

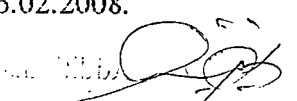
03.01.2008OA 574/2003

Present: None for the applicant.

Mr. T.P.Sharma, counsel for the respondents.

Additional reply not filed despite last opportunity having been granted. Let the matter be placed before the Hon'ble Bench for direction/appropriate orders on 06.02.2008.

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(GURMIT SINGH)
DEPUTY REGISTRAR06.02.2008OA 574/2003

Present : None for the parties.

This case has been listed before the Deputy Registrar due to non-availability of the Division Bench. Be listed before the Hon'ble Bench on 14.02.2008.

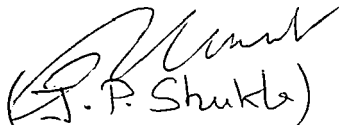
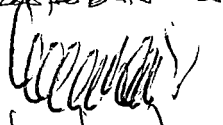
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(GURMIT SINGH)
DEPUTY REGISTRAR14-2-2008

Mr. Shiv Kumar, Counsel for applicant
Mr. T.P. Sharma, Counsel for respondents

Heard learned Counsel for the parties.

For the reasons dictated separately,
the OA is disposed of. ~~The documents~~ The documents
produced by the learned Counsel for the respondents is
taken on record.


(J.P. Shukla)
MLA
(M.L. Chauhan)
MLJ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 14th day of February, 2008

ORIGINAL APPLICATION No.574/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Badri Shankar Kapoor,
s/o Shri Daya Shankar Kapoor,
r/o 3K4, Vaishali Nagar, Ajmer,
last employed on the post of
Hindi Superintendent,
Ajmer Division, Ajmer.

.. Applicants

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India through General Manager,
North Western Railway,
Jaipur.
2. Chief Works Manager,
North Western Railway,
Ajmer Division,
Ajmer.

... Respondents

(By Advocate: Shri Tej Prakash Sharma)

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O R D E R

Per Hon'ble Mr. M.L. Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That the impugned order dated 14/10/2003 (Ann.A1) may please be declared illegal, arbitrary and the same may be quashed with all consequential benefits.
- ii) That the respondents may be directed to fix the pay of applicant as Rs. 7550/- as on June, 1999 in the pay scale of Rs. 5000-8000 onwards and they may be further directed to place the pay of applicant in the pay scale of Rs. 6500-10500 by taking his pay as Rs. 7550/- basic as on June 1999 in the pay scale of Rs. 5000-8000. His pay may be fixed in the pay scale of Rs. 6500-10500 without taking reduced pay.
- iii) Any other order/directions/relief may be passed in favour of applicant which may be deemed fit just and proper under facts and circumstances of this case..
- iv) That the cost of this application may be awarded.

2. Briefly stated, facts of the case are that the applicant while working as Assistant Station Master in the pay scale Rs. 1400-2300 was medically decategorised on 24.9.1991. Subsequently, he was absorbed on the post of Assistant on 25.9.1991 on which post he joined on 26.9.1991. After the recommendation of the 5th Pay Commission was accepted, the applicant's pay was fixed at Rs. 7250/- on 1.7.1996 and Rs. 7400/- on 1.7.1997. In June, 1999 the basic pay of the applicant was Rs. 7550/-. The applicant was drawing basic pay of Rs. 7550/- but it was reduced from Rs. 7550/- to Rs. 7250/- w.e.f. July, 1999. The applicant made a representation, but it was



not accepted and a sum of Rs. 19279/- ~~which~~ was ordered to be recovered from the pay of the applicant. Feeling aggrieved, the applicant filed OA No.517/2001 before this Tribunal and this Tribunal observed that no show cause notice was issued to the applicant before effecting recovery and reducing pay of the applicant, as such, action of the respondents is in violation of principles of natural justice. Accordingly, the OA was allowed and respondents were directed to refund the aforesaid amount to the applicant within two months from the date of communication of the order. It was however made clear by the Tribunal that this order will not preclude the respondents from passing appropriate order after following the principles of natural justice. Pursuant to the order passed by the Tribunal in earlier OA, the respondents issued a show-cause notice dated 19.5.2003 (Ann.A6) to the applicant for making recovery of Rs. 19279/-. It may be relevant to state here that pursuant to the order passed by this Tribunal in earlier OA, the respondents have refunded the amount of Rs. 19279/- to the applicant vide cheque No.059850 dated 30.4.2003. The applicant gave reply dated 24.6.2003 to the show-cause notice. The respondents after considering the reply of the applicant has passed order dated 14.10.2003 (Ann.A1) whereby the applicant has been directed to deposit the amount of Rs. 19279/- within 15 days from the date of receipt of

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the letter failing which the respondents will start making recovery from DA, which the applicant is getting on pension. It is this order which is under challenge in this OA.

The case of the applicant in this OA is that old pay scale of Rs. 1400-2300 is revised to Rs. 5000-8000, as such, his pay was rightly fixed in the pay scale of Rs. 5000-8000 vide order dated 15.1.98 (Ann.A2).

