

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

21.12.2009

OA No. 413/2005 with MA No.418/2005

Mr. P.V.Calla, counsel for applicant
Mr. Anupam Agarwal, counsel for respondents

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 21st day of December, 2009

ORIGINAL APPLICATION No.413/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Yogendra Kumar Atri
s/o Shri Brijendra Kumar Atri,
working as Assistant Reservation Supervisor,
Office of Chief Reservation Supervisor,
Railway Station, Jaipur
r/o Plot No.7, Chinkara Colony,
Green Avenue,
Khatipura Road, Jaipur

... Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. The Union of India
through General Manager,
North-Western Railways,
Headquarter Office,
Opposite Railway Hospital,
Jaipur
2. The Divisional Railway Manager (Establishment),
Jaipur Division,
Jaipur.

... Respondent

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

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

- i) by an appropriate writ, order or direction the impugned letter dated 1.8.2005 annexure A/1 and further by appropriate order or direction direct the respondents to pay the salary to the applicant in the pay scale Rs. 5000-8000 treating his pay at Rs. 7400/- as on 1.1.2003 with all consequential benefits.
- ii) Further by an appropriate order or direction the respondents may be restrained to make any recovery from the pay of the applicant.
- iii) Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.
- iv) The Original Application may kindly be allowed with exemplary cost.

2. Briefly stated, facts of the case are that the applicant who was initially inducted as Assistant Commercial Clerk in the railway department was promoted on the post of Enquiry-Cum-Reservation Clerk (ECRC) on 7.7.1985 in the pay scale of Rs. 330-560 which was later on revised to Rs. 1200-2040 w.e.f. 1.1.1986. The respondents issued a notification dated 23.12.1988 for promotion through selection to the post of Guard Grade-C in the revised scale of Rs. 1200-2040. From the material placed on record, it appears that the applicant in order to be eligible for promotion to the post of Goods Guard sought reversion to the post of Courier in the pay scale of Rs. 975-1540. The applicant was promoted to the post of Goods Guard vide order dated 18.5.1989 and his pay was fixed at Rs. 1230/- in the

pay scale of Rs. 1200-2040. It may be stated that pay of the applicant was fixed in the aforesaid scale at Rs. 1230/- on the basis of his reversion and posting as Courier in the pay scale of Rs. 975-1540 at basic pay of Rs.1180/-. However, on representation made by the applicant regarding his aforesaid fixation, pay of the applicant as on 18.5.1989 was fixed at Rs. 1290/-. It may also be stated here that while fixing pay at Rs. 1290/-, the respondents have taken into consideration pay of the applicant while working as ECRC w.e.f. 1.1.1986 to 1.7.1988 ignoring the fact that the applicant has been reverted to the lower post of Courier and his pay in the lower pay scale of Rs. 975-1540 was fixed at Rs. 1180/-. Thus pay of the applicant on account of ad-hoc promotion as ECRC could not have been protected after his reversion to the lower post.

Be that as it may, the respondents subsequently issued a show-cause notice to the applicant dated 25.11.2004 (Ann.A/2) thereby proposing to rectify the mistake which has occurred on account of fixation of pay in the aforesaid manner. The applicant submitted reply and subsequently vide impugned order dated 1.8.2005 (Ann.A/1) the respondents refixed pay of the applicant w.e.f. 1.7.1989 in the manner suggested in the show-cause notice. It has further been recorded in the impugned order that the recovery of the excess amount shall also be made from the applicant. It is this order which is under challenged before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. The stand taken by the respondents is

that the applicant was not entitled to protection of his pay on account of ad-hoc promotion on the post of ECRC, more particularly, when the applicant sought reversion to the lower post and he was again promoted in the equivalent scale of ECRC on the post of Goods Guard subsequently. Thus, according to the respondents, there is no infirmity in the impugned order whereby pay of the applicant has been correctly refixed and recovery on account of excess payment has been effected.

4. We have heard the learned counsel for the parties and gone through the material placed on record. From the facts as stated above, it is evident that the applicant was promoted as ECRC in the revised pay scale of Rs. 1200-2040 and continued on the said post till 1988. It is also admitted fact that the applicant sought reversion to the post of Courier in the pay scale of Rs. 975-1540 and his pay was fixed at Rs. 1180/- . The applicant was subsequently promoted to the post of Goods Guard in the pay scale of Rs. 1200-2040 w.e.f. 18.5.1989. Thus, pay of the applicant in the grade of Goods Guard was rightly fixed at Rs. 1230/- by granting him benefit of increment in terms of the rules. Thus, we see no infirmity in the action of the respondents whereby pay of the applicant on the post of Goods Guard was fixed at Rs. 1230/-. Further, we see no infirmity in the action of the respondents whereby they have rectified the mistake after following due process of law i.e. by issuing show-cause notice.

5. The further question which requires our consideration is whether on account of pay fixed by the respondents in the manner stated above, the excess payment already made to the applicant should be permitted to be recovered or the respondents should be prohibited from making any recovery. The law on this point is no longer res-integra. The Apex Court in a catena of decisions, granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if 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 relief against recovery was granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. This is what the Supreme Court has observed in the case of Syed Abdul Qadir and ors. vs. State of Bihar and Ors., (2009) 1 SCC (L&S) 744. Reference in this behalf may also be made to the case of Shahib Ram vs. State of Haryana, 1995

SCC (L&S) 248; Shyam Babu Verma vs. Union of India, 1994 SCC (L&S) 683 and Union of India vs. M.Bhaskar, 1996 SCC (L&S) 967.

6. Undoubtedly, the excess payment made to the applicant was not due to misrepresentation or fraud on the part of the applicant and the applicant has also no knowledge that the amount which is being paid to him was more than what he was entitled to. In fact the applicant was of the view that his pay has not been correctly fixed on account of his promotion to the post of Goods Guard, as such, he made representation which representation was accepted by the respondents and his pay was refixed at Rs. 1290/- instead of Rs. 1230/- w.e.f. 18.5.1989. Now the respondents are making recovery after a lapse of about 14 years.

7. In view of what has been stated above, we are of the view that no recovery of excess amount pursuant to the order dated 1.8.2005 (Ann.A/1) be made from the applicant. Accordingly, the impugned order Ann.A/1 is quashed to the aforesaid extent and the respondents are restrained from making recovery of the excess payment from the applicant pursuant to order dated 1.8.2005.

8. The OA stands disposed of accordingly with no order as to costs.

9. In view of disposal of the OA, no order is required to be passed in MA No.418/2005, which stands disposed of accordingly.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

R/