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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION No. 107 of 1993

DATE OF ORDER: - 14th February, 1997

BETWEEN:

S.PULLAIAH

.. APPLICANT

AND

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad,
2. The Divisional Manager,
S.C.Railway, Vijayawada,
3. The Sr.Divisional Personnel Officer and
Manager, Correspondent, Railway School,
S.C.Railway,
Vijayawada.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.SUDENDER KULKARNI

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.Sudhender Kulkarni, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant was appointed as Assitant Teacher in the pay scale of Rs.135-220 (AS) on 25.6.71. He was

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brought on the 3rd Pay Commission scales of pay in the pay scale of Rs.330-560 (RS) from 1.1.73. Further he was promoted as Trained Graduate Teacher in the scale of pay of Rs.440-750 (RS) on adhoc basis from 19.2.74 and regularised in the said grade from 21.8.76. As a result of creation of selection grade of 530-630 (RS) in the category of Assistant Teachers, he was accorded to selection grade of Rs.530-630 (RS) with retrospective effect from 1.4.76. Further while in the Trained Graduate Teacher grade of Rs.440-750 (RS) he was allotted selection grade of Rs.740-880 (RS) from 6.4.84 and his pay was fixed at Rs.775/- and brought on to the 4th Pay Commission scale of Rs.1640-2900 (RSRP) and presently he is drawing Rs.2900/- with effect from 1.4.92 in the scale of pay of Rs.1640-2900 (RSRP). It is stated that ^{was} Audit Inspection Party found his pay fixation ^{grade} wrong in that he was promoted to the regular channel as Trained Graduate Teacher in the scale of Rs.440-750 (RS) from 21.8.76 and his pay was fixed taking into account his pay in the non functional grade of Rs.530-630 (RS) from 1.4.76. It is further stated that the pay fixation in all such cases has to be regulated under Rule 12(1) Appendix-XXX of Code R-II (Annexure R-4 to the reply) which envisages that the pay in the higher post should not be fixed under rule 2018-B-R-II with reference to proforma pay in the intermediary grade but the pay of the employee that he would have got from time to time in the intermediary post but for his appointment in the higher post, shall be protected by grant of personal pay. Against this position his pay was inadvertently fixed under rule 2018 B-R.II with reference to his pay in intermediary grade instead of substantial grade viz. Rs.440-750 (RS) which culminated in accrual of

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unintended benefit to the employee for which he is not entitled in accordance with the Fundamental Rules.

3. In view of the above, his pay was refixed by the impugned order No.B/P.117/IX/RMHS(TM)STPM/89-90/Pt.I/220 dated 21.1.93 (Annexure-5 to the OA) and excess payment ~~was sought~~ ³⁶⁾ to be recovered on refixation of his pay as per the details given in Memorandum No.B/P.594/XI/EM/RJY/Vol.IV dated 19.1.93 (Annexure-4 to the OA). // This OA is filed for setting aside the impugned pay fixation Memo dated 19.1.93 and the impugned order dated 21.1.93 issued by R-3 by holding it illegal, arbitrary and unconstitutional and without jurisdiction, void-ab-initio and against the principles of natural justice and for a consequential direction not to recover the excess payment allowed to have been paid.

4. There are two main contentions in this OA:

(i) The refixation and recovery was ordered without giving a proper notice to the applicant.

(ii) The recovery relates back to the year 1976. The initial fixation of pay was not done by the applicant. ^{The Constitution} It was a ~~contradiction~~ of the rules by the respondents and hence recovery after a period of about 17 years is not warranted. For this contention he relies on the judgment of the Apex Court reported in 1995 SCC (L&S) 248 (Sahib Ram v. State of Haryana) to state that the applicant is not responsible for any erroneous fixation. Even if it is treated as erroneous, he should not be penalised by

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recovery of excess amount after a period of over 17 years.

5. The respondents have filed a reply. In Paragraph 8 and 9 of the reply, the respondents admit that the Personnel Branch had made the refixation erroneously by erroneous understanding of the rules and they entered into correspondence with Financial Advisor of the Railways who is the authority on all financial matters, to ascertain the correctness of the fixation. However, the Financial Adviser had not agreed with the appreciation of the rules by the Personnel Branch and directed refixation of pay in accordance with the rules as per Annexure R-4 to the reply. Hence his pay was refixed and recovery is ordered. Hence there is no irregularity committed by the Railways, as it is a case of ~~promotion~~ ^{payment} from the ~~date of~~ exchequer, the applicant cannot escape the recovery process. They further submit that there is no estoppel against the Government where some benefits have been wrongly accorded even though that benefit was sought to be withdrawn after 20 years. For this contention, they rely on the judgement reported in 1994 (26) ATC 539 (Bhargava Shiva Rao v. Union of India). They also submit that there is no bar ^{for recovery when} ~~against~~ wrong fixation in view of the decision in D.Chandrasekhar Rao v. UOI (1994) (27) ATC 373 (C.A.T., Madras).

