

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.361 of 2002

Jabalpur, this the 18th day of August, 2003

Hon'ble Shri D.C.Verma-Vice Chairman(Judicial)
Hon'ble Shri Anand Kumar Bhatt-Administrative Member

Banshilal, S/o Late Lala Ram,
Date of birth 1.4.1942, Sr. Technician
(M.C.M.) T.No.7053 (since retired),
R/o Santoshi Nagar, House No.261/10,
Veer Shivaji Ward, P.O.WRS, Khamtarai,
Raipur-492008

(By Advocate - Shri S.Paul)

- APPLICANT

Versus

1. The Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata.
3. The Divisional Rly. Manager, SE Rly, Bilaspur.
4. The Chief Workshop Manager, W.R.S. O/o C.W.M. South Eastern Railway, Raipur.

(By Advocate - Shri M.N.Banerji)

- RESPONDENTS

O R D E R (Oral)

By D.C.Verma, Vice Chairman(Judicial)-

By this Original Application the applicant has prayed for quashing of an order dated 15.4.2002 (Annexure-A-1) by which an amount of about Rs.78,984/- has been ordered to be recovered from the settlement dues of the applicant.

2. The applicant joined the respondents' service on 16.5.1964 and superannuated on 31.3.2002. After superannuation the respondents passed the impugned order dated 15.4.2002 (Annexure-A-1) for recovery of the amount. The impugned order shows that pay of the applicant was wrongly fixed in the year 1980 at a level higher than what should have been fixed as per rules. After the superannuation of the applicant, the excess over payment

was worked out and was directed to be recovered from the applicant's settlement dues. Hence, this O.A.

3. The respondents' case is that when the applicant was working as Technician Grade-II his pay was stepped up by giving six increments and fixed at Rs.400/- in the scale of Rs.330-480 at par with his immediate junior who was drawing higher pay than the applicant. According to the respondents the stepping up was done due to revision of seniority as the decision was taken place in a joint meeting held with the Unions and representatives of the Headquarters office. The result thereof was that the applicant's pay was fixed on 25.9.1980 at Rs.400/- whereas his pay should have been fixed at Rs.346/-. Due to wrong fixation of pay, the applicant continued to draw the higher pay till his superannuation. Hence the order of recovery was made.

4. Counsel for the parties have been heard at length.

5. The learned counsel for the applicant has challenged the fixation of pay as indicated in the impugned order with effect from 1980. The submission of the learned counsel for the applicant is that the pay of the applicant was correctly fixed at Rs.400/-, hence the amount drawn by the applicant cannot be recovered. The second submission of the learned counsel of the applicant is that the respondents have not observed the principle of natural justice as the applicant was not given any show cause notice nor was heard with respect to the fixation done by the impugned order. The submission is that as the amount already drawn by the applicant has been used up by the applicant

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since 1980 till his retirement, the recovery cannot be made from the retiral dues of the applicant.

6. The applicant's fixation of pay, as per the respondents, was wrongly done with effect from 25.9.1980. Thus, for about two decades the wrong fixation continued and the applicant used to draw the amount every month till his superannuation. It was after the audit inspection that the case of stepping up was re-examined and thereafter the impugned order was passed.

7. It is strange to note that for over two decades the Department kept on paying the amount to the applicant and no audit objection was either not raised during this period of two decades or the applicant's case was not examined by internal or statutory audit. After the applicant's retirement on 31.3.2002 the Department issued the impugned order on 15.4.2002 to recover an amount of Rs.78,984/- from applicant's gratuity. After withholding the said amount, the rest of the gratuity amount, it has been told, has been paid to the applicant. Even if the pay fixation was not correctly done in the year 1980, the amount paid to the applicant for the last two decades and used up by him every month cannot now be realised after his retirement from his gratuity as the applicant would now become almost a pauper to feed his family and other dependents and to meet other requirements. If the pay was not correctly fixed in 1980, it was open to the respondents to examine the same within a reasonable time and to fix the pay correctly. Had it be done, this would not have put

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the applicant to the misery which he would now face when the amount has grown up to more than Rs.78,000/-.

