

OA 350/200624.01.2007

Present : Mr. Nand Kishore, counsel for the applicant.
 None for the respondents.

Written statement filed. Learned counsel for the applicant states that he does not intend to file any rejoinder. Thus pleadings are complete. Let the matter be listed before the Hon'ble Bench for admission/hearing on 08.02.2007.

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DEPUTY REGISTRAR

08.02.2006OA No. 350/2006

Mr. Nand Kishore, Counsel for applicant.
 Mr. R.G. Gupta, Counsel for respondents.

Learned counsel for the applicant submits that he does not want to file rejoinder. Pleadings are thus complete.

Let the matter be listed for hearing on 20.03.2007.

(J.P. SHUKLA)
 MEMBER (A)

(M.L. CHAUHAN)
 MEMBER (D)

AHQ

20.3.07

Mr. Nand Kishore, Counsel for applicant
 Mr. R.G. Gupta, Counsel for respondents

Heard, The OA is disposed of by a separate order, for the reasons recorded therein

(J.P. Shukla)

M (A)

(Kuldeep Singh)

V.C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 20th day of March, 2007

ORIGINAL APPLICATION NO.350/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Harnam Singh
s/o Shri Hazari Lal,
Ex-Chief Loco Inspector,
North Western Railway, Phulera
r/o Plot No.134, Tejaji Colony,
Purana Phulera,
Distt. Jaipur.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
North Western Railway,
Hasanpura Road,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur.

.. Respondents

(By Advocate: Shri R.G.Gupta)

O R D E R (ORAL)

The facts in brief as narrated by the applicant are that he was working in the scale of Rs. 330-560 as on 1.1.1986. However, his pay was fixed at Rs. 1680/-

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in the new scale of Rs. 1350-2200 as on 1.1.1986 and his pay was raised to Rs. 1720/- after adding the annual increment of Rs. 40/-. The said fixation was objected to by the Audit Party during May, 2000, on the ground that such fixation was wrong due to merger of old grade of Rs. 330-560 and Rs. 425-640 w.e.f. 1.1.1986.

2. Consequent upon the observations of audit party, the basic pay of the applicant was reduced from Rs. 2525/- to Rs. 2375/- in February, 1989, which resulted into recovery of Rs. 48,500/-. The applicant objected such recovery order but to no avail. The applicant submits that similarly situated persons had also filed OA which had been allowed. Though reduction in the pay scale has been maintained but the recovery made from employees has been ordered to be refunded to them.

3. Thus, by way of the present O.A. the applicant has prayed for the following reliefs:-

"i) Respondents letter dated 12.5.2000 (A/1) may be declared as null & void, quashed and set aside, so far the applicant is concerned.

ii) The amount earlier recovered on account of Audit objection may be refunded with interest @ 12%."



4. The OA has been contested by the respondents. Their objection is that the impugned order has been passed in the year 2000 and this OA has been filed in the year 2006. They have stated that the OA is highly belated and time barred and the same is liable to be dismissed.

5. We have heard the learned counsel for the parties and have gone through the records of the case.

6. Learned counsel for the applicant placed reliance on a decision of this Bench in the case of Kamal Singh & Another vs. Union of India and Others, (OA No.157 of 2005) decided on 25.8.2006. We have perused the same which was decided by a Division Bench in which one of us (Hon'ble Mr.J.P.Shukla) was a member.

7. The controversy involved in this case came up for adjudication in OA No.583 of 2001 titled Prem Prakash Mukhi & Suresh Chand Sharma vs. UOI etc. which was allowed vide order dated 31.3.2003 holding that no recovery can be effected from the applicants, without following the principles of natural justice, more so, when the recovery was made after more than 10 years. The impugned recovery orders were quashed with liberty to the department to proceed afresh in the matter. However, the respondents after serving show cause notices, again sticked to their stand and ordered

recovery. The said impugned orders were challenged in OA No.31/04 and 55/05 which were disposed of on 25.8.2004, holding that the adverse orders passed against those applicants were illegal and were quashed to the extent they related to recovery of payment made to applicant during the period from 1.1.1986 to 1.7.1999. The amount of recovery were also ordered to be refunded to the applicants. However, the re-fixation done by the respondents was upheld. Based on those decisions, the O.A. in the case of Kamal Singh (supra) was allowed.

8. Placing reliance on the decision rendered by the Apex Court in the case of Shyam Babu Verma vs. Union of India & Others, (1994) 27 ATC 121, P.H.Reddy and others vs. National Institute of Rural Development and Others, 2002 (2) ATJ 208, and various other OAs decided by various Benches of the Tribunal it was held that since the employees were not responsible for wrong fixation of pay, the order of recovery of over payment cannot be sustained.

9. However, at this stage learned counsel for the respondents submitted that since the applicant did not approached the Court of law in time and kept on waiting for a decision in some other OA that will not give him a fresh cause of action which expired in 2001 itself. We find that even this point has been taken

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care of in that OA. Considering the point of law that benefit of a judgment should be extended to all similarly situated persons, the Bench took into consideration decision of Apex Court in the case of State of Karnataka & Others vs. C.Lalitha, 2006 SCC (L&S) 447; decision of CAT, Chandigarh Bench in Savita Rani & Others vs. Union of India and Others, 1998 (1) SLJ 54, it has been held that benefit of a decision should be extended to all similarly persons, whether they have approached the court of law or not. In K.C.Sharma (supra), it has been held by Apex Court that where the applicant has sought benefit of the decision by filing an OA, the application should not have been dismissed as barred by limitation.

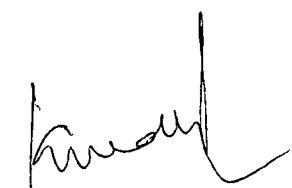
10. In view of decision given over the similar issue as raised in this OA by a Co-ordinate Division Bench of this Tribunal and finding that the facts of the present OA are fully covered by the decision in OA No.157/2005, this OA is also allowed. Since the applicant has claimed benefit of various decisions rendered by this Bench of the Tribunal, it is but natural that he has waived of his relief of wrong fixation of pay and is challenging only recovery part. As such, the impugned order, Ann.A1, to the extent the pay of the applicant has been re-fixed is upheld. However, in so far as recovery part is concerned, that is quashed and set aside qua, the applicant. The

respondents are directed to refund the recovered amount to the applicant. However, he shall not be entitled to any interest or costs. These directions be complied with within a period of three months from the date of receipt of copy of this order.



K.J.P. SHUKLA)

Administrative Member



(KULDIP SINGH)

Vice Chairman

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