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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.596/90

Date of order: 27.3.1997

Mahendra Pal Singh : Applicant

Vs.

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The General Manager, Western Railway, Churchgate, Bombay.
3. Chief Works Manager, Wagon Repair Shop, Western Railway, Kota-2.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P. Sharma, Administrative Member

PEP HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Mahendra Pal Singh, has prayed that the respondents may be restrained from fixing the applicant in scale Rs.260-400(F) and making recoveries of the payment made since 28.4.1981 till the disposal of the O.A. He has further prayed that respondent No.3 may be directed to regularise the applicant in scale Rs.330-560(F) as already done from the date of his appointment and that his seniority position may be restored accordingly with other consequential benefits.

2. The applicant's case is that he was appointed as Manager in the Canteen of Wagon Repair Shop, Western Railway, Kota, by order dated 28.4.81, in scale Rs.160-250. The Canteen in which the applicant was working was an A-Type Canteen. Scale of pay of Manager of such Canteen was fixed as Rs.300-500 subsequently with effect from 1.11.1980. The applicant was accordingly paid the difference of pay at the rate of Rs.300/- per month from 28.4.81 to December 1981 and thereafter he was paid at the rate of Rs.300/- per month. The scale of pay of Rs.300-500 was revised to Rs.330-560 (F) and the applicant was paid in this

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scale of pay w.e.f. 28.4.81, i.e. from the date of his engagement in the Canteen. Subsequently, an audit objection was raised to the effect that the applicant should have been fixed in scale Rs.260-400 instead of Rs.330-560. The respondents accordingly sought to fix the applicant's pay in scale Rs.260-400(R) from the initial date of his appointment and to recover the amount of over payment. The applicant aggrieved by the aforesaid decision of the respondents filed an O.A, No.395/87 before the Tribunal which issued an interim order restraining the respondents from making recovery of the amount of over-payment. By the final order passed by the Tribunal on 21.12.88 (Annex.A15), the Tribunal dismissed the O.A on a statement made by the counsel for the respondents that the respondents had not passed any order directing recovery from the salary of the applicant and that if any such order were to be made in future, it would be made after giving an opportunity of hearing to the applicant. The respondents remained silent for about 2 years after receipt of the aforesaid judgment. However, now, vide their letter dated 2.8.90 (Annex.A1) they have proposed to fix the applicant in pay scale Rs.260-400. Although, this is a show cause notice, yet a decision had already been taken by the respondents to fix him in the lower scale of pay and this show cause notice was an empty formality just only to show that they have acted as per the decision of the Tribunal as per Annex.A15. The applicant asked the respondents to give him certain documents vide his representation dated 7.8.90 but he was informed that the document asked for was not relevant to the issue. The applicant was asked to present himself before the APO(W), Kota. The applicant's prayer for grant of documents to enable him to make a proper representation has not been granted.

2. The respondents have filed a reply. The substance of



their reply is that the applicant was, initially on his appointment in pay scale Rs.160-250 but this scale was revised to Rs.260-400 and therefore the applicant was actually entitled to the pay scale of Rs.260-400 from the date of his appointment. However, the respondents had erroneously assumed that the scale of pay in which the applicant was appointed was Rs.300-500 and therefore they fixed him in the corresponding revised scale Rs.330-560. Since the applicant was never in the scale of pay of Rs.300-500, he was not entitled to the corresponding revised scale of Rs.330-560. The mistake committed by the respondents in this regard was sought to be corrected by them. After receipt of the Tribunal's order Anx.A15, the respondents have issued several letters and notices to the applicant for personal hearing which had been served upon him but the applicant is delaying the matter and has failed to avail himself of the opportunity provided to him to show cause why his pay scale should not be fixed at Rs.260-400. The administration is entitled to rectify a mistake after adopting the proper procedure of giving opportunity to the employee concerned to submit his representation. They have denied the averments of the applicant ~~that~~ that he was ever given the scale of pay of Rs.300-500.

3. The applicant has also filed a rejoinder which is on record.

4. None is present on behalf of the applicant. We have heard the learned counsel for the respondents.

5. The learned counsel for the respondents stated during his oral arguments that the revised scale of pay corresponding to Rs.160-240 ~~240~~ would be Rs.240-400 and that was the only scale of pay available to the applicant on the pay revision. Since the applicant was never placed in the scale of pay Rs.300-500, he was not entitled to the corresponding revised

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scale of Rs.330-560. The applicant's averment that subsequent to his appointment he was fixed on the scale of Rs.300-500 is not substantiated by any document placed by him on record. In view of the judgment of the Tribunal (Annex.A15), the respondents have given an opportunity to the applicant to show cause why his pay should not be refixed in scale Rs.260-400 instead of Rs.330-560 which was wrongly granted to him. He has been adopting dilatory tactics and has not furnished any effective representation. He has added that the respondents have since passed a final order placing the applicant in scale of pay Rs.260-400 with effect from 28.4.81, the date of his initial appointment. Regarding recovery of the excess amount paid, it has been stated in the aforesaid order that the matter has been kept pending till the decision of the Tribunal.

6. We have considered the matter carefully. It is apparent that initially w.e.f. 28.4.81, the date of his appointment, the applicant was placed in scale of pay of Rs.160-240. The said scale has been revised to Rs.260-400 as per Annex.A8. Persons placed in scale of pay Rs.300-500 only were to be placed in the revised scale of pay Rs.330-560, as per Annex.A8. Although the applicant has averred that he was subsequently granted scale of pay Rs.300-500 and was therefore by implication entitled to the revised scale of pay Rs.330-560, he has not placed any documents on record to substantiate his averment in this regard, even alongwith his rejoinder to the reply of the respondents. It is obvious that the applicant has been wrongly fixed in the scale of pay Rs.330-560 to which he was not entitled because the revised scale of pay to which he was entitled was Rs.260-400. The respondents have now issued a show cause notice to the applicant vide Annex.A1 dated 2.8.90 against which the present O.A has been filed. The applicant has not made any effective representation against the proposal of the

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respondents. The respondents have since passed a final order dated 18.3.93 refixing the applicant's pay in scale Rs.260-400, which has ever not been presented by the applicant by amending the O.A or otherwise. We have taken a copy of the aforesaid order on record. We cannot fault the action of the respondents in refixing the applicant in scale of pay of Rs.260-400 from the date of his appointment. Apparently the corresponding revised scale from 1.1.86 would be Rs.950-1500 and the applicant would be entitled to pay in this scale w.e.f. 1.1.1986.

7. As regards recovery of the excess amount made to the applicant as a result of his refixation in scale Rs.330-560 or the corresponding scale from 1.1.1986, we are of the view that since the applicant has been paid the higher scale not on the basis of any misrepresentation made by him but on account of an error by the respondents themselves, no such recovery should be made from him.

8. The O.A is disposed of accordingly. No order as to costs.

(O.P.Sharma)

Administrative Member.

Chirle
(Gopal Krishna)

Vice Chairman.