

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/00185 of 2015

Date of order: This the 28th Day of April, 2016.

HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

Shri Subrata Choudhury,
Son of Late Satyandra Nath Choudhury
National Highway Road
Near Gaurio Math
Silchar-788012

Applicant

By Advocate Mr.M.Chanda,

-AND-

1. The Union of India
Represented by Secretary and
Director General,
Department of Posts,
Dak Bhawan, Sansad Marg
New Delhi-110001.
2. The Chief Post Master General
North Eastern Circle
Shillong-793001
3. The Director of Accounts (Postal)
North east Postal Circle
Shillong-793001
4. The Director of Accounts (Postal)
Assam Circle
Guwahati-781003
5. Senior Post Master Silchar
Head Post Office,
Silchar-788001

6. Assistant Chief Accounts Officer(Pension)
 Office of the Director of Accounts (Postal)
 North east Postal Circle
 Shillong-793001. Respondents

By Advocate Mr.R.Hazarika, Addl.C.G.S.C.

ORDER

Per Mrs. Manjula Das, Judicial Member:

By this O.A. applicant makes a prayer for setting aside the impugned letter dated 15.05.2015 issued by the Director Accounts (Postal), N.E.Postal Circle, Shillong.

2. Mr.M.Chanda, learned counsel for the applicant submits that applicant retired on attaining the age of superannuation on 30.06.2005. Thereafter, Pension Payment Order was issued on 18.08.2005 fixing his monthly pension @ Rs.7013+ DR and family pension @ Rs.4275/- w. e. f. 01.07.2005. It was submitted by the learned counsel that as per 6th CPC applicant's pension was re-fixed @ Rs.9,663/- w. e. f. 01.01.2006 vide order dated 21.06.2013. Accordingly, applicant got arrears of pension as per 6th CPC recommendation which was given effect to by the Govt. of India vide notification date 29.08.2008 by giving retrospective effect from 01.01.2006.

3. According to the learned counsel, suddenly vide impugned letter dated 15.05.2015, the respondent No.6 of the office of the Director of Accounts (Postal) without showing any show cause or notice or intimation to the applicant in violation of principle of natural justice issued orders of reduction of pay to Rs.10567/- and family pension to Rs. 6,441/- .

4. To substantiate his arguments learned counsel for the applicant relied on the decision of the Hon'ble Apex Court in the case of **Shyam Babu Verma Vs.UOI & Others, (1994) 2 SCC 521** wherein it was held that when officials were paid higher scale due to the no fault of theirs, it shall only be just and proper not to recover any excess amount which has already been paid to them. Learned counsel also relied on the Hon'ble Apex Court decision in the case of **Bhagwan Sukla Vs. Union of India & Ors. Reported in (1994) 6 SCC 154** wherein it was held "Prior opportunity ought to have been afforded before passing an order of reduction of pay scale."

5. The respondents have filed their written statement denying all the averments made by the applicant except those that are specifically admitted or supported by records.

6. The respondents have admitted that the pay of the applicant at the time of retirement was Rs.9500+50% Dearness Pay i.e. Rs.4750/- which comes to the total salary at Rs.14250/-. The average emoluments for last 10 years of the applicant is Rs.14520/- and accordingly, his pension will be 50% of the A.E which comes to Rs.7013/- including Dearness Pay as on date of his retirement. As per the Fitment table the revised pension w.e.f. 01.01.2006 in case of Basic Pension of Rs.7013/- with Dearness Pay comes to Rs.10567/-. However, due to bonafide mistake in calculating the Basic Pension of Rs.7013/- as without DP the applicant was granted revised pension at Rs.15851/- which ought to have been Rs.10567/-. Moreover, the family pension was also wrongly calculated at Rs. 9663/- instead of Rs.6441/-. Respondents further submitted that the applicant has already been granted the Dearness Pay of Rs.4750/- with his salary, so there is no question of granting the Dearness Pay again. Accordingly, the applicant is entitled to his pension (revised) at Rs.10567/- as per the O.M.No.38/37/08-P&PW (A) dated 01.09.2008.

7. I have heard Mr.M.Chanda, learned counsel for the applicant and Mr.R.Hazarika, learned Addl.C.G.S.C. for the respondents.

8. The main grievance of the applicant is that the respondent No.6 has issued the impugned order dated 15.05.2015, whereby, monthly pension of Rs.15,851/- has been reduced to Rs.10,561/- and family pension Rs.9,663/- reduced to Rs.6441/- without issuing any prior show cause notice. Learned counsel for the applicant submitted that the applicant is a cancer patient, who had retired on superannuation long back on 30.6.2005. The learned counsel for the applicant further submitted that the applicant had no other source of income save and except pensionary benefit and the arrear monetary benefit paid to the applicant on account of revision of pension has already been spent by the applicant due to his constant medical treatment at Tata Memorial Hospital, Mumbai.

9. Mr.R.Hazarika, learned counsel for the respondents submitted that whatever amount has been paid to the applicant as a result of wrong calculation will be recovered from the applicant. Learned counsel further submitted that mere error in calculation, does not give the applicant the right to receive higher amount to which he is not entitled.

10. Learned counsel for the applicant, on the other hand relied on the decision of the Hon'ble Apex Court in the case of **Bhagwan Sukla Vs. Union of India & Ors(Supra)**, wherein it was held that when officials were paid higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount which has already been paid to them.

11. In view of the above facts and circumstances of the matter and relying on the decisions of the Hon'ble Supreme Court, present O.A. is disposed of with direction to the respondents to calculate the correct pension amount as per law and to make the payment immediately. The amount already paid to the applicant as a result of calculation, shall not be recovered from the applicant. No order as to costs.

(MANJULA DAS)
JUDICIAL MEMBER

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