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Central Administrative Tribunal, Principal Bench

Original Application No.1222 of 1999

New Delhi, this the 7th day of December, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman

Ajay Kumar Agarwal, S/o Shri M.R. Agarwal,
Personal Asstt. to Chief Engineer/ Const.,
Northern Railway Headquarters Office,
Kashmiri Gate, Delhi. - Applicant

(By Advocate Shri M.L. Sharma)

Versus

Union of India through

1. General Manager, Northern Railway,
Headquarters Office, Baroda House, New
Delhi.

2. Chief Personnel Officer, Northern
Railway, Headquarters Office, Baroda
House, New Delhi.

3. Chief Administrative Officer (Const.),
Northern Railway, Headquarters Office,
Kashmirigate, Delhi. - Respondents

(By Advocate Shri Rajinder Khatter)

O R D E R (Oral)

The only short point that arises for consideration in this case is whether the pay of the applicant, who is a retired Railway official, is liable to be refixed, by reducing his pay which he was drawing on the date of his retirement, without issuing notice.

2. It is a case of the applicant that he has been drawing the pay of Rs.7,300/- per month in the revised scale of Rs.6,500 - Rs.10,500 since 1.10.1997 and he continued to draw the same pay till the date of his retirement. By the impugned order, which is wrongly shown as 'notice', the pay of the applicant has been reduced from Rs.7,300/- to Rs.7,100/- with effect from 1.10.1997 and recoveries were ordered of the excess amount paid. This decision is impugned in this O.A.

3. The learned counsel for the applicant submits that the impugned order is void for want of notice. The

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learned counsel for the respondents, however, contends that as the impugned order itself is a notice, no further notice is necessary. He further submits that no representation was made by the applicant against the impugned notice/order. Hence, the O.A. is not maintainable.

4. The contention that the impugned order itself is a notice is not acceptable. Though the order was titled as 'notice', as the decision was already taken by the General Manager, refixing the pay by reducing from Rs.7,300/- to Rs.7,100/- and the recoveries were also directed to be made, the impugned order is not a notice but it is ^{the final} an order passed by the authority. It is not correct to contend that no representation was made against the impugned order as it is seen from Annexures A-12 and A-13 that the applicant did make representations against the impugned order.

5. Having heard the learned counsel for the applicant and the respondents, I find that there is sufficient force in the contention of the learned counsel for the applicant. The Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. Union of India, 1994 SCC(L&S) 1320, on identical facts set aside the impugned order reducing the pay without notice. In the instant case, as the applicant had been drawing the pay of Rs.7,300/- with effect from October, 1997 and the pay is now reduced with retrospective effect without notice, following the above judgment of the Supreme Court, it is held that the impugned order is void for want of notice.

6. The learned counsel for the respondents relies upon three judgments of the Tribunal, but they will not

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come to his help as they do not deal with the question of want of notice. The learned counsel for the respondents also relies upon the circular dated 15.10.1971 (Serial No.5456), but as we are not going into the merits of the case, we do not propose to deal with this ^{✓ circular} ~~issue~~ at ~~present~~. *this stage.*

7. The O.A., therefore, succeeds. Accordingly, the impugned order is set aside. This order, however, will not preclude the respondents to issue notice, if they so choose and pass appropriate orders in accordance with law.

8. The learned counsel for the applicant seeks to contend that the applicant was entitled for increments after his suspension period was treated as duty and hence the retiral benefits should be refixed taking into account the said increments. This relief is a distinct relief, which cannot be clubbed with the present O.A. It is, however, open to the applicant to file a fresh O.A. for this relief. OA is accordingly allowed.

No costs.

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman