

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 482 of 2003

Indore, this the 1st day of October, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

Sukumar Douglas Rupa, S/o. Late
Shri Samuel Rupa, aged 61 years,
Retired Station Superintendent,
Western Railway, r/o. AM 222, Pandit Deen
Dayal Upadhyaye, Nagar, Sukhliya,
Indore 452 010. ... Applicant

(By Advocate - Shri D.M. Kulkarni)

V e r s u s

1. Union of India, through
General Manager, Western Railway,
Church Gate, Mumbai.
2. Divisional Rail Manager,
Western Railway, Ratlam.
3. Divisional Rail Manager,
(Establishment), Western Railway,
Ratlam.
4. Senior Divisional Accounts Officer,
Western Railway, Jabalpur. ... Respondents

(By Advocate - Shri Anand Pathak)

O R D E R

By A.S. Sanghvi, Judicial Member -

The applicant is a retired Railway employee and is aggrieved by the action of the respondents in deducting Rs. 75,000/- from his gratuity by way of recovery of the excess salary paid to him and also by refixation of his pay with effect from 1974. The applicant had joined the Railway service in 1966 and has now retired with effect ^{from} 31.1.2002 on attaining the age of superannuation. While in service he had participated in the Railway strike in the year 1974 but by inadvertance he was allowed one increment of Rs. 15 per month by way of bonus increment which was given to the employees who had not participated in the strike. The benefit of this increment given in the year 1974 had continued through out his service and this error was noticed only when his pension papers were to be prepared. The ^{Account Office} ~~audit~~ objected to the fixation of the pay of the

applicant with effect from 1974 and consequently opined that there was an excess payment of Rs. 84,570/- made to the applicant and the same be recovered from his gratuity. His pay has been refixed with effect from 1974 by omitting the bonus increment given to him and the excess amount paid to him is worked out by the respondents. The respondents have deducted Rs. 75,000/- from the amount of the gratuity payable to the applicant and aggrieved by this action of the respondents the applicant has approached this Tribunal. It is contended by the applicant that even ^{if} the increment was given by mistake to him, it was not of his fault and at the time of his retirement he cannot be put to such a huge financial loss. He has prayed for direction to the respondents to refund the amount of Rs. 75,000/- with interest and also for re-assessment of his pensionary benefits.

2. The respondents on the other hand in their reply have contended inter alia that in the year 1974, All India Level Railway Strike was organised in which it was apprehended that all employees of the Railway Department would take part. To give the incentive and encouragement to the loyal and dutiful employees, it was decided by the appropriate authorities to give increment of Rs. 15/- to those employees ^{who were} ~~who are~~ not going on strike and would remain on work. The applicant had proceeded on strike and therefore, he was not entitled to get the advantage of the increment of Rs. 15/- at all. However, due to inadvertance the said increment was given to him and had continued all through out his service thereafter. The applicant was in Kota Division in the year 1974 and came to Ratlam Division in the year 1998. His salary was fixed at Rs. 7300/- as on 1.6.1997 and in June, 1998 the applicant was transferred to Ratlam Division and his salary was fixed at Rs. 8100/-. His service book however, remained at Kota Division and when his pension papers were to be prepared the same was sent to the Accounts Department. Only then it came to the

knowledge of the authorities that he was getting an additional increment which he did not deserve. The Accounts Department therefore raised the objection over the said payment of increment and hence the same had been withdrawn and necessary recoveries have been started. They have also stated that a notice to show cause was also sent to the applicant but he did not react to it. According to them the applicant is not entitled to any relief prayed for and the petition deserves to be rejected.

3. We have heard the learned counsel for both the parties and with their consent we are disposing of this OA at the admission stage.

4. The action of the respondents to deduct the amount of Rs. 75,000/- from the gratuity of the applicant deserves to be quashed on a preliminary ground that no order has been passed by the respondents for withholding or deducting the amount from the gratuity. The applicant has not received any such order and the respondents have also in their reply not mentioned ^{anything} ~~nothing~~ about any order having been passed by the competent authority directing the recovery of the excess payment ^{made} ~~paid~~ to the applicant from the gratuity payable to the applicant. The reply of the respondents also shows that the Accounts Department raised the objection about the over payment made to the applicant by way of erroneous increment given to him. However, there is absolutely no pleading that pursuant to the objection raised by the Accounts Department the competent authority had passed orders directing the recovery from the gratuity of the applicant. It is no doubt true that the applicant was served with a show cause notice on dated 31.12.2001 but then no order has been passed subsequent to the issuance of the show cause notice. The fact further remains that the amount of Rs. 75,000/- is deducted from the gratuity of the applicant and the applicant is very much

aggrieved by this action of the respondents.

5. Mr. Kulkarni learned counsel appearing for the applicant has placed strong reliance on the decision in the case of Nand Kishore Sharma And Others Vs. State of Bihar and Others, (1995) 31 ATC 786, Sahib Ram Vs. State of Haryana & Others, 1995 SCC (L&S) 248 and Shyam Babu Verma Vs. Union of India, 1994 SCC (L&S) 683 as well as Union of India Vs. Rekha Majhi, 2000 SCC (L&S) 744 in support of his contention that for the lapse on the part of the Department or the administration, the employee cannot be punished by way of recovery from his salary. In the case of Sahib Ram (supra) the Hon'ble Supreme Court had observed that it was not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. Similarly in the case of Nand Kishore Sharma & Ors. (supra) the appellant was given the higher pay scale by the State Government due to inadvertence. The Hon'ble Supreme Court said that the appellant was not to be blamed. The anomaly committee recommended grant of higher pay scales to the appellant and the Finance Department also concurred with the same and as a result thereafter the appellant was given the pay scales and was disbursed the arrears as a lump sum. While quashing the order of directing the recovery of the amount paid to the appellant, the Hon'ble Supreme Court observed that it was not the fault of the appellants that they were paid the arrears and the enhanced salary. Similarly in the case of Shyam Babu Verma (supra) the Hon'ble Apex Court quashed the recovery on the ground that it was not on account of fault of the appellant that he was given the higher pay. In the instant case also it was not on account of any misrepresentation on the part of the applicant that he was given one increment more in the year 1974. It was

a lapse on the part of the administration to give such increment and after allowing him to enjoy the benefit of that increment for 25 years, he could not have been suddenly asked to refund that amount. The action of the respondents to deduct the amount from the gratuity payable to the applicant ~~is~~ therefore, clearly cannot be sustained and deserves to be quashed and set aside. We ^{see} ~~have~~ however, no reason to interfere ^{revised pay fixation consequent} in the ^{increment given} pension fixed by the respondents after deducting the excess ~~payment made~~ to the applicant. But we are of the opinion that the recovery could not have been made from the gratuity of the applicant.

6. We, therefore, direct the respondents to refund the amount of Rs. 75,000/- deducted from his gratuity with interest at the rate of 9% per annum from the date the gratuity became payable till the payment is made.

7. With this direction, the Original Application stands disposed of with no order as to costs.

(A.S. Sanghvi)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अवधि:-

(1) सचिव, उच्च न्यायालय वर एसोसिएशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के काउंसल

(3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल

(4) वर्यपदा, वर्यपदा, जबलपुर न्यायाधीश

संवर्ग एवं आवश्यक कार्यवाही हेतु

उच्च न्यायालय

DM Kulkarni

Anand Pathak

Issued
On 5.10.04