

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 981/98

Date of Decision: 11-3-99

Shri S.P. Madyalkar

Applicant.

Shri K.B. Talreja.

Advocate for  
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri S.C.Dhawan.

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri.

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to No other Benches of the Tribunal?

*R.G. Vaidyanatha*  
(R.G. Vaidyanatha)  
Vice Chairman.

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

Original Application No. 981/98.

Presented the 11<sup>th</sup> day of March 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

S.P. Madyalkar  
R/o Carnation II/  
Room No. A02/39  
6th floor,  
Godrej Hill-  
Barve Village,  
Kalyan(West).

... Applicant.

By Advocate Shri K.B. Malreja.

V/s.

Union of India through  
The General Manager,  
Central Railway,  
Mumbai CSTM.

The F.A. & C.A.O.  
Central Railway,  
Mumbai CSTM, Mumbai.

The Manager,  
Canara Bank  
Murbad Road,  
New Zozwala  
Building, Kalyan.

... Respondents.

By Advocate Shri S.C.Dhawan.

O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed their reply. I have heard counsel for both sides.

2. The applicant has retired from Railway service on 31.3.1996. He was getting pension. When he went to draw his pension on 30.9.1998, he was told by the Bank officer that the Railways have stopped the payment of pension due to recovery of excess payment of Rs. 49,000/-. He has not been paid revised pensionary benefits in pursuance of Vth Pay Commission Report. Therefore the applicant has filed this O.A. for a direction to the

respondents to release his pension forthwith and not to make any recovery from the pension amount.

3. The respondents in their reply have stated that the applicant was paid revised pensionary benefits on the basis of Vth Pay commission Report and his pension has been refixed. He was entitled to Rs. 51,687/- towards difference of DCRG and Rs.1,68,699/- towards commuted value of pension less the commuted value which he has already received at the time of superannuation, which was Rs. 49,832/- . But when sending the cheque to the Bank it was sent for a total amount of Rs. 2,20,386/- without deducting Rs.49,832/- which had already been paid to the applicant at the time of superannuation. It was due to clerical error. When the mistake was noticed, within three or four months a letter was sent to the Bank. By that time the applicant had drawn the amount. The respondents have not stopped the pension, they have only informed the Bank to collect excess payment in monthly instalment of 1/3rd of the pension as per Rules.

4. After hearing both sides and perusal of the materials on record, I find that this is a case of simple clerical mistake due to which the applicant had paid excess amount of Rs. 49,832/-.

In fact the respondents have produced calculation sheet of their office file which shows that the applicant is entitled to Rs. 1,30,350/- towards DCRG as per revised pension and since he had already received Rs. 78,663/- at the time of superannuation, he is now entitled to difference of Rs. 51,687/-.

Similarly the applicant is entitled to commuted value of pension of Rs. 1,68,699/- as per revised pension. Then it is clearly mentioned that this amount is due to the applicant less the amount

already paid to him at the time of superannuation namely Rs. 49,832/-.

By a clerical error a cheque has been sent to the Bank for a total amount of Rs. 2,20,386/- without deducting the amount of Rs. 49,832/- which the applicant had received at the time of superannuation. That is how an amount of Rs. 49,832/- has been paid to the applicant sometime in January or February 1998. Within three to four months the mistake was noticed and immediately a letter was sent to the Bank to stop the payment. Then the respondents wrote to the Bank in August 1998 to recover the amount at the rate of 1/3rd of pension amount as per rules.

The respondents have not stopped the payment of pension as alleged by the applicant. The respondents have only intimated the Bank Manager to collect the excess amount at the rate of 1/3 rd of pension amount. It may be that the Bank Manager did not release the pension for which the respondents are not responsible. The Bank Manager has not been made a party in this case.

The learned counsel for the respondents brought to my notice the pension form and declaration signed by the applicant at the time of superannuation, Wherein the applicant has stated that any over payment made to him ~~can~~ be deducted from pension, DCRG etc.

5. The learned counsel for the applicant contended by relying <sup>on</sup> some authorities that no recovery can be made without issue of show cause notice and without observing principles of natural justice. This is not a case where the recovery being made due to fixation of pay or wrong calculation.

This is a case where a clerical error had occurred while totaling the amount and a wrong amount has been arrived at without deducting the amount of Rs.49,832/- which the applicant has received at the time of superannuation. Since this is a case of discovery of clerical error no prejudice is caused to the applicant in not issuing show cause notice. On the face of it there is a clerical mistake in calculating the commuted value of pension without deducting the amount which he had already received at the time of superannuation. In such a case of glaring and apparent clerical mistake in totaling the amount, there is no necessity to issue show cause notice. The applicant has not given any explanation about this. Therefore even if a show cause notice had been issued the applicant could not have done anything because it is purely an apparent clerical mistake.

6. The learned counsel for the applicant referred to number of authorities in support of his contention that the amount once paid cannot be recovered at all. In my view none of the authorities apply to the facts of the present case. I would only refer to some of them. There is no use in multiplying the authorities on the same point.

For instance reliance was placed on the judgement dated 25.4.1996 in OA 2166/90 which is item No.311 in Swamy's case law Digest 1996/1 where it was a case of recovery due to wrong fixation of pay and recovery was sought to be made 10 years after the event. Similarly the decision at item No. 297 in Swamy's case law Digest 1996/1 it was again a case of wrong fixation of salary and consequent excess payment which was sought to be recovered after 5 years.

In case at item No. 310 in Swamy's Case Law Digest 1996/1, It was a case of recovery of commercial debit from DCRG amount. It is pointed out that such commercial debit should be raised within six months and not later. No enquiry was held to find out how the commercial debit was levied against the official.

In item No. 276 in Swamy's Case Law Digest 1996/2, It was a case of alleged excess payment due to re-fixation of pay and sought to be recovered after a long lapse of time.

It is not necessary to multiply the decisions. All the decisions relied on by the learned counsel for applicant were due to excess payment made, due to fixation of pay or refixation of either salary or pension and that too after a lapse of some years. In these circumstances it has been observed that recovery should not be permitted.

7. In the present case the mistake has been noticed within three to four months after the payment and immediately the Bank has been informed to recover the amount and the whole exercise is done within five to six months of the payment. Further it is not a case of fixation or re-fixation of salary or pension, but the over payment is due to a clerical mistake in not deducting the amount already paid to the applicant at the time of superannuation. In my view none of the decisions are applicable to the facts of the present case. The applicant is bound to re-pay the amount which he has received as excess payment due to some clerical mistake.

The learned counsel for the applicant submitted that his pay has not been properly fixed at the time of promotion namely 1.3.1993. In this application we are not concerned with that dispute. It is always open to the applicant to take proper legal steps according to law, ofcourse, subject to law of limitation.

8. In the result the application is allowed partly. The respondents should not stop payment of pension to the applicant. However the respondents may intimate the Bank Manager to recover the excess payment of Rs. 49,832/- from the applicant at the rate of 1/3rd of the Pension amount, which I am now fixing round figure of Rs. 800/- per month from the pension for the month of March 1999 payable on 1.4.1999 and onwards. No order as to costs.

Copy of the order be communicated to the Manager Canara Bank, Murbad Road, New Zozwala Building Kalyan for information and necessary action.

*R. Vaidyanatha*  
11-3-99  
(R.G. Vaidyanatha)  
Vice Chairman

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