CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.459/1998

New Delhi this the 3rd day of December, 2002

Vasudev Ganesh Gokhale	...	Applicant.
Shri D.V. Gangal	...	Advocate for the applicant.

Versus

Union of India & Ors.	...	Respondents.
Ms. Supriya Daware	...	Advocate for the respondents.

CORAM:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

(i)	To be referred to the reporter or not?	-	Yes
(ii)	Whether it needs to be circulated to other Benches of the Tribunal?	-	No
(iii)	Library?	-	No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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Mumbai this the 3rd day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

Shri Vasudev Ganesh Gokhale,
retired as Guard from the
DRM's office, Mumbai CST
R/o Sneh Bhavan, Opp. Peer
Baba Mandir, Lele Ali, Tilak
Chowk, Kalyan 421 301. ... Applicant.

(By Advocate Shri D.V. Gangal)

Versus

1. The Union of India,
through the General Manager,
Central Railway,
Mumbai CST.

2. The Divisional Railway
Manager, Mumbai Division,
Central Railway.

3. The Assistant Personnel
Officer, Central Railway,
Mumbai CST.

4. The Financial Adviser,
and the Chief Accounts
Officer, Central Railway
Mumbai, CST. ... Respondents.

(By Advocate Ms. Supriya Daware, learned proxy for Shri Suresh Kumar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has impugned the action and letters issued by the respondents dated 29.8.1996, 4.9.1996 and 30.8.1996 (Annexures A-1, A-2 and A-3), respectively. By these orders, the respondents have ordered and recovered the over payments made to the applicant since 1988 which the applicant has submitted has been done from his retirement dues.

2. The brief relevant facts of the case are that the applicant was appointed as Carriage and Wagon Khalasi with the respondents on casual basis on 13.3.1957. He was regularised on 1.10.1957. He was later promoted as Car Attendant in 1961 and as Ticket Collector in 1963. He has stated that he was thereafter, promoted as Guard in 1974 and retired from service in that post on superannuation on 31.8.1996.

3. Shri D.V. Gangal, learned counsel for the applicant has submitted that just two days before the applicant's date of retirement, the respondents have issued the letter dated 29.8.1996 and thereafter have recovered an amount of Rs.56,008/from the pensionary benefits due to him, on the ground that his pay had been wrongly fixed since 1988 and have taken this action after eight years. He has also submitted that no show cause notice was issued to the applicant before such recovery was made. The learned counsel has very vehemently submitted that the action of the respondents in deducting such a huge amount from retirement dues of the applicant, on the ground that they had over paid him, is highly arbitrary and illegal and the impugned orders should be quashed and set aside. He has, however, submitted that in case any amount was due as scooter advance from the applicant, he has no objection to the same being recovered from him by the respondents. He has also submitted that the amount has been recovered from the applicant not even in easy instalments and that too just two days before his superannuation. Learned counsel has also disputed the manner in which the respondents have fixed his pay for the last 10 months

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on the basis of which the pensionary benefits have been worked out. According to him, the applicant was drawing the basis pay of Rs.2360/- from November, 1995 to June, 1996 and hence, in July, 1996, he became entitled to one increment which raised his basic pay to Rs.2420/- from July, 1996. He has contended that the respondents have fixed the retiral benefits wrongly by taking into account the applicant's basic pay of Rs.2300/-, thus denying him the due retiral benefits under the Rules. Learned counsel has relied on the judgements of the Hon'ble Supreme Court in **Bhagwan Shukla Vs. Union of India & Ors.** (1994 SCC (L&S) 1320) and **R Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Anr.** (1994 (28) ATC 516).

4. Learned counsel for the applicant has also relied on the provisions of Chapter X of the IREM (Annexure A-1) and has contended that under paragraph 1009, the arrears of pay and allowances or increments which have been allowed to remain in abeyance for a period exceeding one year, cannot be investigated by the Accounts Officer on his own authority. He has also relied on paragraph 1013 and has contended that the recoveries of over payments cannot be done beyone one year of the date of payment as the respondents ought to have checked the amounts finally within one year. In the present case, he has contended that the respondents have not done anything for about eight years and thereafter, at the verge of retirement of the applicant, they have issued the impugned orders and recovered the huge amount which they cannot do. Learned counsel for the applicant has submitted that it is also not the case of the respondents that the applicant was in any way responsible for the wrong fixation of pay which

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the respondents have not discovered for over eight years. In the circumstances, he has prayed that the impugned orders should be quashed and set aside with the directions to the respondents to pay to the applicant the recovered amount of Rs.56,008/- together with interest @ 18% per annum from 31.8.1996 till it is paid, with deductions of any legitimate dues, like payment of scooter advance. He has also prayed for a direction to the respondents to fix his pensionary benefits in accordance with the rules, taking into account his claims and pay the arrears taking also into account the recommendations of the 5th Central Pay Commission.

