

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.467 of 2012

This the 9th day of September, 2015

**HON'BLE MR. G.GEORGE PARACKEN, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

J.R. Dhiman S/o Shri Raghbir Chand,
R/o H.No. 105/4, Thomsons Road,
Railway Colony, New Delhi-02.

...Applicant
(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi.
2. Division Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. The Sr. Divisional Medical Officer (D&AR),
Northern Railway Central Hospital,
New Delhi.
4. The Divisional Finance Manager,
Northern Railway Delhi Division,
State Entry Road, New Delhi.

...Respondents
(By Advocate : Shri Shailendra Tiwari)

ORDER (ORAL)

SHRI G.GEORGE PARACKEN, MEMBER (J) :

The Applicant has filed this OA seeking the following
reliefs:-

“(i) That the Hon'ble Tribunal may graciously
be pleased to pass an order of quashing the
impugned order dated 10.12.2010 and
consequently pass an order directing the
respondent to re-fix/restore the pay of the
applicant without implementing the penalty
order dated 1997 and grant all the
consequential benefits to the applicant
including the revision of retirement benefits
with arrears.

- (ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondent to decide and to regularize the suspension period w.e.f. 28.11.1992 to 15.07.1993 with all consequential benefits.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. The aforesaid impugned order dated 10.12.2010 mentioned in the relief clause is reproduced as under:-

"DRM's Office
New Delhi

Notice:-

In compliance of the orders of Hon'ble CAT/NDLS in OA No.2814/2005 dated 25.7.06, the penalty orders issued vide NIP No.Mod-E/DKZ/Vig/JRD/2001/15-Vig/75/011 dated 20.10.2003 imposing penalty of WIP for one year assailed by Shri J.R. Dhiman, Ex. Pharmacist was set aside with liberty granted to respondents, if they wish to proceed with the said proceedings and intend to impose the aforesaid penalty once again desired by the respondents and the same should be completed within a period of six months from the date of orders.

Consequently, the NIP orders dated 20.10.2003 of WIP for one year given effect to vide this office letter of even number dated 2.12.2008 was to be set aside and further the Appellate Authority had passed orders to held de-novo enquiry. However, this never proceeded further. On the other hand, the effect of the NIP remained as per record of the employee affecting his settlement dues. This was assailed again by Sh. J.R. Dhiman Ex. Pharmacist vide OA No.2738/2009.

As per direction dated 21.9.2010 order passed by the Hon'ble CAT/NDLS in OA No.2738/2009, the Competent Authority has decided to withdraw/set aside the penalty orders dated 20.10.2003 with consequential effects vide letter No. Med-E/Court Case/JRD/OA-2814/05 dated 30.11.2010. The Hon'ble CAT/NDLS has further directed to the respondents to take further recourse to the provisions of Rule-15 Railway Service (Pension) Rules, 1993.

Accordingly his pay is now refixed on proforma basis as under:-

Pay already fixed			Pay now fixed			Remarks
Grade	Pay	Date	Grade	Pay	Date	
5000-8000	6200	1.5.02	5000-8000	6200	1.5.02	
5500-9000	6375	1.5.02	5500-9000	6375	1.5.02	Promotion on proforma basis
-Do-	6375	1.5.03 WIP one year	-Do-	6550	1.5.03	
-Do-	6550	1.5.04	-Do-	6725	1.5.04	
6500-10500	6900	1.5.04 promoted on proforma basis	6500-10500	7100	1.5.04	Promoted on proforma basis
-Do-	7100	1.5.05	-Do-	7300	1.5.05	

His wages may be adjusted accordingly.

This has the approval of Competent Authority.

Note:- His pay fixation under 6th Pay Commission will be fixed after vetted by Associate Finance and settled dues be recalculated accordingly.

No.758-E/502/PtI/P6

Delhi 10.12.2010

Sd/-

for Divisional Personnel Officer
New Delhi”

3. Brief facts of the case are that the applicant has retired from service on 31.1.2007 and his retiral benefits have been finalized and paid to him. Thereafter, it came to the knowledge of the respondents that a penalty was imposed upon him but the same was effective from 1.5.1997, vide Order dated 28.4.1997. Therefore, they have issued order dated 2.12.2008 treating him under deemed punishment effective from 1.5.1997. The said order reads as under:-

“NORTHERN RAILWAY

DRM's Office

New Delhi

NOTICE:-

The representation received from Sh. J.R. Dhiman regarding his promotion in higher grades has been examined and found from office records available that Sh. Dhiman was awarded following punishments

1. WIP 5 years vide NIP No.724-E/JRD/HU/CH/2/93 dated 28.4.97/28.8.97
2. WIP one year vide NIP No.Mod-E/DKZ/Vig/JRD/2001/15-Vig/75/01

The above punishment of WIP 5 years was issued on 28.4.1997/29.8.97 but not made effective from 1.5.97 as mentioned in NIP. In case the above punishment is made effective from 1.5.97 to 30.4.2002 then the employee becomes eligible for promotion from 1.5.2002.

