

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 21.5.99

OA No.527/1995

Birdhi Lal Shringi S/o Shri Kesari Lal Shringi, aged around 58 years, r/o Railway Quarter No. 69B, Workshop Colony, Kota Jn., retired from the post of Office Superintendent, Western Railway, Kota.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Chief Works Manager, Western Railway, Kota Division, Kota.
3. Sr. Accounts Officer, Workshop Western Railway, Kota Division, Kota.

.. Respondents

Mr. Vinod Goyal, Advocate, Briefholder for Mr. R.N.Mathur, counsel for the applicant.

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh, Administrative Member

Applicant, Birdhi Lal Shringi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following:

- i) That the respondents may be directed to release the amount of Rs. 26,299/- which was recovered from the pensionary benefits of the applicant. The aforesaid amount may be paid to the applicant alongwith the interest @ 22 per cent per annum; and
- ii) That the respondents may be directed to pay interest on the delayed payment of gratuity; and

Gopal Singh

iii) That the respondents may be directed to issue a revised pension payment order on the basis of pay of the applicant deemed to be Rs. 2900/-; and

iv) That the respondents may be directed to give other benefits such as commutation of the pension may be computed on the basis of pension payment order.

2. The applicant's case is that after due selection he was appointed on the post of Office Superintendent vide respondents' letter dated 21.3.85 (Ann.A3). Subsequently under the restructuring and upgradation scheme, the applicant was promoted to the post of Office Superintendent w.e.f. 1.1.84 vide respondents letter dated 16.12.91 (Ann.A4). Subsequently, the respondents vide their letter dated 20.11.93 (Ann.A5) superseded their earlier order dated 16.12.91 mentioned supra and changed the date of promotion of the applicant to the post of Office Superintendent from 1.1.84 to 1.6.84 on proforma basis. The applicant submitted a representation against the order dated 20.11.93. In reply, the respondents vide their letter dated 15.4.95 ^{have} ~~has~~ pointed out that the applicant was not entitled for promotion on proforma basis and consequent pay fixation w.e.f. 1.5.84 and accordingly vide respondents' letter dated 20.11.93, the orders for proforma promotion and pay fixation were cancelled. In this letter dated 15.4.95, the applicant was also given show-cause notice to give reply within 7 days. The respondents vide their letter dated 4.5.95 (Ann.A1) intimated the applicant that his case has been reconsidered and he was not found eligible for the benefit of proforma promotion w.e.f. 1.5.84. Accordingly, an amount of Rs. 26,299/- on account of pay fixation of the applicant on his erroneous promotion to the post of Office Superintendent has been recovered by the respondents. Feeling aggrieved, the applicant has approached this Tribunal through the present OA.

3. Notices were issued to the respondents and they have filed

Copab Singh

their reply.

4. It has been submitted on behalf of the respondents that the applicant was promoted on provisional basis. They have also averred that the applicant was given erroneous promotion under a bonafide mistake because persons senior to the applicant were not given such benefit and, therefore, the promotion order dated 16.12.91 was superseded vide respondents' order dated 20.11.93. The applicant was served with a show-cause notice as to why he should not be reverted to the lower post. It is the assertion of the respondents that the applicant was actually entitled for the said promotion only w.e.f. 23.3.85. The applicant was thus treated as promoted to the post of Office Superintendent w.e.f. 23.3.85 and his pay was refixed w.e.f. that date and because of refixation, ^{the} ~~an~~ over-payment made to the applicant because of earlier fixation worked out to Rs. 29,299/- has been recovered.

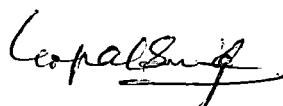
5. We have carefully gone through the records of the case. It may be mentioned that the applicant has since retired w.e.f. 31.5.95. A perusal of the records reveals that the applicant was erroneously given promotion to the post of Office Superintendent initially w.e.f. 1.1.84 and subsequently from 1.5.84 ignoring the claims of his seniors. When it came to the notice of respondents, the mistake was rectified and the applicant was afforded promotion to the post of Office Superintendent w.e.f. 23.3.85. It is also seen from the records that the applicant was given show-cause notice vide respondents letter dated 15.4.95 (Ann.A7) in this regard and after due consideration of his representation, the final order of recovery of the amount over paid to the applicant was made by the respondents vide their letter dated 4.5.95 (Ann.R2). The applicant has, however, been allowed the benefit of promotion and consequently yearly increments from 23.3.85. It is thus seen that the applicant was given due opportunity to present his case before the recovery of the over payment amount was ordered. The over paid

Copaling

(B)

amount has already been recovered from the gratuity of the applicant. Consequent upon his promotion to the post of Office Superintendent w.e.f. 23.3.85, his pay was fixed at a lower stage than ^{The} ~~its~~ earlier and, therefore, his pension was calculated on the basis of the pay fixed consequent upon his promotion from 23.3.85. The claim of the applicant that his pension and other retirement benefits should be calculated on the basis of his earlier pay is not tenable because his pay was refixed on his promotion w.e.f. 23.3.85. We, thus, do not find any justification for interference in the action taken by the respondents for recovery of the over paid amount from the applicant.

6. The OA is accordingly dismissed with no order as to costs.


(GOPAL SINGH)

Adm. Member


(GOPAL KRISHNA)

Vice Chairman