

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No 668/95

Transfar Application No:

DATE OF DECISION: 28 JULY, 1996

C.R. Sharma

Petitioner

Mr. H A Sawant

Advocate for the Petitioners

Versus

U?O.I. & Ors.

Respondent

Mr. P.M.A. Nair

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri P.P. Srivastava, 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(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI-1

ORIGINAL APPLICATION NO. 668 of 1995

DATED: THIS 25th DAY OF JULY, 1996

Coram: Hon. Shri P.P. Srivastava, Member(A)

Shri C.R. Sharma
retired Assistant Mechanical
Engineer, Western Railway,
residing at 79, Bina Nagar,
Abhrama Valsad 396001
(By Advocate Mr. H.A. Sawant) ..Applicant

V/s.

1. The Divisional Railway
Manager, Bombay Central
Division, Western Rly.,
Bombay 400008.
2. The General Manager
Western Railway,
Headquarters Office,
Churchgate, Bombay 400020
3. The Union of India
through General Manager
Western Railway,
Mumbai 20

(By Advocate Mr. P.M.A. Nair,
Railway Counsel) ..Respondents

ORDER

(Per: P.P. Srivastava, Member(A))

The Applicant was working as Loco Supervisor in Western Railway. His pay was fixed by the respondents vide their order dated 10.1.1989 which is placed at Annexure-V. By this order the pay of the applicant was stepped up to the pay of his junior Shri M.C. Sharma, in the scale of Rs. 2000-3200 with effect from 26.7.86 to Rs. 3200/- and from 1.7.87 to Rs. 3300/-. Thereafter the applicant was promoted to Group B post and his pay was fixed at Rs.3500/- in the scale of Rs.2000-3500 with effect from 23.5.1988.



On 31.5.1989 the applicant retired on superannuation. The applicant has further submitted that the respondent administration thereafter issued a letter dated 28.4.1995 mentioning therein that the stepping up of the pay given to the applicant was wrongly given and therefore the stepping up of pay given vide memo dated 27.6.89 is withdrawn. The operative portion of this letter reads as under:

" Board vide their subsequent letter No.E(P&A)II/88/RS/12 dated 23.4.93 have issued orders that stepping up of pay in terms of their letter dated 16.9.88 is to be allowed only wherever codal conditions required for stepping up pay are fulfilled. Since Shri Malhotra belongs to different seniority Unit, you are not entitled for stepping up of pay in terms of Board's order dated 24.3.93.

" In view of the above stepping up of pay granted to you vide memo dated 27.6.89 is withdrawn. Overpayments drawn as per the above stepping up of pay will be recovered from you. If you have anything to represent you may do so within 15 days. Amount of recovery : Shri G.R. Sharma Rs.9518.00"

Aggrieved by this letter the applicant has approached this Tribunal for quashing the above order.

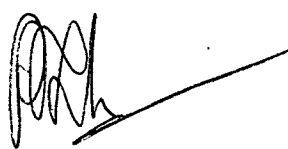
2. The applicant's counsel has submitted that since the applicant has retired in 1989 and the pay fixation was made in 1988 the administration has no right to re-fix the pay after a period of five to six years after his retirement on the plea that the



stepping up of pay was withdrawn. Counsel for the applicant has also argued that although letter dated 28.4.95 is a final order and the administration have made up their mind they are treating it as a notice. It cannot be treated as a notice as the administration has already decided to recover the amount from the applicant and there is hardly any scope of showing cause after this letter. Therefore this reduction in his pay is also without any show cause.

3. Respondent's counsel on the other hand has submitted that the applicant was given the stepping up of pay by application of the rules wrongly and since a mistake has occurred the administration has a right to recover the amount by correcting its mistake at this stage. The question of limitation on the basis of the fact that the employee has retired would not apply in this case.

4. I have considered the matter and I am of the view that the Respondent Administration is not justified in ordering recovery after five to six years of the retirement of the employee and that also without any proper show cause notice. It is also seen that the pay of the employee was fixed by the administration and therefore if at all any correction can be made it can have effect only prospectively. Since the respondent administration have come to the conclusion that the stepping up of pay in the case of the applicant was erroneous in the year 1995 there cannot be any question of reducing the pay before that date. Meanwhile the employee has retired in 1989, I therefore see no reason for permitting the reduction in pay from back date.



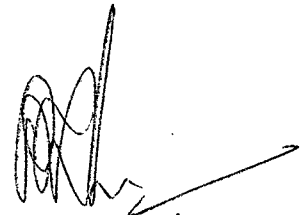
5. Ld. Counsel for the applicant had brought to my notice the judgment of the Tribunal in O.A.No. 477/94 of Jodhpur Bench, MAHAVEER SINGH Vs. UNION OF INDIA & ORS., 1995(2) ATJ 631 decided on 20.9.1995 wherein on a similar issue the Tribunal had held that there cannot be any recovery of the over-payments made to the applicant without his fault after he has been allowed to obtain the benefits of the same for so many years uninterruptedly till he retired. The mistake was entirely of the administration and the administration must therefore share the burden of this overpayment. The Ld. Counsel for the applicant has also brought to my notice the Supreme Court decision in BHAGWAN SHUKLA S/O. SARABJIT SHUKLA Vs. UNION OF INDIA & ORS., (1994)28 ATC 258, decided on 5.8.1994, wherein it has been held by the Supreme Court that without proper notice the pay cannot be reduced and this was a flagrant violation of the principles of natural justice and the applicant has been made to suffer huge financial loss without being heard. The Supreme Court has further held that no recovery can be made without giving an opportunity to show cause against the reduction and giving him an opportunity of being heard in the matter.

6. In the present case the administration has determined the reduction and conveyed it through the impugned order, it cannot be termed as proper show cause notice. On this account also I am of the opinion that the order dated 28.4.95 is required to be quashed. It may be clarified here that I am not giving any opinion whether the pay fixation which was done previously was correct or the pay fixation which is being done now is correct.



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7. In the result, the impugned order dated 28.4.1995, Annexure A-1, is quashed. Respondents are directed not to make any recovery in terms of the order which is already quashed. The O.A. is disposed of accordingly. No order as to costs.



(P.P. Srivastava)
Member (A)

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