

(53)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO.

T.A. NO.

DATE OF DECISION

25.1.90

Y. Narayana Reddy

Petitioner

Advocate for the  
Petitioner (s)

Versus

General Manager, S.E.O. Garden Road

Respondent

Calcutta

Advocate for the  
Respondent (s)

CORAM

The Hon'ble Mr.

J. Narayana Reddy

Member (J-2)

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. whether their Lordship wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on columns 1,2,4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

no

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HNS

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(54)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH.

D.A.No. 176 of 1989.

Date of decision: 25-1-1990

Between:

Sri Y. Narayana Rao. .. Applicant.

Vs.

Union of India represented by  
the General Manager, S.E.Railway,  
Garden Reach, Calcutta-43 and  
two others. .. Respondents.

Sri P.V.R.Sharma, Counsel for the Applicant.

Sri N.R.Devaraj, Standing Counsel for Railways.

CORAM:

Hon'ble J.Narasimhamurty. Member(Judl.)

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(Judgment of Single Member Bench pronounced  
by Hon'ble Sri J.Narasimhamurty,  
Member (Judicial)

--:-

This application is filed seeking a direction  
to the respondents to restore the pay of the applicant  
which he was drawing prior to the implementation of the  
impugned order dated 30--9--1981 and order dated 14-7-1986  
with all the consequential benefits including the payment  
of Rs.9,966--66Ps., deducted from the DCRG., and the  
resultant pensionary benefits thereto.

The contents of the application are as  
follows:

The applicant was originally appointed in the

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Railways as a Clerk in the year, 1954 and later promoted as a Senior TNC in 1964. Subsequently, he was appointed as a Guard Gr. 'C' after a systematic process of written examination and selection. The applicant x was given the impression that the process of the selection and subsequent appointment to the post of Guard Gr. 'C' is a promotional one and the applicant will be monitorily benefitted with the element of running allowance attached to the post of Guards Grade 'C' Post. With that view the applicant accepted the promotion to the post of Guard Grade 'C' which was given to him after undergoing the process of written examination. The applicant was drawing a basic pay of Rs.166/- as a Sr.TNC., on the date of Departmental Promotion as a Guard Grade 'C' on promotion to the post of Guard Grade 'C', his basic pay was fixed at Rs.175/- by giving two increments.

The applicant states that at the time of revision of Pay Scales of Central Government Employees with the introduction of III Pay Commission Report in 1973, the applicant exercised his option for the enhanced pay scales with effect from 1--1--1973 onwards and accordingly the pay of the Applicant was fixed in the scale of Rs.330--530. The applicant was given the benefit of one Annual Increment with effect from 1--6--1974 as a mark of honour for his loyalty and sincerity towards service

as a Railway Employee during strike period. Later the applicant's pay was fixed in the scale of Rs.330--560 on his promotion to the post of Guard Grade 'C' with effect from 21--9--1980 and the basic pay of the applicant was fixed at Rs.530/- as on 21--9--1980 and the applicant fell due for the next increment from Rs.530/- to Rs.540/- on 1--9--1981. Instead of authorising the next increment, the applicant was served with the impugned order dated 30-9-1981

The pay of the applicant was reverted from Rs.530/- to Rs.476/- as on 21--9--1980 on the basis of the impugned order dated 30--9--1981 after a lapse of 14 years from the date of authorisation. The act of reverting the pay after 14 years of authorisation is void, arbitrary, illegal and against the cannons of justice.

Aggrieved by the orders of the impugned order, he made written representation to higher authorities and also issued registered notices dated 30--10--1986 and 1--3--1988 and also to the Chief Personnel Officer, South Eastern Railway, Calcutta. The respondents have not considered his representation in his favour. The applicant did not receive any response for the registered notices from the respondents.

The respondents initiated action in reducing his pay at a belated stage i.e., more than 14 years which resulted in deduction of substantial amount payable to the applicant at the time of retirement and receiving less pension for the life time by virtue of reduction

of pay at the time of retirement is void. Hence, he filed the petition to set aside the impugned orders.

The respondents filed their counter contending as follows:

The Application is barred by limitation. The impugned order was given in September, 1981 and the applicant made representations and they were disposed of by 14--7--1986. The applicant had served a legal notice on 30--10--1986 on the Department stating that his demands and claims should be complied within two months from the date of receipt failing which the applicant would be constrained to proceed to proper Court of law for recovery of the amounts. He filed the O.A., in the month of March, 1989. Even then he failed to approach the Court in time. The legal notice is dated 30--10--1986. So the petition is time barred as per rules and the provisions stipulated under the Central Administrative Tribunals Act, 1985.

