IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.28/98   Date of order: 12.9.2000

Arjun Dass, S/o Shri Jhaman Dass, R/o Plot No.111, Vivekanand Colony, Ajay Nagar, Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.

2. Divisional Rly.Manager, W.Rly, Ajmer.

3. Sr.Divisional Personnel Officer, W.Rly, Ajmer.

4. Divisional Accounts Officer, W.Rly, Ajmer.

...Respondents.

Mr.W.Wales - Counsel for applicant.
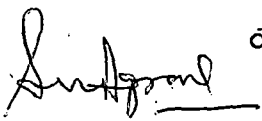
Mr.K.S.Sharma - Counsel for respondents.

CORAM:

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

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

In this Original Application under Sec.19 of the Administrative Tribunals Act, 19085, the applicant makes a prayer:

(i) to quash and set aside the impugned order dated 27.6.97 (Annx.A1);

ii) to direct respondent No.2 to refund Rs.22271/- retained from the applicant's retiral benefits/salary with interest;

iii) to direct respondent No.2 for correctly compute the amount payable towards gratuity, in terms of Railway Board's instruction dated 8.8.95 and (iv) to direct respondent No.2 to revise the amount paid towards retiral benefits taking into account the basic pay of the applicant as Rs.1530 as against Rs.1470/-.

2.   In brief facts of the case as stated by the applicant are that he retired from railway service on attaining the age of superannuation on 30.6.95 but Rs.22271/- were withheld at the time of settling the retiral benefits to the applicant. The applicant filed O.A No.186/96 which was decided on 29.4.97 with the following directions:

"We direct the respondents to issue a show cause notice to the respondents within a period of two months from the date of receipt of a copy of this order, giving details of the errors committed in his earlier pay fixation and asking him why the pay should not be suitably revised. The applicant should be given one month's time to furnish his reply to the show cause notice to be issued by the respondents. Thereafter on receipt of the applicant's reply, the respondents shall take a decision in the matter as to the correct fixation of the pay of the applicant and payment of the retirement dues to him within a period of one month. Regarding commutation of the gratuity payable to the applicant, the respondents should keep in view the instructions issued by the Govt of India vide Annx.A8 dated 8.8.95 and revise the applicant's gratuity upwards suitably while making final payment to him after receipt of the applicant's reply to the show cause notice and calculation of the final retirement dues payable to him."

3.   In pursuance of this order dated 29.4.97, respondent No.3 issued notice on 27.6.97 which was nothing but repeatition of the original details of pay fixation. The applicant preferred representation on 24.7.97. It is stated that recovery as computed by respondent is not supported by any rules/instructions. It is also stated that erroneous payment made before 12 months can only be recovered as per para 1014(b) of IREM but in the instant case recovery of overpayment relates to a period of 23 years, therefore, there is no justification to recover the same. It is also stated that recovery of overpayment due to wrong fixation cannot be made after a long time and there was no misrepresentation on the part of the applicant to get the payment. Therefore, no recovery can be made from the applicant. Therefore, the applicant filed the O.A for the relief as mentioned above.

3.   Reply was filed. In the reply it is stated that in pursuance of the order passed by this Tribunal in O.A No.186/96, notice to show cause was issued to the applicant which was legal and valid. It is also stated

that the applicant's basic pay was revised from Rs.1530 to 1470 and respondents was empowered to correct the error made earlier and if any payment has been made on account of erroneous fixation, the respondents' department was entitled to recover the same. Therefore, the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit liable to be dismissed.

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

5.   The learned counsel for the applicant has vehmently argued that the respondents has reopened the fixation made before 23 years ago and issued show cause notice on the same line against which the applicant has already filed O.A, therefore, the recovery made from the applicant in pursuance of order Annx.A1 is altogether arbitrary and illegal and liable to be quashed. On the other hand the learned counsel for the respondents has argued that the respondents' department was competent to correct the erroneous fixation made to the applicant and if any over payment has been made, the respondents' department was entitled to recover the same.

6.   Heard the learned counsel for the parties and also perused the whole record and also the legal citations as referred by the learned counsel for the applicant.

7.   As regards the contention of the applicant is concerned, the law is well settled on the point that in all cases where the Govt has fixed the pay suo motto even if the govt has fixed the pay wrongly, no recovery can be made after a long lapse.

8.   In Shyam Babu Verma & Ors Vs. UOI & Ors, (1994) 2 SCC 521, it was held 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.

9.   In Sahib Ram Vs. State of Haryana & Ors, 1995(Sup(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 already made.

10.   In <u>Collector of Madras & Anr. Vs. K.Rajamonickam</u>, (1995) 2 SCC 98, it was held by the Supreme Court that the respondent was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during that period was prohibited.

11.   In <u>UOI & Ors Vs. M.Bhaskar & Ors</u>, (1996) 4 SCC 416, in this case the Supreme Court while setting aside the judgments of various Tribunals in regard to scale of pay of pre-1997 Traffic/Commercial Apprentice making them entitled to the pay scale of Rs.1600-2660, it was held that the recovery of the amount already paid because of the judgment of various Tribunals would cause hardship to the respondents/appellants concerned and therefore, the respondents (UOI) were directed not to recover the amount already paid.
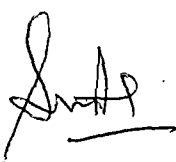
12.   In UOI & Ors Vs. Ram Gopal Agarwal & Ors, (1998) 2 SCC 589, it was held by the Supreme Court that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered.

13.   In <u>State of Haryana Vs. Om Prakash & Anr</u>, (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.

14.   In view of the above legal position as stated above and the facts and circumstances of the case, I am of the considered view that no recovery can be made from the applicant in pursuance of the impugned order at Annx.A1.

15.   On the basis of foregoing discussion, I am of the considered view that the respondents' department is not entitled to recover the amount from the applicant on account of wrong fixation made before 23 years.
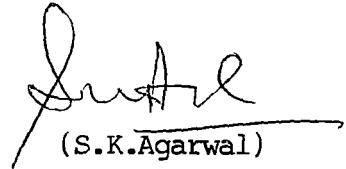
16.   I, therefore, allow the O.A and quash the impugned order Annx.A1

and direct the respondents not to recover any amount in pursuance of order Annx.A1 and refund the amount if any recovered in pursuance of order Annx.A1 with interest @ 12% per annum from the date of recovery till the amountis refunded to the applicant, within a period of 3 months from the date of receipt of a copy of this order.

17. No order as to costs.

(S.K.Agarwal)

Member (J).