

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1106/97

Date of Decision: 20.6.02

D. R. Ramaswamy - Applicant.
(Shri S.N. Pillai) - Advocate for
Applicant.

Versus

UOI d another. - Respondent(s)
Shri Suresh Kumar. - Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. N. Bahadur - Member (A)

Hon'ble Shri. S. L. Jain - Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

B.N.Bahadur
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the Thursday the 20th day of June, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.1106 of 1997

L.R.Ramaswamy,
(Retd. Mail Guard),
Central Railway, Group 'C'
26, 16th Cross, 12th Main,
Malleswaram (W) P.O.
Bangalore.
(By Advocate Shri S.N.Pillai) - Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
Mumbai, CST.
2. The Divisional Railway Manager,
Central Railway,
Mumbai Division, Mumbai,
CST.
(By Advocate Shri Suresh Kumar) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The Applicant comes up to the Tribunal in grievance against the recovery made from his pensionary dues, consequent upon refixation of his pay pertaining to the period of 1.1.1984 till the date of retirement. He thus seeks that it be held by the Tribunal that the refixation of salary and recovery are illegal. Consequential benefits/directions are sought.

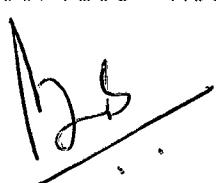
2. The facts of the case, as brought out in the OA, and argued by the learned counsel for the Applicant, are that the Applicant who was Mail Guard, retired from service on 31.5.1995 after having served the Railways from April, 1956. The pay of



large number of persons had been fixed in view of restructuring orders in respect of Mail Guards. It is the contention of the Applicant that the pay of several other Mail Guard who were clearly junior to the Applicant were also similarly fixed. However due to alleged wrong fixation recovery was made by Respondents of an amount of Rs.17,393/- at the time of retirement of the Applicant. The respondents have stated that the pay fixation as made was re-corrected and Applicant's pay which had been downgraded to Rs.600/- from Rs.640/- came to be again fixed subsequently at Rs.620/-. Accordingly, the recovery sum now came to be Rs.7744/- instead of Rs.17,000/- PLUS calculated earlier.

3. The learned counsel for the Applicant Shri Pillai stressed two points in his arguments viz. (a) that no notice was served prior to recovery and (b) that there was discrimination, in that no recovery is being made from all those who were decidedly junior to Applicants as Mail Guards. He expounded at some length on these aspects. He alluded to names of juniors as aspects as recorded by him. The stands of the Respondents is that a mistake had been made and corrected for Applicant and that it has been corrected for some others also. This position is being contested. Be that as it may.

4. After hearing both sides for sometime on earlier date, it was felt necessary that Service Record of the Applicant be brought and seen. Accordingly the respondents have brought the Service Record of the Applicant today. We have provided



opportunity to the learned counsel for the Applicant to peruse the Service Record at some leisure., and he has done so. It transpires that no benefit arises from perusal of the Service Record.

5. On point of notice not provided to Applicants he has now had the opportunity to say before us and the entire matter has been gone into hence get all details and present his case before us. We cannot solely point as to which junior the Applicant has been discriminated against. We cannot go for a fresh enquiry. It is for the Applicant to convince us that as per rules as to how fixation has wrongly been done. This is the crux. Even a wrong proved for another employee cannot enable this Tribunal to order a refixation again if rules do not allow it. Settled law does not permit such redressal.

6. Suffice to say that Applicant has not been able to convince us that the fresh fixation by which his salary has come to be fixed at Rs.620/- per month on 1.1.1984 is wrong as per rules. We, therefore, find no reason to interfere in the matter.

7. On the point of refund of recovery made, both sides argued the matter. The learned counsel for the Applicant took Sahib Ram Vs. State of Haryana and others, 1995 SCC (L&S) 248 and Shyam Babu Verma and others Vs. Union of India and others,



1994 SCC (L&S) 683. The learned counsel for the respondents Shri Suresh Kumar sought support from the judgment in the matter of V.Gangaram Vs. Regional Joint Director and others, (1997) 6 SCC 139. We have considered all the three cases and the matter will have to be decided in the facts and circumstances of the case. Here the fixation pertains to a period eleven years back. The applicant was due to retire and a sum of Rs.7744/- has been recovered after all this length of time. We do feel that based upon the case of Sahib Ram and Shyam Babu (supra) the applicant deserves the relief of refund of recovery made. Under the circumstances, while the prayers made in the OA are rejected on merit, we hereby order that the respondents shall refund the amount to the tune of Rs.7744/- recovered from him (No interest). This refund be made within three months. The learned counsel for the applicant Shri Pillai mentioned that refund of pension based on fixation at Rs.620/- has also not yet been made. This is not an issue before us but we are confident that whatever is due to the Applicant as per rules will certainly be provided to him. The OA is disposed of accordingly. No orders as to costs.

SLJ
(S.L.Jain)
Member (J)

mb

B.N.Bahadur
(B.N.Bahadur)
Member (A)