The respondents state that this is a simple recovery of overpayment to the applicant on an erroneous fixation of his pay on his conversion from Trains Clerk to Guard 'C'. While fixing the pay of the applicant as Guard 'C', the administration

erroneously fixed on a higher scale which was detected only in 1981 and recovery was ordered in 1981 and representations were made by the applicant and the recovery was in fact made from the DCRG of the applicant and overpayment if made erroneously, it can be recovered at any time and no notice is required to be given because it is a simple administrative action. Otherwise, it would amount to only loss of public money.

It is stated that overpayment is recovered retrospectively and further such payment is stopped prospectively. The pay was originally fixed at Rs.175/- instead of at Rs.162/-plus Rs.3/-p.p., by mistake and against rules and hence the overpayment resulting from such mistake cannot be retained by the applicant under law. Therefore, there is no illegality committed by the administration in recovering the payment and readjusting the pay of the applicant according to rules and save public money.

As per the option exercised by him on 15--1--1974 his pay in the revised scales has been fixed at Rs.380/- p.m., with effect from 1--1--1973 in the scale of Rs.330--530. While so, he has opted for refixation of pay from 1-6-1974 vide his option dated 12--2--1979- The refixation of pay from 1-6-1974 was done in June, 1979 basing on the pay originally fixed as Guard 'C' i.e., Rs.175/- in the scale of Rs. 130--225 which itself was fixed erroneously. Thus the overpayment erroneously ~~fixed~~ made from 19--9--1967 to May, 1986 has been worked out to Rs.10,010--66 and has

been recovered from his ODRG. There are no merits in the application and it is liable to be dismissed.

Heard Sri P.V.R.Sarma, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for Railways.

It is a fact that the impugned order was served on the petitioner on 30--9--1981 and his pay was reduced from Rs.530/- to Rs.476/- as on 21--9--1980. After that petitioner made representations to the various Authorities in 1981 and 1982. ~~and also~~ After that the applicant kept quiet and a legal notice was issued on 30--10--1986. The applicant retired on 31--7--1986. The applicant while he was in service gave representations and registered notices and also after retirement he issued a registered notice on 1--3--1988. The respondents did not choose to give any reply to the petitioner. He filed the Application on 8th March, 1989.

The plea of the respondents ~~is~~ that the application is barred by limitation cannot be accepted because the delay in filing the application is very negligible.

In COLLECTOR, LAND ACQUISITION, ANANTNAG V. KATIJI (A.I.R.1987 S.C. 1352) the Supreme Court ~~has~~ observed that "when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in justice being done because of a non-deliberate delay."

In COLLECTOR, Land Acquisition, Anantnag V. Katiji the State preferred an appeal for condonation of delay of 4 days. While allowing the Appeal the Supreme Court held as follows:

"The Courts therefore have to informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "Sufficient cause" So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. "

In the instant case there is a delay of only 7 days in filing the application. The applicant states that he retired from service on 31--7--1986 and ~~xxxxxxx~~ after his retirement he issued a <sup>1</sup>lower Notice dated 30-10-1986. He also stated that when there was no response from the respondents he issued another Registered Notice on 1-3-1988. The applicant was not silent. He was making representations and giving notices to the respondents. The last notice served on the respondents is dated 1--3--1988. The application filed in the Tribunal ~~ix~~ on 8-3-1989. Thus there is only a delay of 7 days in filing the application.

Following the above decision of the Supreme Court, I am satisfied that the Applicant has shown sufficient cause for condoning the delay in ~~ix~~ filing the application. The delay is, therefore, condoned.



Now I will dispose of the case on merits.

The Applicant was drawing a pay of Rs.530/- p.m., and it was reduced to Rs.476/- as on 21--9--1980. For this the respondents stated that he was taken as Guard Grade 'C' his pay was fixed erroneously at Rs.175/- instead of Rs.165/- and it was continued till 21--9--1980 by that date he was drawing Rs.530/- p.m. and the next increment of the applicant was due on 1--9--1981. Instead of granting the increment, the applicant was served with the impugned order d/30-9-1981 and his pay was reduced to Rs.530/- to 476/- as on 21--9--1981. This impugned order was served on the applicant after a lapse of 14 years from the date of fixation of his pay. The respondents propose to recover the same from 19--9--1967.

The respondents contended that when the applicant was promoted from the post of Sr.TNC to Guard, Grade 'C' his pay was erroneously fixed as Rs.175/- instead of Rs.165/- in the year, 1967. From that date, he has been paid erroneously the excess amount than what he is actually entitled to get and that mistake was detected in the year, 1980 and his pay was reduced from Rs.530/- to Rs.476/- and the same was intimated to the applicant by an order dated 30--9--1981. As per the order dated 30--9--1981, they have been deducting the alleged excess payment from his pay. The overpayment

from 1967 to 1986 comes to Rs.9,966--66P., and the same was deducted from his D.C.R.G.

