

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.55/1999

New Delhi, this the 9th day of the April, 2001

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Hori Lal S/o Shri Duni Chand
Retd. Office Supdt. Gr. II (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,
Kashmiri Gate, Delhi.

....Respondents

(By Advocate : Shri R.L. Dhawan)

ORDER

By Shri Govindan S. Tampi, Member (A):-

Reliefs sought in this OA are as below:

- i) to quash and set aside the impugned letter dated 03.8.1998, (A-I), P.P.O. dated 1.10.1998 (A-2), and the letter dated 19-11-1998 (A-3).
- ii) to direct the Respondents to refix and pay the pension, commutation & gratuity on the basis of basic pay Rs.6200/- p.m. which

27

✓

(2)

the applicant was receiving immediately before his retirement,

23

- iii) to direct the Respondents further to pay the difference of arrears with 18% panel interest thereon and also to pay back the amount of Rs.10,370/-, already recovered from the gratuity of the applicant further with 18% panel interest thereon as allowed by Hon'ble Supreme Court in the case of R. Kapur Vs UOI 1995 SCC (L&S)18.
- iv) to direct the respondents further to pay the difference of 3% D.A. on pay from 1-1-1998 to 31.3.1998 and on 262 days leave encashment with 12% interest as already applicable in the ordinary course.
- v) any other relief which is deemed fit and proper in the facts and circumstances of the case may also be granted in favour of the applicant.
- vi) the cost of the case may also be granted in favour of the applicant and against the respondents.

2. Heard the learned counsel for the applicant and the respondents, perused the pleadings including those filed subsequent to the hearing.

by

(3)

29

3. Applicant who joined as clerk on 1.6.64 in Lucknow, came over to Northern Rly. Headquarters, New Delhi on 15.4.1976, became a Sr. Clerk in 1982, Head Clerk in 1987, Asstt. Superintendent in 1992 and finally Office Superintendent Grade-II in the grade of Rs.1600-2660/- (Rs.5500-9000/-) w.e.f. 1.8.1997. On his superannuation on 31.3.1998, his basic pay stood at Rs.6200/-. However, his retiral benefits were worked out, reducing his basic pay to Rs.6025/-, by re-fixing his pay retrospectively w.e.f. 1.1.1978, in a unilateral manner and without putting him on notice. This action was in violation of the Supreme Court's order in Bhagwan Shukla Vs Union of India & Others (1994 SCC (L&S) 1320). Retiral benefits suffered as the basic pay was reduced to Rs.6025/-. Besides, recovery of Rs.10,370/- was also effected from his gratuity which was already reduced, inspite of the fact that the higher pay, if any, was granted to him by the Department and not on his representation. This recovery was also clearly illegal as decided in a number of judgments, which directed refund of incorrectly recovered amounts with interests. As the respondents had ample opportunity to correct-mistakes if any, before he retired, the action by the respondents was improper. Further payment of pension, did not take place for our nine months, commutation of pension was delayed, gratuity payment was delayed, difference of arrears of DA for two months was held back as did

by

(4)

the encashment of 262 days. Representations against the arbitrary action fell on deaf ears. Hence, this application.

30

3. Respondents do not dispute the facts but state that in terms of Rule 49 of Railway Pension Rules, 1993, settlement dues are worked out on the basis of the pay in the cadre post that he would have drawn at the time of his retirement. As the applicant was in construction organisation on ad hoc basis, according to them, re-fixation of the applicant's pay at Rs.6025/- to work out the retiral benefits was correct. They further state that the applicant was put on notice, but no representation was received from him. This had been mentioned in Rule 1303 (i) of I.R.E. Code. Further the decisions cited by the applicant were not relevant while on the other hand, Hon'ble Supreme Court has held that a wrong decision does not give rise to an enforceable right [state of Haryana Vs. R.K. Mann - SC SLJ 1777 (32) SC 257], and that mistake committed by respondents could not confer any right contrary to recruitment rules [A.K. Sharma Vs. UOI - JT 1991 (1) SC 113]. In view of the above, the applicant has no case, say the respondents. They also invite my attention to Tribunal's decision dated 24.12.1998 in OA No.2109/1997.