Accordingly, it has been decided to treat him under punishment as deemed operative from 1.5.97.

Consequent there upon, he may be given proforma promotion from 1.5.2002. Therefore, Sh. J. R. Dhiman ex Pharmacist Gr. Rs. 5000-8000 Delhi is now promoted in Gr. Rs.5500-9000 w.e.f. 1.5.2002 on proforma basis and further in grade Rs.6500-10500 & 7450-11500 w.e.f. 1.5.04 & 3.5.06 also on proforma basis from the date of promotion of his juniors by treating his above punishments effective from 1.5.97 to 30.4.2002.

His pay is fixed as under on proforma basis.

Pay already drawn			Pay now fixed			
Gr.	Pay	Date	Gr.	Pay	Date	
5000-8000	6050/-	1.5.96	5000-8000	6050/-	1.5.96	
-Do-	6200/-	1.5.97	-Do-	6050/-	1.5.97	WIP 5 years
-Do-	6350/-	1.5.98	-Do-	6050/-	1.5.98	
-Do-	6500/-	1.5.99	-Do-	6050/-	1.5.99	
-Do-	6650/-	1.5.00	-Do-	6050/-	1.5.00	
-Do-	6800/-	1.5.01	-Do-	6050/-	1.5.01	
-Do-	6950/-	1.5.02	-Do-	6200/-	1.5.02	
-Do-	7100/-	1.5.03	5500-9000	6375/-	1.5.02	Promotion on proforma basis
-Do-	7250/-	1.5.04	-Do-	6375/-	1.5.03	WIP 1 year
-Do-	7400/-	1.5.05	-Do-	6550/-	1.5.04	
			-Do-	6900/-	1.5.04	Promotion on proforma basis
			-Do-	7100/-	1.5.05	
			-Do-	7300/-	1.5.06	

			7450-11500	7675/-	3.5.06	Promotion on proforma basis
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His wages may be adjusted accordingly and arrear/recovery if any, be advised to settlement Section for further adjustment from his settlement dues accordingly.

Sd/-
No. 758-E/502/Pt.I/P6 for Sr. Divisional Personnel
Officer
Dated 02.12.08 New Delhi”

4. The applicant had earlier challenged the aforesaid order of the respondents before this Tribunal vide OA No.2738/2009 and this Tribunal vide Order dated 21.9.2010 after considering the submissions of learned counsel for the parties, directed the respondents to take into consideration of the provisions of Rule 15 or any other relevant fact before passing the final speaking orders. The relevant portion of the said Order reads as under:-

“5. We are convinced from the documents annexed by the applicant that order dated 20.10.2003 was already quashed by the Tribunal and Writ Petition was also dismissed on 24.08.2008, therefore, naturally it could not have been taken into account by the respondents for refixing his pay after the retirement of the applicant. Moreover, respondents have also stated that they would be taking the corrective measures, as such the impugned order is liable to be quashed because fresh orders would have to be passed by the respondents after deleting the punishment.

6. As far as the 1st punishment is concerned, there were heated arguments. As per the applicant, he had not been served the said order but respondents maintained they had sent the order through regd. Post. We have seen the original record which shows that letter was indeed dispatched to the applicant in November, 2002 by regd. Post. At this juncture, it would be relevant to quote Section 27 of the General Clauses Act, which reads as under:-

"Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either or the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

7. Moreover, respondents have shown us the representation dated 20.12.2005 written by the applicant himself from the original records which shows that applicant was fully aware of the penalty of WIP for 5 years against him. In view of above, we cannot accept the argument of the applicant that he was not aware of the penalty or it was not served on him, therefore, this contention is rejected. Counsel for the applicant invited our attention to Rule 15 which for ready reference reads as under:-

"(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government servant dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance, or outstanding advance.

(iv)(b) Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned."

He submitted that no recovery could have been made from applicant's gratuity after 3 months of his retirement. We are not expressing any views on this point at this stage because respondents have

to pass fresh orders for correcting their mistake with regard to penalty No.2, after quashing the order dated 02.12.2008, we, therefore, direct the respondents to take the provisions of Rule 15 or any other fact which may be relevant into consideration before passing the final speaking orders. This exercise shall be done within a period of three months from the date of receipt of a copy of this order under intimation to the applicant. If any amount has been recovered from the applicant, which was not to be recovered, the same shall be returned to the applicant within the aforesaid period along with a calculation sheet.

