

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 2160/2012

Order reserved on : 21.01.2016
Order Pronounced on: 22.02.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Sh. Jwala Prasad,
S/o Sh. Gopal Prasad,
Khallasi under Dy. CE.BR (D),
Baroda House, New Delhi.

- Applicant

(By Advocate: Sh. Khairati Lal)

Vs.

Union of India through

General Manager,
Northern Railway,
Baroda House,
New Delhi.

- Respondent

(By Advocate: Sh. Shailendra Tiwari)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The present OA has been filed with the following prayer:

- “i) Direct the respondent to refund the amount of Rs.23,742/- which has been recovered illegally from the pension of the applicant without any reasonable justification along with interest there on at the rate of 18% P.A.
- ii) Grant any other relief that the Hon'ble Tribunal may deem fit.”

2. The applicant retired as Khallasi on 30.07.2011 from the office of the respondent. Prior to that he was given a Show Cause Notice on 20.06.2011 stating that his pay scale as revised under V CPC had been revised again and a copy of the same was being sent as advance information. The applicant was given time till 28.06.2011 to submit his representation if any. Though the applicant submitted his representation against any recovery of excess payment, the respondents went ahead and deducted entire amount of Rs.23,742/- from his retiral dues.

3. Learned counsel for the applicant submitted that the applicant in a separate proceeding before this Tribunal has claimed ACP/MACP and while the matter was pending before this Tribunal, the respondent went ahead with the recovery of the amount which allegedly had been wrongly paid to the applicant. The respondent should have waited for the outcome of the OA. If the applicant succeeds in that OA there would be no need for any recovery from the applicant as he would be entitled to some arrears. This action of the respondent to recover an amount when a related matter of sanction of ACP/MACP from due date was pending before this Tribunal was illegal. The respondent could have recovered any amount from the retiral dues only as a consequence of any disciplinary proceeding against him. He further submitted that the applicant was in no way responsible

for any alleged wrong fixation of pay by the respondent. The applicant was the lowest grade employee and any recovery from his retiral dues was extremely harsh on him.

4. Learned counsel or the respondent, on the other hand, submitted that the applicant was promoted to the grade of Rs.775-1025 against the upgraded post vide order dated 03.06.1991 w.e.f. 20.06.1989. In terms of the recommendations of the 5th CPC, the replacement scale of Rs.775-1025 was Rs.2610-3540. However, in terms of Railway Service (Revised Pay) Amendment Rules, 2002, his pay was wrongly fixed in the scale of Rs.2610-4000, which was the replacement scale of Rs.775-1150. When this error was noticed by the respondent, the scale of the applicant and other similarly situated persons was revised in the year 2008. While doing so, the respondent had taken an undertaking from several such persons including the applicant, a copy of which has been placed on record as Annexure R-4. In this undertaking, the applicant has admitted that the earlier fixation of pay was wrong and the same was required to be corrected. Now at this stage, the applicant cannot go back on the undertaking given earlier and say that the recovery was illegal or against the rules. Learned counsel also relied on **Chandi Prasad Uniyal vs. State of Uttarakhand & ors.**, (2012) 8 SCC 417 wherein the Hon'ble Supreme Court had held that any amount paid/received without authority of law could always be recovered.

5. We have heard both the sides and perused the record. The applicant filed MA No.1888/2011 along with MA No.768/2012 in OA No.1859/2011, in which he had asked for a direction to the respondent to refund the amount of Rs.23,742/- along with 18% interest that was recovered by the respondent. The MA 768/2012 was disposed of with the direction that he should challenge the same by filing a fresh OA. Accordingly, the applicant has filed the present OA. The issue before us is whether the excess payment made to the applicant during the period from 01.01.1996 to 31.08.2008 on account of wrong fixation of pay could be recovered by the respondent -

- (i) when his claim for financial upgradation from earlier dates was still before this Tribunal and
- (ii) when the applicant was on the verge of superannuation.

6. The Hon'ble Supreme Court in **Chandi Prasad Uniyal** (supra) has categorically held that any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardship but not as a matter of right. Before we apply this principle, it is to be ruled out that the present case is not covered by the exception of extreme hardship.

7. The facts of the case would reveal that the applicant had started his career as a casual labour in 1973, regularised as

Khallasi in 1989 and retired as Khallasi in 2011. In the meantime, though he got financial upgradations, the date from which such upgradations was due to him is a matter of dispute in some other OA. The records also show that the respondent realised its mistake sometimes in 2008 and revised the scale of pay of the applicant from Rs.2610-4000 to Rs.2610-3540. An undertaking was obtained from the applicant on 10.09.2008 admitting that the earlier scale was wrongly given to him and that his pay should have been fixed in the lower scale of Rs.2610-3540. What surprises us is that it took three years for the respondent to realise, that too on the eve of his superannuation, that there was some amount to be recovered from the applicant. Only after such late realisation the Show Cause Notice was given in the month of June 2011 and the recovery effected from the retiral dues of the applicant. The counter filed by the respondent is silent about the delay of three years in making the recovery. Had the respondent recovered the amount in instalment immediately after revision of pay in 2008, the applicant would be in a position to repay the amount with relatively less difficulty. For a retiring employee a notice for the recovery of Rs.23,742/- from his retiral dues would be a bolt from the blue as at that juncture he would be planning to cope up with the post retiral life with reduced income. We are, therefore, of the view that present case deserves to be categorised as one of those exceptions of

extreme hardship that has been mentioned in **Chandi Prasad Uniyal** (supra). With regard to the respondent's action of making recovery while the OA regarding ACP/MACP was pending, we do not find any connection between the two as these are independent causes of action.

8. From the foregoing discussion we conclude that the respondent failed to carry out the recovery well in time after the revision of his pay in 2008 when the applicant had three years' service left and when he would have been in a better position to repay that amount in monthly instalments. By delaying the action of recovery from the monthly pay, the respondent had to resort to recover the amount from the retiral dues of the applicant which would be a cause of extreme hardship for a low rung employee.

9. The OA is therefore allowed. The respondent is directed to refund the amount of Rs.23,742/- recovered from the retiral dues of the applicant within a period of four weeks from the date of receipt of a copy of the order. No costs.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

February 22, 2016

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