IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 7.11.2000

OA 243/98

Vimal Chand Jain son of Shri Udai Raj Jain aged about 61 years, resident of Village & Post Office Jodhpur Tehsil & District Ajmer last employed on the post of Office Superintendent in DRM(E) Office, Ajmer, Western Railway.

.... Applicant.

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.

2. The Divisional Railway Manager, Western Railway, Ajmer.

3. The Sr. Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.

.... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.
Mr. R.G. Gupta, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. Gopal Singh, Member (Administrative)

ORDER

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

The main grievance of the applicant in this OA is that pay of the applicant was fixed by the Department suo-motto but after the period of about 10 years, the fixation of pay made earlier was cancelled and an amount of

...2/-

Rs. 15,860/- was withhold from his DCRG payable on his superannuation.

2. We have perused the averments made in the OA and also reply filed by the respondents and rejoinder to the reply filed by the applicant and also perused the whole record and gave anxious consideration to the rival contentions of both the parties.

3. It is not disputed fact that pay of the applicant was fixed after granting Special pay of Rs. 35/- per month. It is also not disputed fact that there was no misrepresentation on the part of the applicant in getting the Special pay. It appears that order to withhold Rs. 15,860/- as overpayment from DCRG is based upon Audit objections. No opportunity of show-cause or opportunity of hearing appears to have been given to the applicant before withholding such amount or for asking to refund the amount as mentioned above.

4. In Shyam Babu Verma & Others vs. Union of India & Others, (1994) 2 SCC 521, it was held that by the Supreme Court that the petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him.

5. In Sahib Ram Vs. State of Haryana & Others, 1995 (Supp (1) SCC 18, it was held by the Supreme Court that upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt. was restrained from recovering the overpayment

...3/-

already made.

6. In Union of India & Others Vs. Ram Gopal Agarwal & Others, (1998) 2 SCC 589, it was held by the Supreme Court that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered.

7. In State of Haryana Vs. Om Prakash & Another (1998) 8 SCC 733, it was directed by the Supreme Court that in case he had withdrawn that amount, the same should not be recovered from him.

8. On the basis of above settled legal position and fact and circumstances of this case, we are of the considered opinion that respondents were not entitled to withhold/recover the amount so mentioned as over payment to the applicant on account of fixation made by the respondents Department ten years back as no mis-representation on the part of the applicant was there and no opportunity of show cause was given before issuance of such orders. Therefore, we are of the considered opinion that action of the respondents is arbitrary, illegal and liable to be quashed.

9. We, therefore, quash and set aside order dated 24.5.93 at Annexure A-1, order dated 14.5.93 at Annexure A-2 and Order dated 30.6.93/2.7.93 at Annexure A-3 and direct the respondents not to recover anything in pursuance of these orders and if any recovery has been made, such amount shall be refunded within two months from the date of receipt of copy of this order.

...4/-

10. No order as to costs.

(GOPAL SINGH)
MEMBER (A)

(S.K. AGARWAL)
MEMBER (J)