

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1000/97

Date of Decision: 13.11.2002

R.H. Suri. Applicant(s)

G.S. Walia. Advocate for Applicants

Versus

Union of India & another Respondents

Shri V.S. Masurkar. Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. . . MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other no Benches of the Tribunal?
3. Library. Yes

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(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.1000/1997

THIS THE 13th DAY OF NOVEMBER, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

R.H. Suri, formerly
working as Safety Counsellor
Under Divisional Railway Manager,
Mumbai Division, Western Railway,
Mumbai-400 008. .. Applicant

By Advocate Shri G.W. Walia

Versus

1. Union of India, through
General Manager, Western
Railway, Headquarters
Office, Churchgate,
Mumbai-400 020.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway, Mumbai Central,
Mumbai-400 008. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant in this case has retired from the Railway service on 30.11.1996 as a Safety Counsellor (C&W) in the pay scale of Rs.2375-3500. Prior to his retirement he was on deputation from 08.11.1996 as Chief Carriage & Wagon Inspector. He was reappointed in Konkan Railway after his superannuation on 01.12.1996. The applicant's basic pay was stepped up equivalent to that of one Shri N.J. Dadlani who according to the applicant was junior to the applicant and his pay was fixed at Rs.3300/- with effect from 01.5.1993. Now the

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respondents vide the impugned order dated 09.10.1996 and 08.11.1996 have informed him that the stepping up of pay granted to him was erroneous and the same is withdrawn. Consequently they have ordered recovery of excess payment made to him on account of the stepping up of the pay. Being aggrieved against revising his pay fixation and recovery the applicant has approached this Tribunal. According to the applicant Shri Dadlani was junior to him and therefore, he had been rightly granted stepping up of pay to the level of pay of Shri Dadlani.

2. The respondents however, submit that the applicant was given a due notice on 19.10.1996 about the refixation of the pay and recovery if any. After considering all aspects of the matter and the representation given by the applicant, the respondents had issued the impugned order of 08.11.1996. Thus, there has been no violation of any principles of natural justice. The respondents state that their action is strictly in accordance with law and the benefits given by the respondents by mistake do not entitle any employee to claim as a legal right and or as a matter of right. The grievance of the applicant is illfounded and not maintainable in law. The respondents have denied that the applicant was senior to Shri Dadlani. According to them the applicant was recruited as Fitter Grade III whereas Shri Dadlani was appointed as Superintendent TSR against direct recruitment quota.

3. Shri Dadlani had been promoted on regular basis with effect from 01.01.1984 against upgradation because he had failed in the selection of CTXR and the applicant had passed in the selection and had been promoted earlier to Shri Dadlani. They were further promoted to scale of Rs.2375/3500 with effect from 01.01.1993. Further, since Shri Dadlani was appointed as CTXR way back on 12.02.1962 whereas the applicant was appointed as Fitter Grade III in the lowest scale Shri Dadlani's pay and status were bound to be higher than that of the applicant and therefore, the claim of the applicant was not tenable in law and rightfully the respondents have withdrawn the wrongful benefit given to the applicant to the level of Shri Dadlani.

4. We have heard the learned counsel for both the sides and have given our careful consideration. Our attention has been drawn to the judgment of this Tribunal in OA 364/97 a copy of which has been produced in the matter of R.H. Suri & Ors. Vs. General Manager, Western Railway & another. In the aforesaid OA the present applicant was also a party as can be seen from the cause title and the applicants therein had challenged the same orders dated 09.10.1996 and 08.11.1996 namely withdrawing the stepping up of pay granted to them equal to that of Shri N.J. Dadlani and recovery of over payment ordered thereof. The present applicant, by the applicant attracted by the principles

of resjudicata in that he is agitating the same cause of action again. However, in order to ascertain the correct position the orders passed in OA 364/97 were called for. On perusal it is seen that an order was passed by this Tribunal on 22.8.1997 i.e. before the judgment and order dated 20th November 2001 in OA 364/97 that Shri Suri has retired and the application had been filed jointly, the same would not be maintainable and therefore Shri Suri was required to file the application separately. Liberty was given to Shri Suri to file application separately if he so desired and it was further directed that administration would be at liberty to withhold the amount in respect of applicant No.1. Apparently therefore the applicant has filed this application independently in view of the order of 22.8.1997. We have perused the order dated 20.11.2001 in OA No.364/97. Since the facts and details of this OA are similar as in OA 364/97 we find that the applicant's case is squarely covered by the aforesaid judgment. Following the order dated 20th November, 2001 in OA 364/97 we therefore, dismiss the present OA. No costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

P.L.Jain
(S.L. JAIN)
MEMBER (J)

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