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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 286/96
T.A. No.

199

DATE OF DECISION 30.8.96

Nathi Lal

Petitioner

Shri Shiv Kumar

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Shri U.D. Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *Yes*
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Signature)
(RATAN PRAKASH)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

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OA NO.286/96

Date of order: 30.8.1996

Nathi Lal S/o Sh.Dhanpal Ram : Applicant

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager (East.) Western Railway, Jaipur Division, Jaipur.

: Respondents

Mr. S.Kumar, counsel for the applicant
Mr. U.D. Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein, Shri Nathi Lal has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to quash the impugned order dated 1-4-5-1996 (Annex-A-1) by which the respondents proposed to recover the amount of Rs. 1,23,061/-.

2. Facts relevant for the disposal of this application in short are that the applicant was initially appointed in the Respondents Railways on the post of Apprentice Fireman at Bandikui on 25.8.1953 and he retired from service from the post of Loco Fireman on superannuation on 31.5.1991. By letter dated 16.9.1988 of the railway Board, the

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orders for stepping up of the pay and for removing the pay anomaly was issued. The applicant having fulfilled the eligibility conditions was allowed the stepping up benefits and vide order dated 18.7.1988 (Annex.A-2) the benefits were allowed to him. It is the grievance of the applicant that after five years of his retirement, respondent No.2, the Divisional Railway Manager (E&Tt.) Western Railway, Jaipur Division, Jaipur has issued the impugned order dated 1-4/5-1996 proposing to recover the aforesaid amount from the applicant, wherein they have also shown withholding of an amount of Rs. 40,000/-. It has been contended by the applicant that since the stepping up has been done in pursuance of the Railway Board letter dated 16.9.1988, ~~the benefits received~~ cannot be recovered now which is being received by him for almost ten years.

3. The respondents have opposed this application by filing a reply to which a rejoinder has also been filed. The stand of the respondents has been that impugned letter Annexure A-1 is not a notice or order directing the recovery or initiating the process of recovery of the amount mentioned therein. Hence, this OA is premature. It has also been contended that the proposed recovery to be made is within the competence of the respondents and as per rules and that the application is without any substance.

4. I have heard the learned counsel for the applicant and also the learned counsel for the respondents and have perused the pleadings.

5. The only question which is to be answered in this Q1 is whether an amount which has been paid to the employee in pursuance of an order issued by the competent authority and having remained in vogue for a number of years can be recovered subsequently on revision of policy?

6. The chief contention of the learned counsel for the respondents has been that since the applicant has approached this Tribunal without making any representation to the respondents and no order of actual recovery has been issued, this application being premature should be dismissed. It has alternatively been suggested that the applicant be directed to file a representation and appropriate order would be issued by the respondents in view of the law laid down by Hon'ble the Supreme Court.

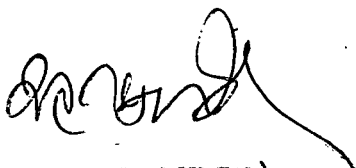
7. I have given anxious thought to the able arguments advanced on behalf of both the parties.

8. After judgment of Hon'ble the Supreme Court in the case of Sahit Ram Vs. State of Haryana and others, 1995 SCC(LAS) 248, there remains no ambiguity that where a benefit of pay scale has been given to an employee and it is not actuated on account of any mis-representation by him and the employee has not been at fault, the amount paid may not be recovered

from him. This principle has further been reiterated by Hon'ble the Supreme Court in the case of State of Orissa and others Vs. Adwait Charan Mohanthy and others, 1995 SCC (L&S) 522 decided on 27.1.1995 wherein the employee even after the age of superannuation was allowed to continue till the age of 60 years and was also paid the salary and benefits throughout, ^{but} the respondents were restrained from making its recovery. In the instant case also the applicant has been receiving the benefits since the year 1996 and more particularly after his age of superannuation in the year 1991, the ratio laid down by Hon'ble the Supreme Court in the aforesaid cases applies squarely to the facts of the instant case.

9. In view of above, the impugned order dated 1-4/5-1996 (Annex.A-1) cannot be sustained in the eye of law and it is hereby quashed.

10. Therefore, while answering the question raised above in the negative, the OA is allowed and the impugned order dated 1-4/5-1996 (Annex.A-1) issued by the respondents proposing to recover an amount of Rs. 1,22,081/- is hereby quashed. The parties to bear their own costs.


(RATAN PRAKASH)
MEMBER (J)