

Central Administrative Tribunal
Principal Bench

O.A.No.1488/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 8th day of April, 2003

Shri Som Nath Vohra
s/o Shri Roshan Lal
Retired Head Parcel Clerk
Northern Railway
Meerut City.

... Applicant

(By Advocate: Sh. S.K.Sawhney)

Vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
DRM Office, Chelmsford Road
New Delhi.

... Respondents

(By Advocate: Sh. D.S.Jagotra)

O R D E R

By Shri Shanker Raju, M(J):

This application is directed against the recovery of Rs.14,433/- and for recalculation of his pension. Applicant has also sought grant of First-class Post Retirement Passes.

2. Applicant, who retired on superannuation on 30.4.2001, while working as Head Parcel Clerk, in the scale of Rs.1400-2300, his pay was fixed as Rs.5150/- on 1.1.1996 and thereafter raised to Rs.5300/- on 1.7.1996 as per the statement of fixation of pay under Railway Service (Revised Pay) Rules, 1996.

3. Applicant was awarded a penalty of withholding of increment temporarily for three years vide letter dated 7.8.1995 which was reduced to withholding of increment for one year by an order dated 13.2.1997.

4. Subsequently, applicant was ordered to be compulsorily retired by an order dated 30.6.1997 but on appeal it was reduced to reduction to lower grade of Rs.1200-2040 at Rs.1600/- which was equivalent to revised scale of Rs.4000-6000. After retirement, the pay of applicant was reduced to Rs.4900/- and pension accordingly fixed, a recovery of Rs.14,433/- along with Rs.1480/- was effected and he has been denied First-class Post Retirement Passes, giving rise to the present OA.

5. Sh. S.K.Sawhney, learned counsel for applicant challenged the orders on the ground that the recovery effected is without any show cause notice which was mandatory as the action of respondents visited the applicant with civil consequences, and moreover this has been done without assigning any reasons.

6. Sh. Sawhney further contended that the penalty reduced to withholding of increment for one year was effective earlier to fixation of new pay scales w.e.f. 1.1.1996 and as the pay of applicant was fixed at Rs.5300/-, on earning one increment on 1.7.1996 and on 1.7.1996 the pay has been raised to Rs.5150/-. As another reduced penalty was imposed, he was fixed on a pay of Rs.1600/- which is equivalent to

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Rs.4000-6000 and accordingly his pay was fixed at Rs.5100/- on 27.10.1997 after earning two increments. The fact of penalty was imposed on 1.2.1999 by reducing of his pay from Rs.5300 to Rs.5100-. As he earn increment on 1.2.2001, he should have been retired on a pay of Rs.5200/- and accordingly, the pension should have been fixed. In this background, it is stated that all the retiral benefits have been paid less.

7. On the other hand, respondents' counsel Shri D.S.Jagotra vehemently opposed the contentions and stated that on compulsory retirement applicant was reduced to one stage for three years which was further modified to two years from 2.7.1999 to 1.2.2001 which he was informed on 23.3.2001 and as a result recovery has been effected from his retiral benefits.

8. Shri Jagotra further contended that on re-examining the matter, the pay of applicant has been fixed at Rs.5000/- and is entitled for post retirement complimentary passes and the difference of salary and settlement dues for the period 2.2.2001 to 30.4.2001 due to fresh calculation of his benefits would be paid to applicant shortly.

9. It is contended by Shri Jagotra that punishment imposed on 21.8.1995 and reduced to WIT on 13.2.1997 but it was implemented w.e.f. 1.7.1996 after effecting in the new pay scale, the punishment of WIT for one year had effected his raise in the pay. As applicant, in the interregnum, was compulsorily retired and on appeal to reduction to the lower grade,

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i.e., Rs.1200-2040 (RPS) at the stage of Rs.1600/- which is equated to Rs.4900/-. On earning one increment in January, 1999, his pay has reached at Rs.5000. Moreover, as a result of the second penalty awarded to applicant on 1.2.1999, his pay was reduced from Rs.5000/- to Rs.4900/- but was restored to Rs.5000/- w.e.f. 2.2.2001. Accordingly, the contention that he is entitled for fixation of Rs.5200/- is not correct and unfounded.

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10. I have carefully considered the rival contentions of the parties and perused the material on record. As per the pay fixation under Railway Service (Revised Pays) Rules, 1996, pay of applicant was fixed as on 1.1.1996 at Rs.5150/- and after earning of additional two increments, the same has been fixed at Rs.5300/-. However as an affect of imposition of punishment of WIT for three years by an order issued in January, 1997, pay of applicant was reduced to withholding of increment of one year. Thereafter as a compulsory retirement was ordered on 30.6.1997 the pay was reduced to reduction in lower grade of Rs.1200-2040 and his pay has been fixed at Rs.1600/- vide order dated 27.10.1997. On 27.1.1999, the same was reduced from the stage of at Rs.5300 to Rs.5100 in the grade equated to the pay scale of Rs.4000-6000. Subsequent punishment of ~~reduction~~ reduction of pay by one stage for two years the pay was reduced to Rs.5100/-. The currency of punishment was over on 1.2.2001 when applicant was earned his next increment making his pay as Rs.5200/- and on attaining the age of superannuation on 30.4.2001 the pay should have been fixed as per the last pay drawn as Rs.5200/-.

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Although the pension was fixed on the basis of last pay drawn Rs.4900/- but subsequently vide Corrigendum letter issued on 29.8.2002, the same has been raised to Rs.5000/- on which the pension has been fixed. By an order dated 25.5.2002 the pay of applicant was reduced to Rs.4900/- for which a recovery has been effected. Whereas the pay slip of applicant for the period January, 2001 shows his salary pay as Rs.5100/-. The contention of respondents that the penalty of WIT was implemented w.e.f. 1.7.1996 after the fixation of pay and as applicant was reduced to the lower grade of Rs.1600 permanently equating this stage, pay of applicant was raised to Rs.5000/- in January, 1999 and applicant has not earned his increment, the pay has not reached to Rs.5100 cannot be countenanced. Nothing in the order reducing the punishment shows that his increments are withheld. As such even after coming to the last stage of Rs.4000-6000 applicant would have earned increment till the date of his retirement making his pay as Rs.5200/- on which the pension should have been calculated. No satisfactory explanation has been rendered as to how respondents had arrived at figure of Rs.5000/- to fix the pension of applicant. As applicant was fixed at Rs.1600/- from 1.7.1995, he earned his increment on 1.7.1996 raising his pay to Rs.5200/- which is supported by pay fixation order. Respondents have not disputed the same.

11. On withholding of one increment temporarily, pay of applicant raised Rs.5150/- on 1.7.1996 and reached Rs.5300/- after earning of two increments and there is no stipulation as to withheld of future increment as well in the punishment order.

12. On award of another punishment of reduction passed on 1.2.1999, pay of applicant has been reduced to Rs.5100/- from Rs.5300/- and on expiry of currency of the punishment on 2.1.2001, he earned an increment raising his pay to Rs.5200/-. As such I do not find any basis for non-fixation of pensionary benefits on the last pay drawn of Rs.5200/- as well as the recovery of Rs.17,433/-. Admittedly no show cause notice has been served upon applicant and reasonable opportunity given has been given to applicant before he visited with civil consequences. This to my considered view is in violation of principles of natural justice.

13. It appears that respondents have wrongly calculated the fixation of pay of applicant as well as his retiral benefits. Their corrigendum issued on 29.8.2002 where the pay has been increased to Rs.5000/- substantiates this plea.

14. In the result, for the foregoing reasons, pay as well as fixation of pension of applicant is not in accordance with rules and instructions on the subject. I accordingly dispose of this OA by directing the respondents to recalculate the pay of applicant on the last pay drawn as observed above and also refund him an amount of Rs.14443/- along with an

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amount of Rs.1480/- recovered from the applicant, in that event, on arrears, applicant would be entitled to a simple interest of 10 per cent till the payment. However as the respondents have already allowed the applicant his post retirement complimentary passes, this grievance does not survive. The aforesaid exercise shall be completed by respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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