5. We have seen the reply filed by the respondents on 9.12.1998 and the statement of pay fixation filed by them on 13.8.2002. Ms. Supriya Daware, learned proxy counsel for the respondents has submitted that the respondents could always recover the excess payments made to the applicant and accordingly, in the reply filed on 9.12.1998, they have stated that an amount of Rs.56,008/- was deducted from the settlement dues of the applicant. According to the respondents, initially an amount of Rs.50,000/- was deducted provisionally as over-drawn wages during the period from 1.7.1988 till the applicant's date of retirement, Rs.2000/- towards future debits, Rs.2000/- as outstanding amount of scooter advance and Rs.2008/- interest on the scooter advance. They have stated that the amount of Rs.2000/- deducted towards future debit was released and passed under order dated 22.7.1997. According to the learned proxy counsel for respondents, the respondents had made an error in the year 1988 which has been rectified when it came to their notice

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just few days before the applicant's retirement when his service register was checked up for correctness of fixation of pay by the Senior Divisional Accounts Officer. According to her, the letter issued by the respondents dated 29.8.1996 is a show cause notice, as a copy of the letter had been sent to the applicant. The respondents have not referred to any representation given by the applicant to this letter and whether he was called upon to do so. Considering the language of the letter dated 29.8.1996, the contention of the learned proxy counsel for the respondents that this letter is a show cause notice, is rejected. It is also relevant to note that by this letter, it has been stated that the applicant has been over paid since 1988 which has to be worked out, so that the recoveries could be made through the settlement dues payable to him and marked as extremely urgent.

6. In the later statement of pay fixation filed in August, 2002, they have stated that an amount of Rs.50,000/- was provisionally deducted on account of over drawn wages between the period from 1.7.1988 to 31.8.1996, that is the date of his retirement. An amount of Rs.4008/- has been deducted as outstanding amount of scooter advance and interest thereon. Out of Rs.50,000/-, an amount of Rs.29,958/- was paid by the respondents' letter dated 11.8.2000. Hence, it has been stated by the respondents that the actual amount recovered from the applicant is Rs.20,042/- and not Rs.50,000/- or Rs.56008/-.

7. Learned proxy counsel for the respondents has relied upon the judgements of the Hon'ble Supreme Court in **O.K. Udayasankaran & Ors. Vs. Union of India & Ors.** (1996(2) SC SLJ

P-5), V. **Gangaram Vs. The Regional Joint Director & Ors.** (1997 (2) SC SLJ 90) and **Union of India & Ors. Vs. Sujatha Vedachalam (Smt) and Anr.** (2000 SCC (L&S) 882). She has contended that the Government can always recover the excess payments on account of wrong fixation of pay. She has, therefore, prayed that the O.A. may be dismissed.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. As already mentioned above, we are unable to agree with the contentions of the learned proxy counsel for the respondents that the letter issued by the respondents dated 29.8.1996 is a show cause notice merely because the copy was sent to the applicant. It is also evident from a perusal of this letter that a decision had already been taken that over payments have been made to the applicant since 1988 which had to be recovered, which was, in fact, done in pursuance of this letter. It appears that later the respondents themselves have released Rs.2000/- against future debits by their letter dated 22.7.1997 and also returned an amount of Rs.29,958/- by letter dated 11.8.2000. Their contention is that only an amount of Rs.20,042/- has been recovered from the applicant. It is seen that initially according to the own averments of the respondents, they have made a msitake in fixation of pay in 1988 which they have discovered only after eight years, when they had issued the letter to recover the excess amount dated 29.8.1996. Therafter, it appears that after a period of another four years, they have discovered that the recovery of Rs.29,958/- was again erroneous which amount they