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that after medical decategorisation the applicant was absorbed as Hindi Assistant in the pay scale of Rs. 1400-2300 and his pay was rightly fixed in the pay scale of Rs. 4500-7000. It is further stated that as per recommendation of the 5th Pay Commission, the pay scale of Hindi Assistant Rs. 1400-2300 was revised to Rs. 4500-7000. Since pay of the applicant was wrongly fixed vide Ann.A2 in the pay scale of Rs. 5000-8000 which was rectified after the Railway Board order in the pay scale of Rs. 4500-7000 which was as per rules. The respondents have also indicated the chart of old pay and revised pay scales in para 4(iii) of the reply affidavit, which is as under:-

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OLD PAY SCALE (In Rs.)	NEW PAY SCALE (In Rs.)
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1200-2040	4000-6000
1400-2300	4500-7000
1600-2660	5000-8000
2000-3200	6500-10500

Thus according to the respondents a note of recovery of Rs. 19279/- after rectifying the mistake as per the Railway Board letter dated 20.10.97 was given to the applicant and hence the excess amount paid to the applicant is required to be recovered.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The main question which requires our consideration is whether the old scale of pay Rs. 1400-2300 was revised to Rs. 4500-7000 or Rs. 5000-8000 pursuant to the recommendations of the 5th Pay Commission. Admittedly, the applicant was absorbed as Hindi Assistant in the pay scale of Rs. 1400-2300. From the material placed on record and in view of the averments made by the respondents in the reply, which part of averment has remained un-rebutted, it is clear that the scale of Rs. 1400-2300 was revised to Rs. 4500-7000 after the 5th Pay Commission recommendations were accepted by the Government. Thus, the fixation made by the respondent vide Ann.A2 so far as the applicant is concerned was not correct. Perusal of

this order Ann.A2 reveals that at Sl.No. 4 name of one Indra Mathur found mention whose old pay scale has been shown as Rs. 1400-2300 and revised as Rs. 4500-7000 whereas in the same order at Sl.No.13 name of the applicant find mention whose old pay scale has been shown as Rs. 1400-2300 whereas revised pay scale has been shown as Rs. 5000-8000. Out of 14 persons mentioned in Ann.A2, these are only two persons whose pay has been revised from the old scale of Rs. 1400-2300. Thus, apparently, from perusal of this document it is clear that when old pay scale of Indra Mathur Rs. 1400-2300 was revised to Rs. 4500-7000 how the pay scale of the applicant could have been revised to Rs. 5000-8000 when his old pay scale was also Rs. 1400-2300 i.e. similar to that of Indra Mathur. Thus it is apparent that the applicant was not entitled to the revised scale of Rs. 5000-8000 and his pay has to be fixed in the revised scale of Rs. 4500-7000. The respondents had every right to rectify this mistake. As such, we see no infirmity in the action of the respondents whereby the pay of the applicant has been revised and the applicant has been directed to deposit Rs. 19279/- vide impugned order dated 14.10.2003 (Ann.A1) being excess amount drawn by the applicant to which he was not entitled.

Now the further question which requires our consideration is whether ^{relief} ~~leave~~ against the recovery of the excess payment made by the Government to the

applicant on account of wrong fixation should be granted to the applicant or the applicant should be directed to deposit the excess amount from the pensionary benefits in easy installments. At this stage, it may be useful to notice decision of the Hon'ble Apex Court where the Apex Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled:-

- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
- (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

The Hon'ble Apex Court has taken this view in the case of Sahib Ram vs. State of Haryana, 1995 SCC (L&S) 248, Shyam Babu Verma vs. Union of India, 1994 SCC (L&S) 683, Union of India v. M.Bhaskar, 1996 SCC (L&S) 967 and V. Gangaram vs. Regional Jt. Director, 1997 SCC (L&S) 1652.

Such relief, restraining back recovery of excess payment is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the

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hardship that will be caused if recovery is implemented. A government servant particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee has knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them.

Viewing the matter from the aforesaid legal position as settled by the Apex court, the question which requires our consideration is whether it is a case where the employee had knowledge that the payment received was in excess of what was due or wrongly

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paid, or where the error is detected or corrected within a short time of wrong payment so as to disentitle the applicant for grant of relief against the recovery. Admittedly, the applicant was in the knowledge about the fact the he is receiving the excess payment as the scale of Rs. 1400-2300 was revised to Rs. 4500-7000. As already stated above, this fact is also evident from Ann.A2 whereby in the case of Indra Mathur, old pay scale of Rs. 1400-2300 was revised to Rs. 4500-7000 whereas in the case of the applicant it was revised from Rs. 1400-2300 to Rs. 5000-8000. Further, in the instant case, error was detected within a short time. Thus, in the facts and circumstances of the case, it is the case where relief against the recovery has to be refused to the applicant. However, keeping in view the fact that the applicant is a pensioner and is in more disadvantageous position as compared to in-service employees, ~~and~~ any attempt to recover excess wrong payment would cause undue hardship to him. It is admitted fact that the applicant is not guilty of misrepresentation or fraud in regard to any excess payment. Thus, the applicant has made out a case in equity and in exercise of judicial discretion. We are, therefore, of the view that direction to applicant to deposit the aforesaid amount will cause hardship to him in case order of recovery is implemented.

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Accordingly, in the facts and circumstances of this case and in view of the reasons stated above, we are of the view that ^{relief} ~~leave~~ against recovery of excess payment made to the applicant is required to be granted. Accordingly, the impugned order dated 14.10.2003 (Ann.A1) is quashed and respondents are directed not to effect recovery of Rs. 19279/- from the pensionary benefits of the applicant.

6. The OA is disposed of accordingly with no order as to costs.


(J.P. SHUKLA)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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