

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH
CIRCUIT AT INDORE

Date of Decision : 3.9.2003

O.A. No. 60/2000.

Jaiwant Lawson Joseph S/o Late Shri H. D. Joseph, aged 67
Years, Ex-Traction Foreman, R/o 16, Sant Nagar, Ujjain.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway,
Churchgate, Mumbai.
2. Divisional Manager, Western Railway, Do Batti Chouraha,
Ratlam.

... Respondents.

Shri D. M. Kulkarni counsel for the applicant.
Shri Y. I. Gupta, counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

S O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Shri Shri Jaivant Lawson Joseph has sought the following
relief through this application :-

"8.1 It be declared that recovery of Rs.76,944/-
from the gratuity payable to the applicant on his
superannuation is illegal and the order annexure A-1
and A-2 be quashed.

8.2 The respondents be mandated to pay Rs.76,944/-
within a specified date towards balance of gratuity
within a specified period along with interest at the
current rate of 18% p.a.,

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8.3 The part of gratuity Rs.5,899/- paid on 9.3.95 being belated, the applicant be awarded interest at the rate of 18% per annum from the date of superannuation till 9.3.95 compounded annually."

2. The factual matrix of the case is that the applicant retired on superannuation from the post of Traction Foreman on 31.10.1992 after rendering 33 years of qualifying service. He became entitled for the retiral benefits. An order came to be issued on 11.06.1998 vide which the applicant has been informed that an amount of Rs.76,944/- has been recovered from the amount of gratuity payable to him. The reasons indicated in the order are that the applicant was wrongly allowed the stepping up of his pay and the arrears to him were wrongly paid for the period from 01.08.1988 to 06.01.1989. The amount of Rs.5,899/- was released to the applicant only on 09.03.1995 without any interest. It has been averred that there was no fault on the part of the applicant and the recovery was made against the principles of natural justice.

3. He filed an OA No. 54/1999 which came to be decided on 02.09.1999 with a direction to the respondents to treat the same as representation and decide the same.

4. The salient grounds on which the OA has been filed are that the applicant was granted the stepping up of the pay vis a vis his junior and no recovery can be made in case the mistake is discovered after the retirement of the applicant. It is also the ground of attack that the recovery of over payment is being made without any notice and the same is liable to be quashed. Certain judgements have been referred in support of the contention that due to the mistake which is not attributable to the government servants the recoveries cannot be made.

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5. The respondents have contested the case and have filed an exhaustive reply to the OA. They have averred in the reply that the applicant was given the stepping up of the pay at par with an employee who was holding the higher post in the feeder cadre and there was a mistake on the part of the respondents and the same was sought to be rectified. It has also been averred that the applicant was given the stepping up of the pay in violation of the rules laid down in Para 1316 of the Railway Establishment Code Vol.II. It is averred that Shri Karelal was working on the post of Driver 'A' Special whereas the applicant was working as Driver 'C' prior to their promotion to the post of Loco Running Supervisor but by mistake the stepping up of the pay was allowed. The judgement referred to in the OA have no bearing to the present case and no fault can be found with the action of the respondents. A short rejoinder has been filed contraverting the defence of the respondents.

6. We have heard the learned counsel for the parties and have bestowed our earnest consideration to the submissions, pleadings and the records of this case.

7. Both the learned counsel for the parties have reiterated their pleadings. Learned counsel for the applicant has submitted that the applicant has not been issued with any show cause notice and, therefore, the impugned order is ex facie bad in law. He had also submitted that no recovery whatsoever can be effected against him. Since there was no misrepresentation on his part and the law position on this is well settled by now and some of the judgements have been mentioned in the very OA. He has also submitted that the applicant was rightly given the stepping up of the pay at par with his junior and there was absolutely wrong in the same.

