

O.A No.248/97

Date of order: 29/9/99

A.K.Verma, S/o Shri Hari Singh Verma, R/o 135, Adarsh Nagar, Ajmer, last employed on the post of Senior Project Manager, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
- e. Chief Works Manager, Loco Work Shop, Ajmer.

...Respondents.

Mr.Shiv Kumar - Counsel for applicant.

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

- (i) to declare the impugned order dated 22.4.96 as illegal and to quash the same;
- (ii) to release the amount of Gratuity so with-held with interest @ 18% per annum.

2. Facts of the case as stated by the applicant are that in pursuance of the Railway Board's letter dated 16.9.88, the applicant was allowed the benefit of stepping-up vide order dated 12.7.89 and pay of the applicant was fixed at Rs.3500/- w.e.f. 3.2.88. Since then, the applicant was continuously drawing the pay as per order dated 12.7.89 but respondent No.2 has issued the impugned order dated 22.4.96, by which the pay of the applicant was fixed at Rs.3400/- in the pay scale Rs.2000-3500, w.e.f. 3.2.88. No notice was given to the applicant before issuing such order and just before 8 days of his retirement, the respondents have with-held the Gratuity amount of Rs.50,000/- payable to the applicant. It is stated that the benefit of stepping-up was given to the applicant in pursuance of Railway Board's letter dated 16.9.88 and other similarly situated persons were also given such benefits and no recovery has been made from them. The applicant filed a representation on 15.5.96 but with no result. It is stated that there is no fraud

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or mis-representation on the part of the applicant and the applicant was allowed stepping-up in pursuance of the Railway Board's letter, therefore, the action of the respondents in with-holding the DCRG is arbitrary, illegal and discriminatory, therefore, the applicant has prayed for the relief as mentioned above.

3. Counter was filed. It is stated in the counter that the benefit of stepping-up allowed to the applicant vide order dated 12.7.89 was irregular and erroneous, therefore, by way of the impugned order dated 22.4.96, the pay of the applicant was refixed in pursuance of the Railway Board's letter dated 30.11.90. It is denied that a representation dated 15.5.96 was filed with the respondents. It is also denied that differential treatment is given to the applicant and stated that it is a case of rectification of an error and to rectify the error the respondents are fully empowered. Therefore, the applicant has no case and this O.A is devoid of any merit.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the impugned order dated 22.4.96 is altogether arbitrary and illegal as it has been passed without following the principle of natural justice. On the other hand, the learned counsel for the respondents has submitted that the impugned order dated 22.4.96 is perfectly legal and it has been issued only to correct the order dated 12.7.89 passed erroneously. In support of his contentions he has referred to 1997 (6) SCC 360, Union of India Vs. O.P.Saxena, laid emphasis that while ordering stepping-up, the following two conditions must be satisfied:

- (a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.

But the case of the applicant was not covered under these two conditions, therefore, the order already passed on 12.7.89 was rectified vide the impugned order dated 22.4.96.

6. We gave thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

7. It is an admitted fact that after passing the order dated 22.4.96, the applicant was only informed that his pay which was wrongly fixed has been correctly fixed vide the impugned order.



8. The learned counsel for the applicant has argued that before passing of this order, the principles of natural justice have not been followed, therefore, the impugned order dated 22.4.96 is altogether illegal and ab initio void.

9. In Menika Gandhi Vs. UOI, 1978(1) SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefit he has enjoyed, an opportunity has to be given. In Delhi Transport Corpn. Vs. Majdoor Congress, 1991 Suppl SCC 600, it was held that rules of natural justice also require that the applicant should be given an opportunity of hearing before subjecting him to any punitive action. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, if order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with the audi altram partem and the party should be given an opportunity to meet his case before an adverse decision is taken.

10. In Sardar Guljar Singh Vs. UOI, SLJ 1998 CAT, the Principal Bench, New Delhi, it was held that action having civil consequences should not be done without giving notice.

11. In view of the legal position as cited above, we are of the opinion that before passing the impugned order dated 22.4.96, it was imperative on the part of the respondents to give an opportunity to the applicant to explain. Therefore, the impugned order was passed without following the principles of audi altram partem.

12. The learned counsel for the applicant has argued that there was no fraud or misrepresentation on the part of the applicant, before the order dated 12.7.89 was issued by the respondents. Therefore, no recovery can be made from the applicant and with-holding of Gratuity payable to the applicant at this count is arbitrary and illegal action of the respondents. In support of his contention, he has referred to a leading case decided by the Apex Court Sahib Ram Vs. State of Haryana & Ors, 1995 SCC(L&S) 248 and also referred the order passed by this Tribunal in O.A No.139/95, Nathi Lal & Anr. Vs. UOI & Ors dated 6.11.96 and order passed in O.A No.286/96 Nathi Lal Vs. UOI & Anr dated 30.8.96.


13. In Sahib Ram Vs. State of Haryana & Ors, it has been held by the Apex Court that "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

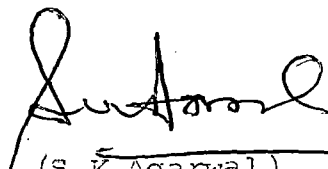
reiterated by Hon'ble the Supreme Court in the case of State of Orissa & Ors. Vs. Adwait Charan Mohanthy & Ors, 1995 SCC (L&S) 522 decided on 27.1.95. In Ahmad Hussain Ansari Vs. The North Bihar Industrial Area Development Authority, 1999(4) SLR 322, the Patna High Court dated 2.12.98, the views of the Apex Court were followed and it was held that "Petitioner got excess payment - Not permissible to effect recovery after 17 years - Wrong fixation of pay was not on account of any misrepresentation made by the petitioner that the benefit of higher pay scale was given to him, but by wrong construction made by the Principal for which appellant cannot be held to be at fault."

14. In the instant case also there appears to be no fraud or mis-representation on the part of the applicant, therefore, any recovery from the applicant in pursuance of the impugned order will not be sustainable in law.

15. In view of the above, we allow this application and quash the impugned order dated 22.4.96 and direct the respondents that any order of re-fixing the pay of the applicant may be made only after giving an opportunity to show cause to the applicant. The amount of DCRG with-held by the respondents may be released within one month from the date of receipt of a copy of this order with interest @ 12% per annum.

16. No order as to costs.


(N.P. Nawani).
Member (A).


(S.K. Agarwal)
Member (J).