Consequently, in our view, the impugned order so far as it relates to recovery ~~is unconstitutional~~, cannot be sustained.

On this point, the learned counsel of the applicant has placed reliance on a decision of the Apex Court in the case of Lakshmi Narayan Mukhopadhyay Vs. Union of India and others, 2992-III-LLJ 527. In the cited case the appellant had taken voluntary retirement but was not paid the full retiral benefits and an amount of Rs.49,536/-was to be recovered from gratuity as the appellant therein had allegedly supplied excess material.

The Apex Court held that the said amount could not have been recovered as the respondents had not afforded any opportunity to the appellant. The order of recovery was found not sustainable. The Apex Court, therefore, directed the respondents to pay the amount within two months with interest and an amonnt of Rs.10,000/- was also directed to be paid in lump sum in addition to the above amount.

8. The impugned order cannot be sustained on the ground of not following the principles of natural justice. If the respondents were to refix the pay of the applicant, the same should have been done after affording the applicant an opportunity by giving a show cause. As no show cause was given, the respondents' action cannot be upheld. In the O.A. it is categorically mentioned that before issuance of the order dated 15.4.2002 no opportunity of any nature was given to the applicant; no show cause notice was given; and no opportunity as per the principle of natural justice was afforded, though the order impugned in the OA entails civil consequences. In reply to this, the respondents have stated that the applicant was verbally intimated by the office. It is

strange that though the applicant's pay was being refixed with effect from September, 1980 but still no show cause notice was given. Consequently on this ground alone, the impugned order cannot be held as valid.

9. The learned counsel for the applicant submitted that the applicant be granted interest on the recovered amount and be also allowed the cost as was allowed by the Apex Court in the case of Mukhopadhyay(supra). We have considered his submission and we are of the view that interest and cost cannot be awarded at this stage as we propose to allow the respondents to give a show cause notice to the applicant with regard to his fixation of pay with effect from 1980 and thereafter to decide the issue. Consequently, fixation of pay matter is not being finally decided here at this stage. The fixation of pay matter is required to be finally settled as it will affect the pension to be drawn by the applicant after his superannuation. We, therefore, leave the matter of interest and cost open.

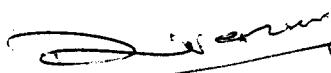
10. We are also of the view that during the period the matter regarding fixation of pay is finally decided by the department, the applicant would be entitled to pension only on the basis of pay fixed at Rs. 6650/-. In case, however, the applicant succeeds in his claim, before the department, he would be entitled to claim the arrears.

11. In view of the discussion made above, the O.A. is allowed to the extent that the order impugned in the OA Annexure-A-1 dated 15.4.2002 is quashed. The respondents are directed to pay back the withheld amount to the applicant within a period of two months. The

respondents may within the aforesaid period of two months give a show cause notice to the applicant with regard to the revised pay fixation and after considering the reply of the applicant decide the issue within a period of three months thereafter. The decision so taken shall be communicated to the applicant. In case the applicant has any grievance against the same, he would be at liberty to approach the Tribunal after exhausting his departmental remedy. Costs easy.



(Anand Kumar Bhatt)
Administrative Member



(D.C.Verma)
Vice Chairman(Judicial)

rkv.

पृष्ठांकन सं ओ/व्या.....जललपुर, दि.....

प्रतिलिपि अच्छे दिन:-

- (1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
- (2) आदेशक श्री/श्रीगती/कु.....के काउंसल
- (3) प्रस्तुती श्री/श्रीगती/कु.....के काउंसल
- (4) व्यायामी, कोप्रां, जबलपुर न्यायालयीर
सूचना एवं आवश्यक कार्यवाही हेतु

*S. Paul Bell
M. A. Banesji Bell*

Abdul Qadeer
मध्यराजस्थान
9.9.03

Tareef M
11-9-03