

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 632 of 1999
Original Application No. 717 of 1999
Original Application No. 840 of 1999

Jabalpur, this the 27th day of August, 2003

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

1. Original Application No. 632 of 1999 -

Mahanand Singh aged about 44 years,
S/o. Shri J. Singh, S.S.E.(RC/TRD)
Central Railway, resident of RB III/313 F.
Railway Colony, Habibganj, Bhopal (M.P.). ... Applicant

2. Original Application No. 717 of 1999 -

Virendra Kumar Jain, aged about 39 years,
S/o. Shri Kanchhedi Lal Jain, J.E.I.,
Resident of R.B.II 295/J, Habibganj
Railway Colony, Bhopal (M.P.) 462024. ... Applicant

3. Original Application No. 840 of 1999 -

Udayvir Dutt Dixit aged about 46 years,
S/o Late Shri Jayanti Prasad Dixit,
S.E. (TRD), resident of RB IV/23, TRD
Colony, Railway Station Banapura,
Distt. - Hoshangabad (M.P.). ... Applicant

(By Advocate - Shri L.S. Rajput in all the three OA's)

V e r s u s

Union of India, Through,

1. The General Manager,
Central Railway, Mumbai CST,
(Maharashtra).

2. The Divisional Railway Manager,
Central Railway,
Habibganj - Bhopal (M.P.). ... Respondents

(By Advocates - Shri S.P. Sinha in O.A. No. 632/1999,
Shri D.K. Tripathi holding brief of Shri
N.S. Ruprah in O.A. No 717/1999 and O.A.
No. 840/1999) ... in all OA's

O R D E R (oral)

By Anand Kumar Bhatt, Administrative Member -

The above three original Applications are of similar
nature and the relief sought is also the same. Therefore

common order is passed in all the three cases. The prayer in all /the original Applications is about quashing the orders of recovery of over payment and holding the fixation of present basic pay of the applicants as proper.

2. As per OA No. 632/1999 the facts in brief are that the applicant was selected by Railway Service Commission, Bombay as Graduate Apprentice (Electric) in the scale of Rs. 550-750/- (R.S.) and was appointed on 26.12.1983 under the Assistant Electrical Engineer, Railway Electrification (in short RE) at Bina. He was allotted his lien in Kurla Car Shed, although he was working in R.E. Organisation. The applicant was promoted as TFO/CTA in the scale of Rs. 700-900 (RS) on adhoc basis in RE Organisation vide order dated 16.05.1986 (Annexure A-5). In his original cadre also he was promoted on the grade of Rs. 700-900 (RS) vide letter dated 28-02-1990. After that the RE organisation issued office order dated 29.03.1990 regularising the promotion of the applicant in the grade of Rs. 700-900 (RS)/Rs. 2000-3200 (RPS) with effect from 28.02.1990. He was further promoted in RE organisation in the grade of Rs. 2375-3500 (RPS) vide order dated 30.05.1989 on adhoc basis. The new ^{of} ~~of~~ TRS and TRD were formed on 31.01.1995. The applicant was posted in TRD cadre, Itarsi in the same scale of Rs. 2375-3500 (RPS) on adhoc basis vide order dated 14.07.1992 (Annexure A-9). As the TRD cadre in Bhopal Division was closed on 31.01.1995, he was assigned proper seniority in the ^{present} ~~present~~ cadre and was regularised in the grade of Rs. 2375-3500 (RPS) on 16.11.1995 (Annexure A-10). On 11.08.1999 an order was passed to start recovery from the applicant for ~~about~~ Rs. 35,236/- in monthly instalment of Rs. 1,000/- per month, from the pay sheet of August, 1999. The applicant made a representation against this order on 12.08.1999 (Annexure A-11). Finally respondent No. 2 i.e. D.R.M. Central, Habibganj (Bhopal) passed another impugned

order dated 04.10.1999 (Annexure A-2), by which the amount of over payment was enhanced from Rs. 35,236/- to Rs. 59,540/- and it was also ordered to reduce the pay of the applicant from Rs. 9,475/- to Rs. 8,800/- per month, from the month of October 1999. The main ground taken by the applicant is that pay fixation has been done by the competent authority with the approval of the Accounts Department and so called wrong fixation of pay is not on account of any mis-representation by the applicant. After claiming benefit for almost 10 years the recovery cannot be done, as it will be against the principles of natural justice.

3. The respondents have stated that the applicant was directly appointed and was selected in the RE Organisation as Graduate Apprentice (Electrical). However his lien was fixed in Electrical Maintenance Department in Bombay Division on 23.07.1986 and his seniority and promotion on regular basis was made in his cadre. Railway Electrification is a Project and adhoc promotions were made in it for working in that Department and such promotions do not give benefit on a permanent post. So when an employee is sent back to his/cadre he is taken on his position/post held in his cadre and not on the post of adhoc promotion which he availed of on the project. At the time of repatriation the applicant was working in the Grade of Rs. 2375-3500/- (RPS) in RE Organisation but on repatriation he should have been treated on his substantive post of T.F.O. in the grade of Rs. 2000-3200 (RPS). His pay in this grade was Rs. 2120/-, whereas he was drawing the pay of Rs. 2600/- on adhoc promotion in the grade of Rs. 2375-3500/- (RPS). So once he was repatriated on open line 13.07.1992 he came on his substantive post of Traction Foreman and after his joining he was again promoted on the post of CTFO in the grade of Rs. 2375-3500/- (RPS), on 14.07.1992. As his pay in the parent cadre was Rs. 2120/- on repatriation,

his pay should have been fixed on adhoc promotion at Rs. 2375/- in the grade of Rs. 2375-3500/-. His pay was continued on the basis of the last pay drawn in the RE Organisation and this mistake was continued and was refixed as per recommendation of the Vth Pay Commission. Later on the Audit Department pointed out this mistake and on the basis of that the pay of the applicant was fixed under FR.22(IV) at Rs. 2375/- minimum in the basic of his presumptive pay in his present cadre in the Division. Due to wrong calculation a recovery of Rs. 35,236/- was mentioned, which was latter corrected. It was found that a sum of Rs. 59,540/- was paid in excess. The respondents further averred that the applicant has not been able to point out any mistake in the re-fixation of his pay or on the part of the Department regarding/re-fixation done.

4. The facts ^{and} ~~of~~ pleadings of both the sides are mutatis ~~mutatis~~ ^{the} mutandis the same in the other two cases i.e. O.A. No. 717/99 and O.A. No. 840/1999.

5. We have seen the pleadings in the cases and heard the counsel on both the sides.

6. The applicant has been able to cite number of cases in which decision has been given by the Tribunal that such recovery cannot be made. A recent case is OA No. 422 of 2002, Shri Ashok Kumar Saxena Versus Union of India and others, of this Bench of the Tribunal, where the facts are similar and the decision is given partly allowing the OA, relying on the decision of the Hon'ble Apex Court in the case of Shyam Babu Verma and others Versus Union of India and others reported in ^{Tribunal's} 1994 27 ATC 121. The relevant portion of the said decision is as follows :



"5. There is no dispute that the applicant was drawing higher pay scale and came to TRS ET on his substantive grade of Rs. 2000-3200. It is also not disputed that the over payment made by the office was not on account of mis-representation or fraud of the applicant. In view of the Supreme Court decision in the case of Shyam Babu Verma & ors. vs. Union of India & ors. 1994 27 ATC 121 such excess fixed amount of pay cannot be recovered. To that extent, this application has to be allowed, modifying the order dated 22.11.2001 (Annexure-A-14). However, it is also un-disputed that the Rule 13F3 of IREC provided for fixation of pay taking into account presuming pay of the applicant. Therefore, the respondents will be at liberty to enforce pay fixed for future as per provisions of the Rule.

6. As pointed out in the preceding paragraphs the excess pay to the applicant before the pay fixation order dated 21.11.2001 cannot be recovered from him. Therefore, this application is partly allowed to that extent without any order as to costs."

As the said decision covers the present three cases on all fours, we propose to pass orders in the three cases on the same lines. Accordingly it is ordered that the recovery orders in the three cases against the applicants due to wrong fixation of pay are quashed. However the respondents will be at liberty to enforce pay fixed for future as per the provisions of the relevant rules in this regard. As such we are not interfering with the refixation of pay done by the respondents with effect from the date they were repatriated to their parent Departments. No order as to costs.

Sd/-

(Anand Kumar Singh)
Administrative Member

Sd/-

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

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