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

O.A. No. 583/2001.
T.A. No.

199

DATE OF DECISION _____

Suresh Chand Sharma & Prem Prakash Mukhi Petitioner

Nand Kishore

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

S. S. Hassan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman

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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(G. L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 31-03-03

O.A. No. 583/2001.

1. Suresh Chand Sharma, aged about 57 years, son of Shri Bal Chand Sharma Mail, Driver A-Special Western Railway, Jaipur, resident of B-1/4, Road No.1, Ganpati Nagar, Railway Colony, Jaipur.
2. Prem Prakash Mukhi son of Shri Harish Chand Mukhi, aged about 58 years, Mail Driver A-Special, Western Railway, Jaipur, resident of 212, Dadu Marg, Barkat Nagar, Jaipur-302015.

.. APPLICANTS.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Jaipur.

... RESPONDENTS.

Mr. Nand Kishore, counsel for the applicant.
Mr. S. S. Hassan counsel for the respondents.

CORAM

Hon'ble Mr. G. L. Gupta, Vice Chairman.

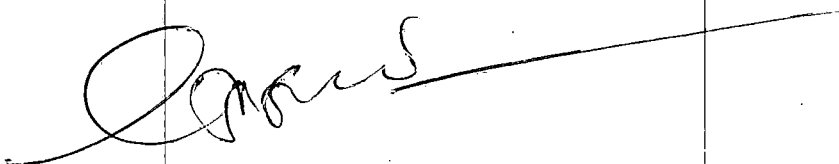


: O R D E R :

Per Mr. Justice G. L. Gupta.

The applicants were working as Driver Grade 'C' on 1.1.86. They were getting their pay at Rs.484/- in the scale of Rs.330-480. They were promoted to the pay scale of Rs.425-640 on 31.1.86 and that their pay was fixed at Rs.515/- The Fourth Pay Commission recommendations were made applicable to the employees w.e.f. 01.01.1986. After the Fourth Pay Commission, the pay scales of Rs.330-560 and Rs.425-640 were merged into one scale of Rs.1350-2200/-. The pay of the applicants as on 1.1.87 was fixed at Rs.1720/-. On the basis of the option given by the applicants they were fixed at Rs.1850/- as on 1.5.87. Thereafter they earned benefit of increments on the first day of May of each year. Audit of account was held in the year 1999 wherein it was detected that the pay of the applicants were wrongly fixed in the corresponding scale of Rs.425-640/- as because of the merger of two pay scales, the applicants could not be given promotion in the scale of Rs.425-640 and there was no occasion of giving option or fixing pay under FR 22. The audit, therefore, recommended the refixation of the pay of the applicants vide order dated 12.05.2000 (Annexure A-7/R-1), whereupon the pay of the applicants was refixed at the stage of Rs.1720/- as on 1.1.87 and Rs.1760/- as on 1.1.88 as against the pay fixation made earlier at Rs.1850/- as on 1.5.87 and Rs.1900/- as on 1.5.88. When the applicants came to know about the order dated 12.05.2000 they approached this Tribunal by filing this OA on 07.12.2001. It is prayed that the order refixing the pay of the applicant be quashed and the amount already recovered from the applicants should be refunded to them with 18% interest per annum from the date of recovery till the date of payment.

2. In the counter, the respondents case is that there was erroneous fixation of the pay of the applicants and, therefore, the respondents



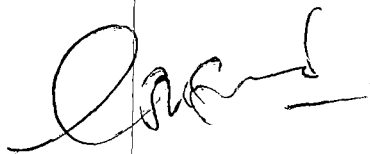
had a right to correct the mistake.

3. Heard the learned counsel for the parties and perused the documents placed on record.

4. The main contention of the learned counsel for the applicants was that recovery was effected without issuing show cause notice to the applicants. He pointed out that the payments had been made to them without any misrepresentation by the applicants and, therefore, if the respondents thought that there was a mistake in the fixation of pay in the year 1987, an opportunity of hearing ought to have been given to the applicants. He submitted that the order refixing the pay of the applicant and recovery of the excess amount should be quashed on the ground of not following the principles of natural justice.

5. On the other hand, learned counsel for the respondents contended that before effecting the recovery, the applicants themselves had made representation against the proposed action of the respondents and, therefore, no prejudice was caused to the applicants by not following the principles of natural justice.

6. I have considered the above contentions. It is now no more in dispute that show cause notice had not been issued to the applicants for the refixation of their pay and no show cause notice had also been issued to them before certain amounts were recovered from the salary of the applicants. It is, however, not clear as to what amount is recoverable from the applicants on account of refixation of their pay. In the reply, it is not stated as to how much amount has been paid in excess to both the applicants. In any case, admittedly the respondents have made recovery to the tune of Rs.43,000/- each



from the pay of each of the two applicants. The further recovery was stayed by the Tribunal vide order dated 14.12.2001.

7. It has to be accepted that when the respondents thought of recovering certain amount from the applicants, they ought to have done so after following the principles of natural justice more so, when the recovery was made after more than ten years.

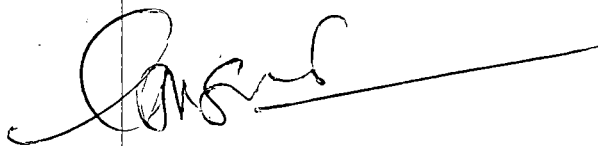
8. The applicants of course made representation on hearing that the audit had raised some objections. In any case, it is not the case for the respondents that they had considered the objections before starting the recovery.

9. Keeping in view the facts and circumstances of the case I think it proper to dispose of the O.A. by giving certain directions without going into the merits of the case.

10. Consequently, it is directed that no further recovery shall be made from the salary of the applicants without issuing show cause notice to the applicants against the proposed recovery and without considering their objections.

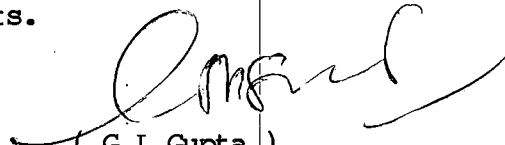
The show cause notice may be issued to the applicants within a period of two weeks from the date of communication of this order. The applicants may file their reply/objection within two weeks thereafter. The competent authority shall decide the matter within four weeks thereafter. If the respondents are not satisfied by the reply/objection of the applicants a speaking order shall be passed and communicated to the applicants.

It the applicants are aggrieved with the order to be passed by the respondents they will be at liberty to challenge the same in accordance with law.



If the competent authority is satisfied with the objections made by the applicants the amounts already recovered from their pay shall be refunded to them with interest at 10% per annum from the date of recovery till the date of payment.

No order as to costs.



(G.L.Gupta)

Vice Chairman.

jsv.