

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1575/2001

New Delhi this the 6th day of August, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

B.M. Narang,
R/o GH-13226, SFS Flats,
Paschim Vihar,
New Delhi 0110 087.

(20)
-Applicant

(By Advocate Shri G.S. Lubana)

-Versus-

1. Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
2. Secretary,
Ministry of Personnel, Public Grievances
and Pensions, Deptt. of Personnel
and Pensioners' Welfare,
Lok Nayak Bhawan,
New Delhi-110 003.
3. Principal, CDA (Pensions),
Allahabad.
4. No.56, ASP, Airforce,
Faridabad-121 001.

-Respondents

(By Advocate Ms. Harvinder Oberoi)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant, who retired as a civilian in the Defence on 1.5.85 has assailed the action of the respondents, whereby his pension has been reduced and a recovery of Rs.3800/- per month has been effected from his pension, after a period of 15 years and out of the total amount to be recovered Rs.2,47,000/- an amount of Rs.48,710/- has already been recovered. He also assails through his amended OA Pension Payment Order issued in 2001.

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2. Applicant at the time of his superannuation was accorded monthly pension of Rs.686/- with relief of pension Rs.400/-. This was amended on 2.7.86 to Rs.1054/-. In pursuance of the recommendations of the Fourth Central Pay Commission pension was revised from 1.1.86 to Rs.1792.00.

3. In May, 2000 after 15 years of his retirement it was apprised to the applicant by the Manager, State Bank of India, Naraina Vihar, New Delhi that CDA (P) Allahabad Audit Team had visited the Bank and shown a huge amount for deduction/recovery. An amount of Rs.3800/- per month has been started as recovery w.e.f. 1.9.2000 under the order of the CDA (P), Allahabad.

4. Learned counsel for the applicant Sh. G.S. Lubana contended that the action of the respondents is arbitrary and illegal as the applicant has been receiving the pension w.e.f. 1.1.86 and after an inordinate delay of 15 years reduction in his pension and consequent recovery without following the due process of law, i.e., issue of show cause notice, cannot be countenanced. It is stated that pension is not a bounty and is to be earned by rendering long and efficient service by a Government servant.

5. The learned counsel has placed reliance on Rule 70 of the CCS (Pension) Rules, 1972 and contended that once the pension is authorised after a final settlement it is not open to the respondents to revise it to the disadvantage of Government servant, and no revision shall be ordered without the concurrence of the Department of Personnel and Administrative Reforms after a period of two

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years from the date of authorisation of pension in case of clerical error. It is further stated that the rules stipulate that before effecting any recovery and revision of pension the retired Government servant shall be served with a notice by the Head of the Office.

6. In the light of the aforesaid provisions Sh. Lubana placed reliance on a decision of the Mumbai Bench of the Tribunal in A.K. Gupta v. Union of India & Ors., 2001 (2) ATJ CAT 193 wherein recovery of excess payment on account of wrong fixation of pension has been held to illegal in the light of Rule 70 ibid.

7. It is stated that from 29.12.2000 recovery has been made effective and a total amount of Rs.48,710/- has already been deducted but for the interim orders issued on 26.6.2001 the recovery is not effected thereupon.

8. On the other hand, respondents in their reply denied the contentions of the applicant and by placing reliance on a decision of the Apex Court in Anuj Kumar Dey and Another v. Union of India & Others, (1997) 1 SCC 366 Ms. Harvinder Oberoi contended that applicant has already given an undertaking that any excess payment can be recovered by the Bank. The recovery effected is legally tenable.

9. Ms. Oberoi has also relied upon a decision of the Apex Court in V. Gangaram v. Regional Joint Director, AIR 1997 SC 2776 to contend that recovery of excess payment on account of accord of two additional increments inadvertently has been held to be legally sustainable.

10. It is further stated that recovery has been effected from the applicant due to wrong fixation of pension w.e.f. 1.1.86. As the applicant retired on 30.4.85 applicant was granted pension at the revised rate of Rs.1054/- and the same was commuted for 15 years and on expiry of 15 years in 2000 once the matter was brought to the notice regarding wrong fixation by the Audit Party as the State Bank of India, Naraina Vihar, New Delhi has wrongly fixed his pension at the rate of Rs.1792/- in column No.4 of the table instead of column No.5 and this pension was further revised w.e.f. 1.1.96 the mistake was perpetuated with the result applicant who was entitled to correct his pension on an amount of Rs.1117/- it should have been revised to Rs.3380/- per month w.e.f. 1.1.96. Applicant has been over paid a sum of Rs.2,47,410/- which was on account of wrong fixation/revision of pension. The action of the respondents to recover the amount is as per rules and law and being a bonafide mistake the same can be rectified at any stage, which does not require any reasonable opportunity to be accorded to the pensioner.

11. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view and having regard to the provisions of Rule 70 ibid even if the respondents' plea that the pension was accorded mistakenly and was revised also and as soon as the Audit Party in May, 2000 detected the mistake and the recovery had started from August, 2000 Rule 70 clearly stipulates that in that eventuality when the pensioner's pension is reduced to his disadvantage due to clerical error the same cannot be done beyond two years from the date of authorisation of pension and in the event

the same is to be revised to the detriment and disadvantage of the retired Government servant, he shall be served with a notice by the head of office to refund excess payment from the date of receipt of the notice. The aforesaid provisions have not been adhered to by the respondents. No show cause notice was served upon the applicant by the respondents.

12. Even in a pension any recovery causes civil consequences for which even a retired person is to be accorded an opportunity in consonance with the principles of natural justice. Moreover, if the provisions to that effect are in the rules the same should have been meticulously followed by the respondents. Their action of reducing the pension and recovering the amount without following Rule 70 ibid cannot be countenanced and is not legally sustainable.

13. In the result, OA is partly allowed. The ~~revision~~^k pension payment order issued by the respondents is quashed and set aside. Recoveries already effected^k shall have to be restored to the applicant, within a period of three months from the date of receipt of a copy of this order. However, this shall not preclude the respondents from proceeding further strictly in accordance with the rules and as per the observations made above. No costs.

S. Raju

(Shanker Raju)
Member (J)

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