8. With the above direction, this O.A. stands disposed of. No costs.”

5. In compliance of the aforesaid directions, the respondents have refixed the pay of the applicant vide impugned order dated 10.12.2010 which has been reproduced earlier in this order.

6. The contention of the learned counsel for the applicant is that as the applicant had already retired from service on 31.1.2007, his pension could not be reduced except by way of penalty. He also submitted that admittedly when the order of punishment passed by the respondents way back on 28.4.1997/28.8.1997 and it was in their knowledge, they could not have passed any consequential orders after 22 months of the applicant's retirement. In this regard, he has also relied upon the judgment of the Apex Court in the case of

Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department & Ors., 2014 (3) AISLJ 62, wherein the Apex Court as stated that mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the

respondents and therefore neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary. The relevant paras of the said judgment read as under:-

“3. After a few years of his retirement, it was found by the respondent - employer that salary of the appellant had been wrongly fixed in 1986 and therefore, his salary had been re-fixed by an order dated 23.03.2005. On the basis of the re-fixed salary a sum of Rs.99,522/- was sought to be recovered and for that purpose a notice had been issued to the appellant on 23.04.2005. In pursuance of the incorrect fixation of his salary in 1986, his salary at the time of his retirement had also been reduced from Rs.11625/- to Rs.10,975/- and therefore, his pension had also been reduced.

4. The aforesated action of the respondent-employer had been challenged by the appellant by filing the aforesated Writ Petition before the High Court. The High Court was pleased to reject the petition as it had come to the conclusion that the pay of the appellant had been wrongly fixed and therefore, the impugned action of the respondent-employer with regard to recovery of the excess salary paid and reduction in the pension was justified.

5. It had been submitted by the learned counsel appearing for the appellant employee that the impugned judgment delivered by the High Court is incorrect for the reason that the High Court did not consider the G.O. dated 16.1.2007 bearing No.S-3-35/10-07- 101(6)/2005 which reads as under:

"[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service."

6. It had been submitted by the learned counsel that the appellant had retired on 31st December, 2003 and somewhere in the month of March, 2005 it was revealed that a mistake had been committed while fixing pay of the appellant in 1986. It had been further submitted that by virtue of the aforesated G.O. dated 16th January, 2007, the mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the respondent employer and therefore, neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary.

7. Upon perusal of the aforesated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforesated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated hereinabove.

9. In the aforesated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

10. For the aforesated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant.

12. For the reasons recorded hereinabove, we quash and set aside the impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs.”

7. The respondents have filed their reply. Learned counsel for the respondents Shri Shailendra Tiwari argued that this case is barred by principle of *res judicata* as this Tribunal has already considered this matter vide its Order dated 21.9.2010 in OA No.2738/2009 (supra). Therefore, the applicant could not have re-agitated the very same issue. He has further

submitted that the respondents are only implementing the earlier directions of this Tribunal.

8. We have considered the submissions made by learned counsel for the parties and perused the material available on record. It is seen that argument of learned counsel for the applicant in the earlier round of litigation in OA No.2738/2009 was that under Rule 15 of the Railway Services (Pension) Rules, 1993, dues should be assessed and adjusted within a period of 3 months from the date of retirement of the railway servant. According to the said Rule, the claim against the Railway servant should be assessed and adjusted within three months from the date of retirement of Railway servant concerned. This Tribunal while disposing the aforesaid OA did not express any view on the aforesaid argument of learned counsel for the applicant. On the other hand, this Tribunal has directed the respondents to take the provisions of Rule 15 or any other relevant facts into consideration before passing the final speaking orders. A perusal of the impugned order shows that the respondents have not taken into consideration the aforesaid Rule or any other relevant facts. It is an admitted fact that the applicant retired from service way back on 31.1.2007 and the respondents have settled his retiral dues immediately thereafter. The recovery has been ordered after expiry of 22 months of his retirement in terms of an order of punishment passed way back on 28.4.1997/28.8.1997. In our considered view, as held by the Apex Court in the case of **Sushil Kumar**

Singhal (supra), after such a long delay no re-fixation could be done or no recovery could be made from the pension of the applicant.

10. In the above facts and circumstances of the case, we quash and set aside the impugned orders dated 10.12.2010 and 2.12.2008. Consequently, the applicant shall not be visited by any adverse effects with regard to his pension. This OA is accordingly allowed. There shall be no order as to costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(G.GEORGE PARACKEN)
MEMBER (J)

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