6. We have examined the various contentions raised in this OA. It is an admitted fact that the applicant's pay was erroneously fixed way back in 1976 and that mistake was detected in 1994 when the Audit Inspection Party found on scrutiny of pay fixation details and the consequential recovery was ordered in the year 1993. Thus there is a ~~gap~~

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of about 17 years between the date of pay fixation and refixation and ordering ~~for~~ recovery. Hence we are of the opinion that the observation made by the Apex Court in Sahib Ram's case cited supra is relevant to this issue. ~~It was held~~ The principles laid down in that cited judgement of the Apex Court is that "the upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, and in such circumstances the recovery of the payment already made, restrained". In that case, relaxation of educational qualification was granted to the appellant in that case by the respondent-organisation without any misrepresentation by the employee. In that context the Apex Court held that it is not the mistake of the appellant in that case and the respondents if failed to follow the rules, the appellant cannot be held responsible for this mistake and in those circumstances the amount paid till date may not be recovered from the appellant therein. In the present case also the initial fixation was done by the respondents themselves and there was no misrepresentation by the applicant in his fixation of pay in the year 1976. Hence the observation made by the Apex Court in that judgment is relevant followed in the present case also.

7. However, we will not like to pass a value based judgment in this connection as the amount appears to ~~be a~~ ~~have~~ high figure and we will not like both the applicant and Government to suffer by our judgment. A reasonable decision has to be taken in this connection by the competent authority. We have no doubt to say that both the parties should not suffer, ~~by a judicial decision which will~~ ^{The decision should}

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not inflict injury by recovery if it is not warranted on facts.

8. The respondents themselves have quoted another judgment of the Madras Bench of this Tribunal reported in 1994(27) ATC 340 (A.Raghavan v. Union of India) which states that show cause notice should be issued before correcting wrong fixation. This is necessary in view of the adherence to the principles of natural justice. In that case it is stated that no notice ~~had~~ been issued. The respondent's counsel submit that the order of refixation and recovery there-of is appealable order and as the applicant has not appealed he has not exhausted the normal grievance ~~or~~ redressal channel in this connection. However we find from Annexure 6 to the OA that an appeal has been filed to R-1 by the applicant on 30.1.93. It is not known whether that appeal is disposed of or not.

9. Under the above facts and circumstances of the case, we are of the opinion that it is a fit case for the General Manager to reconsider the decision already taken by R-2. We do not propose to refer it to R-1 as there is a doubt that the instructions given by R-2 would have been ~~undesired by~~ done ~~at the instance of~~ R-1. Hence we are satisfied that the General Manager of South Central Railway should dispose of his representation in accordance with law. We also give ~~an~~ another opportunity to the applicant to file a fresh appeal in addition to his representation dated 30.1.93 addressed to the General Manager for ~~setting aside~~ ^{considering} the impugned orders quoted above. If the applicant is so advised, he should file such a fresh appeal within a period

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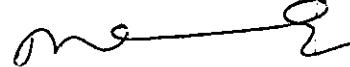
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of 30 days from the date of receipt of a copy of this order. If such an appeal is received by the General Manager, South Central Railway, Secunderabad within the stipulated period, he should dispose of the appeal taking into account the appeal already filed by him on 30.1.93 (Annexure 6 to the OA) and also other contentions raised in this OA and taking due note of the judgement of the Supreme Court in Sahib Ram's case referred to supra. The General Manager should dispose of the representation within 2 months from the date of receipt of the representation. A final reply in this connection should be issued to the applicant within the stipulated period and till such time the representation/appeal is disposed of by the General Manager, stay of the recovery as per the interim order dated 23.3.93 ~~shall~~ ^{will} be in force.

10. With the above direction, the OA is disposed of. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

14/2/97

DATED:- 14th February, 1997
Dictated in the open court.

vsn


R.S. (S)

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TYPED BY CHECKED BY
COMPARED BY APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE SHRI. R. RANGARAJAN: M(A)

AND
THE HON'BLE SHRI B.S. BHAI PARAMESHWAR:
M(J)

DATED: 14/2/87

Order/Judgement
R.P/C.P/M.A. NO.

in
O.A. NO. 107/83

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
DISMISSED FOR DEFAULT
ORDERED/REJECTED
NO ORDER AS TO COSTS.

II COURT

YLKR

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal
देशभा /DESPATCH

10 MAR 1987 (ASB)

हैदराबाद न्यायालय
HYDERABAD BENCH