to direct the department not to make recovery of the overpayment on account of wrong fixation of the pay of the applicant from 1.12.1986 which came to light only in June, 1994 i.e. after a lapse of more than 7 years.

6. The main relief sought by the applicant however is that the department should be directed to fix the pensionary benefits of the applicant including the gratuity on the basis of Rs.2100/- as last pay drawn

rather than Rs.1900/-. The applicant contends that he had no opportunity of showing cause against taking the level of Rs.1900/- as the last pay drawn for the purposes of pension. In this connection, he relies on the following Judgments:

1. H.L.Trehan and others V/s. Union of India and Others (1989 SCC (L&S) 246).

This was a case relating to employees of Galtex Oil Refinery (India) Ltd. The grievance was that an alteration in terms and conditions of the service was made without following principles of natural justice. The Supreme Court noted the use of the term 'duly' in Section 11(2) of the relevant Act and held that since the employees were not given an opportunity of hearing before the impugned circular was issued, the same cannot be sustained.

2. Shri Bhanwar Singh V/s. State of Haryana & Ors. (1991 LAB, I.C. 2394)

In para 17 it is laid down that if any reduction in the pay of the petitioner was to be made that has to be done after affording an opportunity of hearing to him.

3. Sunil Kumar Nandoo and others V/s. Union of India & Ors. (1991(2) CAT SLJ 361).

In this case it was laid down that mistake can't take away the right conferred and the consequences of mistake should devolve on the authorities.

7 I have noted the Judgments cited by the applicant. The principle laid down by the Supreme Court in H.L.Trehan case that there can be no deprivation or curtailment of an 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 is unexceptionable and binding. However, the question is whether the applicant had an opportunity of showing cause. On facts, it appears to me that the applicant did have such an opportunity and there is no violation of the principles of natural justice. The applicant retired on 31.7.1994 and the mistake in regard to pay came to notice in June, 1994 and the applicant was made aware of the mistake on 8.6.1994 but he made his representation on 24.10.1994 and the only defence that he put forth was that a stepping up of pay was granted to him, he could not produce any order to that effect except to annex a copy of his own representation made on 12.9.1986. It cannot, therefore, be said that there has been no notice to the applicant in regard to reduction of the pension on the basis of the revised last pay. I, therefore, do not find any infirmity in the order of the Department in granting the pension of the applicant at Rs.1900/- as last pay drawn. The applicant therefore is not entitled to the main relief as sought by him. The applicant, is however, granted the limited relief regarding restraint on recovery of over payment as mentioned in para 5. The O.A. is accordingly disposed of. There would be no order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER (A)