4. In his submissions Sr. M.L. Sharma, learned counsel for the applicant reiterates his

pleadings and avers that the applicants pay was fixed not on account of any misrepresentation by him. There were no dues outstanding against him on his date of retirement and even if there were any dues the same should have been recovered within three months from his retirement i.e. from 31.3.1998. Further a Rly servant's pay cannot be reduced 12 months after it has been fixed, in terms of paras 1013 to 1019, of IREM. His pay was fixed on 1.8.1992 and had been refixed on restructuring in 1984, 1986, 1993 and 1996, and on none of those occasions any discrepancy was pointed out. Supreme Court has frowned upon effecting recoveries from gratuity in Shyam Babu Verma Vs. UOI and others - 1994 SCC (L&S) 683, Salvatore Fernandes Vs. State of Karnataka - SC SLJ 1995 (1) SC 24. Shri Sharma also referred to the decision of the Principal Bench, CAT in the case of L.C. Chawla Vs. Union of India and others which squarely covered his case according to him. He reiterated that no show cause notice was ever received by them and the recovery was illegally ordered. On the other hand, Shri R.L. Dhawan pleads for the respondents that the recovery was correctly effected keeping in mind his basic pay in his cadre post. Further he states that the notice before the refixation was prepared and placed in file but before it was issued and replied by the applicant the impugned order was issued. However, as his subsequent representation on 16.10.1998 was replied on

21

m

19.11.1998 the requirement was fulfilled, pleads Shri Dhawan, relying upon the decision of the Apex Court in A.K. Sharma's case (Supra). Further recovery of the dues form gratuity was authorised by Rule 15 of Railway Service (Pension) Rules 1993. In view of the above the application should be dismissed pleads Shri Dhawan.

5. The matter has been carefully considered. While the applicant states that his retiral benefits have been reduced by incorrectly re-fixing his pay w.e.f. 1.1.1978, that too ;without putting him on notice, which is against the prescriptions of law as well as judicial pronouncements, the respondents hold that what was done was only a rectification of mistake which could be attempted at any time and that the principles of natural justice have been adhered to. According to the respondents in terms of Rule 49 of Railway Pension Rules, 1993 settlement dues are to be worked out on the basis of the pay in the cadre post that the retiring official could have drawn. As in this case the applicant was working in construction organisation on a ad hoc basis he was not entitled to have the retiral benefits worked out at Rs.6200/- as the basic pay which he actually drew on his superannuation but only at Rs.6025/- which would have been his regular basic pay at his cadre post and, therefore, the Tribunal's decision in OA No.2109/1997, decided on 24.12.1998 would cover

the case. Further the re-fixation of pay for the purpose of rectifying the mistake also had the sanction of the Supreme Court in the decision of State of Haryana Vs. R.K. Mann as well as A.K. Sharma. At the same time, it is brought on record that the applicant's pay has been fixed as far back as 1992 and re-fixations had been effected in 1984, 1986, 1993 and 1996. It is also on record that even if any mistake had arisen, the same had not occurred on account of any act on the part of the applicant but was done by the respondents themselves. That being the case downward revision of the retiral benefits more than 5 months after his retirement and re-fixation of pay going as far back as 20 years was a bit too strange for comfort even if rectification of mistake was permitted by the instruction and the pronouncement of the Apex Court. It is also worth mentioning that as brought out in Supreme Court's pronouncement in Shyam Babu Verma's case and Salvatore Fernande's case effecting recoveries from the gratuity has been considered as an incorrect step, even if regulations permit the same. It emerges, therefore, that both as the aspect of re-fixation of pay on a subsequent and belated date and effecting recovery from the gratuity, are suspect in the eyes of law. More than that the fact remains that the applicant was not put on notice about the re-fixation/ downward revision of pay and recovery from the gratuity. Respondents have earlier indicated in their counter that the party

33

m

(8)

was in fact put on notice, but have changed their stands in the written submission after their hearing wherein they pointed out that the notice was placed in the file but before the same was issued and represented against, infact on the very same days. The impugned order was issued. Obviously therefore, no show cause notice was issued and this basic failure to adhere to the principles of natural justice is not cured by replying to a representation from the applicant after the order was issued and the recover began. In the circumstances, the case of the applicant in this OA is on all fours with the decision of Tribunal on 17.12.1999 in OA No.143/1999, which has relied upon the decision of the Supreme Court in the case of Bhagwan Shukla Vs. UOI (1994 SCC - L&S. 1320). In the said case also pay of the applicant was reduced on re-fixation after he had retired on superannuation leading to recalculation of the pensionary benefits and recovery from the amount of gratuity. This had been done without putting the concerned party on notice. While allowing the appeal Hon'ble Chairman of the Tribunal has opined that the aforesaid reduction has been brought about in flagrant breach in the Principles of natural justice and quashed & set aside the same. In view of the identical circumstances of this application with OA No.143/1999, I respectfully follow the same.

3A

m

6. In the above view of the matter the application succeeds and is accordingly allowed. The impugned order dated 3.8.1998 is quashed. The respondents are directed to work out the retiral benefits of the applicant on the basis of his last pay drawn i.e. Rs.6200/- per month with all other consequential benefits. The amount of Rs.10,370/-, recovered from his gratuity is also directed to be refunded to him along with the amount due on encashment of his earned leave for 262 days. This exercise shall be completed within three months of receipt of this order and the amount so worked out with 12% interest from the date of his retirement to the date of actual payment. No Costs.

35


(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/