The learned counsel for the respondents argues that whenever an excess payment is made to a particular individual that can be recovered from him either from his pay or from his retiral benefits. In the instant case, the applicant was overpaid Rs.9,966--66P., So the respondents deducted the said amount from his D.C.R.G.

Now the point for consideration is:

"Whether the Government can recover the excess made payment ~~xxxx~~ to the applicant as long back as 14 years by the date of Application?

It is a fact that the excess payment was made due to wrong fixation of pay at the time of his accepting the post of ~~xx~~ Guard, Grade "C". The said overpayment was detected in the year 1980 after a lapse of 14 years.

Principal  
The ~~Bangalore~~ Bench of the Central Administrative Tribunal IN SHRI C.S.BEDI V. UNION OF INDIA AND ANOTHER (A.T.R.1988(2)C.A.T. 510 ~~xxxx~~ Justice Puttaswamy relying upon the observation of Calcutta Bench in the case reported as NILKANTH SHAH 1987(2)SLJ (CAT)306 wherein it has been held:

"We however, take into account the fact that the

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respondents took more than 7 years in detecting their mistake regarding wrong fixation which resulted in over payment of more than Rs.13,000/- and even after waiver of 50% on compassionate ground, the applicant is required to pay back more than Rs.6,000/- from his salary. When the applicant was given the benefit of revised pay he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale he enjoyed. Any deduction at this late stage definitely cause hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years. "On this ratio which is binding on me, the applicant in this case is also entitled to succeed."

Following the above decision of the Calcutta Bench the Principal Bench of the C.A.T., in C.S. BEDI case held as under:

"The applicant who joined service on 28--9--1945 has also retired from service on 30--11--1987 on attaining superannuation. Without any doubt the recoveries of heavy excess payments, even if they were really excess, either by actual recoveries or by adjustments from out of the terminal benefits payable to the applicant would undoubtedly cause him serious financial hardship and injury. On these facts also, that are peculiar, this is a fit case in which I should interfere with the impugned order and direct the respondents to release all such amounts that are ultimately due to the applicant on his retirement."

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To:

1. The General Manager, (Union of India), S.E.Railway, Garden Reach, Calcutta-43.
2. The Chief Personnel officer, S.E.Railway, Garden Reach, Calcutta-43.
3. The Divisional Railway Manager, S.E.Railway, Waltair.
4. One copy to Mr.P.V.R.Sarma, Advocate, 2-2-18/18/4/21, Indraprasta colony, Near Ahobilamath, Hyderabad-500 013.
5. One copy to Mr.N.R.Devaraj, SC for Railways, CAT, Hyderabad.
6. One spare copy.

. . . .

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25/1/90

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25/1/90

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The facts of the instant <sup>case</sup> are similar to the cases referred to above.

In the circumstances and in the light of the decisions cited supra, I make the following orders and directions:

"I quash the Order No. BU III/1/SE Railway, dated 30--9--1981 and the other consequential order dated 14--7--1986 of the respondents and direct the respondents to refund the amount recovered from the applicant's D.C.R.G., towards excess payment made due to wrong fixation of his pay in accepting the post of Guard Grade 'C' ~~xx~~ and make payment of all the terminal benefits that are admissible to him without affecting any recoveries from out of the salaries paid to him and payable to him even after his retirement from service."

However, there will be no order as to costs. This Order should be implemented within three months from the date of receipt of this order.

MS  
25-1-1990.  
(J. NARASIMHAMURTY)  
Member (Judicial)

SSS.

DEPUTY REGISTRAR (J)

52  
25/1/90  
Draft by: Checked by: Approved by  
D.R.(J)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA (V.C.)

AND

HON'BLE MR.D.SURYA RAO:MEMBER(JUDL)

AND

HON'BLE MR.D.K.CHAKRAVORTY:MEMBER:(A)

AND

HON'BLE MR.J.NARASIMHA MURTHY:MEMBER(J) ✓

DATED: 25-1-90 ✓

ORDER/JUDGMENT ✓

M.A./R.A./C.A./No.

in

I.A.No.

(U.P.No.)

O.A.No. 176/89 ✓

Admitted and Interim directions  
issued.

Allowed. ✓

~~Dismissed.~~

Disposed of with direction.

M.A. Ordered.

No order as to costs. ✓

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Central Administrative Tribunal  
DESPATCH  
30 JAN 1990  
HYDERABAD BENCH.  
25/1/90