have returned in August, 2000. These facts, therefore, show that the respondents have acted in a negligent and arbitrary manner not just once but repeatedly. This is so, in spite of having a battery of officers in the Department whose duties and responsibilties are to check disbursements of pay and salaries to the employees, including the applicant. No reasons have been given by the respondents as to why it has taken eight years to discover the mistake which was checked and corrected only in 1996. It is nowhere the contention of the respondents that the wrong fixation of pay initially done by them is due to any fault of the applicant. It is also clear from the statement of pay fixation filed by them on 13.8.2002 that they have discovered another mistake in the manner in which they have recovered a larger amount from the applicant than what was due to be paid, which again was done after nearly four years of the initial recoveries. Such negligent and arbitrary action on the part of the respondents is not only unreasonable but has to be deprecated, particularly when considering the facts that repeated erroneous orders have been issued by the concerned officers in the Railway Administration against a Group 'C' employee who has retired from service on superannuation after nearly 39 years of service. Such action on the part of the respondents has also meant that the applicant had to file this application on 24.9.1998. It was only after this application was filed that the respondents have returned an amount of Rs.29,958/- to the applicant on 11.8.2000 and they have also stated that the statement has been given in accordance with Tribunal's orders. In the facts and circumstancs of the case, we are of the view that this is a case which should be personally considered and

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reviewed by Respondent No.1, that is the General Manager, Central Railway, Bombay, to ensure that responsibility is fixed on the concerned officers so as to avoid such actions in future. According to the respondents, the initial alleged wrong fixation of pay of the applicant was done in 1988 which has been continued till August, 1996 and thereafter, an order was issued in August, 2000 to rectify another mistake which itself reveals the manner in which the officers have carried out their duties and responsibilites.

10. We have perused the judgements of the Hon'ble Supreme Court relied upon by the learned counsel for the parties. In the facts and circumstances of the case and for the reasons given above, we are of the considered view that the judgement of the Hon'ble Supreme Court in **Bhagwan Shukla's** case (supra) would be applicable to the facts in the present case. It may be relevant to mention that in **Udayasankaran's** case (supra) relied upon by the respondents and, in particular paragraph 12, the Hon'ble Supreme Court has noted that the respondents have admitted their mistake in asking for the consent letter and also that they made the mistake in granting to the three appellants the benefit of paragraph 3.8 although they were engaged after 1.1.1988. It has been further observed "They have sought to correct his mistake by their letter of 16.1.1991 by recalculating their salary from 1991". In the circumstances, the Hon'ble Supreme Court has held that they were entitled to reduce the pay of the appellants on the basis of the correct fitment to be given to them in the light of the instructions of 2nd of June, 1989. From these facts, it appears that the mistakes and corrections were done within a

reasonable time which is not at all the position in the present case, as it has taken several years for the respondents to discover their mistakes each time. The respondents have not stated what action,if any, has been taken against the concerned officials who have committed the mistakes in the alleged wrong fixation of the pay of the applicant and wrong deductions made from him. It is also relevant to note that for these wrong orders issued by them, there is no fault on the part of the applicant.

11. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

(i) The impugned orders are quashed and set aside;

(ii) Since the respondents themselves have returned an amount of Rs.29,958/- to the applicant on 11.8.2000, they shall pay him simple interest @ 10% on this amount from the date of erroneous recovery till the date of payment. This shall be done within one month from the date of receipt of a copy of this order;

(iii) The balance amount of Rs.20,042/- recovered from the applicant shall be returned to him with simple interest @ 10% from the date of recovery till the date of payment. This shall also be done within one month from the date of receipt of a copy of this order;

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(iv) The respondents shall recheck the claims of the applicant for revision of pensionary benefits and pass a reasoned and speaking order within two months from the date of receipt of a copy of this order and if any arrears are due to the applicant, in accordance with the rules, the same shall be arranged to be paid to him expeditiously;

(v) Respondent No. 1, i.e. the General Manager, Central Railway, Mumbai shall review the action taken by the concerned officers in this case and the alleged over payments to the applicant shall be ordered to be recoverd from those officers, to avoid any loss to the Government, in accordance with law and rules. Necessary action in this regard shall be taken by Respondent No.1 within four months from the date of receipt of a copy of this order;

(vi) In the circumstances of the case, cost of Rs.5000/- (Rupees five thousand only) is granted in favour of the applicant and against the respondents which shall be paid within two months from the date of receipt of a copy of this order.

(Smt. Shanta Shastry)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'

13/J/Dee

on 31/1/02

order/Judgement despatched
to Applicant/Respondent(s)
on 22/1/...