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8. On the contrary, learned counsel for the respondents has submitted that the respondents have committed a mistake and they have every right to correct the same. Our attention was drawn to the conditions which are necessary for grant of the stepping up of the pay and one of the essential condition is that the scale of the pay of lower and higher post in which they are entitled to draw the pay should be identical. But this condition was not fulfilled and inadvertently the applicant was extended the benefit of stepping up of pay who was holding a higher post in higher scale before promotion to the post in identical scale of the pay. As regards the following the principles of natural justice, the applicant has already approached this Tribunal and his OA was directed to be treated as representation and, therefore, after due consideration the impugned order has been passed. Thus, the applicant cannot complaint of breach of the principles of natural justice. In respect of the recovery, in case where there is no misrepresentation in the part of the individual, there was serious dispute from the side of the respondents as regards the law position.

9. We have considered the rival submissions made on behalf of both the parties.

10. As far as the question regarding the recovery of the amount of over payment on account of wrong fixation is concerned, the law position is well settled in catine of judgements including that of Supreme Court and there is unanimity on the same. It has been held that in case of over payment due to wrong fixation made to the employees



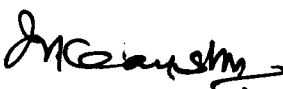
where there was no mis-representation on part of the particular employee the recovery of such amount cannot be made. A number of judgements have been mentioned in the ground part of the OA and we do not find any necessity to cite them here and to make this order bulky. Thus as far as the question relating to the recovery of the over payment on account of the wrong fixation is concerned, the same cannot be made in the present case since admittedly there was no mis-representation in the matter from the side of the applicant. Thus there is ample force in this submission and this part of the prayer is well founded.

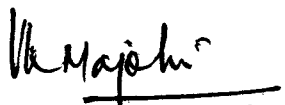
11. Now adverting to the next part of the matter. We have perused the relevant rule extracted in Para 5 of the reply and find that one of the essential condition of grant of stepping up of pay is that the scale of pay of lower and higher post in which they are entitled it should be identical and this condition has not been fulfilled, inasmuch as the applicant was ~~xxxxxx~~ holding the post of Driver 'C' whereas the person with whom he was allowed ~~xxxxxx~~ stepping up of pay was holding the post of Driver 'A' Special and these posts were not in identical scale before their promotion to the higher post of Traction Foreman. Thus the essential condition was not fulfilled. Learned counsel for the applicant tried to project some confusion as regards the post which the applicant and the other persons were holding prior to ~~xxxxxx~~ their promotion and wanted to confirm the same. His attention was directed towards the very reply which has been filed on behalf of the respondents and the factual aspect of the matter relating to these aspects has not been contraverted

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in the rejoinder and, therefore, the same has to be taken as correct, and we do not find that any clarification is required in the matter. After filing the rejoinder, the pleading part of the matter stands closed. Thus we have no reason to disbelieve the version of the respondents and, therefore, there is no force in the contention of the learned counsel for the applicant that the applicant was correctly allowed the stepping up of pay. The stand of the learned counsel for the applicant rather stands repelled and is not countenance by any cogent evidence. Therefore, this issue ~~XXXX~~ goes against the applicant.

12. In the premises, the OA is partly allowed and the impugned order dated 11.06.1998 (Annexure A-1) stands quashed. The respondents are directed to release the withhold amount of the gratuity along with interest at 8% per annum from the date of his retirement within a period of 3 months from the date of receipt of a copy of this order. It shall be scarcely necessary that the applicant shall be entitled for the pension and retiral benefits on the reduced pay which is arrived at after taking into account the withdrawal of the order for the stepping up of the pay, ~~with~~ the same has not already been done. However, in the facts and circumstances of the case, parties are ~~XXXX~~ directed to bear their own costs.

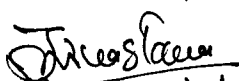

(J. K. KAUSHIK)
MEMBER (J)


(V. K. MAJOTRA)
MEMBER (A)

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अचो धित:-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) अडिटर जी/बी/सी/कु.....के कार्यालय
- (3) सचिव जी/बी/सी/कु.....के कार्यालय
- (4) वकील/सचिव, जलमपुर न्यायाधीश सचयन एवं आवेदन के कार्यालयी हेतु

Forwarded
17/10/03


उप सचिव
16/10/03

Dr Kulkarni Adv Indore.
4-I m e t t a - Adv Indore-