

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1701/98

New Delhi, this the 29th day of September, 99.

HON'BLE MR. S.P.BISWAS, MEMBER (A)

Aruna Pareek (Legal Heir), W/O Late Sh. Mahesh Pareek, (Died on duty on 26.8.1996) Chief Draftsman (Civil), Northern Railway Headquarters Office, CAO's Office, Kashmiri Gate, Delhi.

R/O WZ-90, Village Neemri, Shashtri

-----Applicant.

(By Advocate :Mr.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 :Mrs. B.Sunita Rao through Mr. R.K.Shukla)

O R D E R

By Hon'ble Mr. S.P.Biswas, Member (A):

The applicant, a Legal Heir of Late Sh. Mahesh Pareek (died on duty on 26.8.96), is aggrieved by Annexures A-1 and A-2 orders dated 01.02.97 and 01.07.98 respectively. By these two communications, the salary of the applicant's husband, who retired as Chief Draftsman (Civil), have been reduced from Rs. 2300 to Rs. 2060 retrospectively without telling the reasons as to why the reduction was necessary. Consequently, the applicant's claim to have been paid lesser retiral benefits in terms of Family Pension, Gratuity and Leave Encashment etc. on the basis of reduced basic pay of Rs. 2060/-. The

9

12

applicant is also aggrieved that a huge amount has been recovered from the gratuity on account of the alleged over-payment. As a result, the applicant seeks relief in terms of quashing the impugned P.P.O. Orders as at Annexures A-1 and A-2 and also issuance of directions to the respondents to re-calculate and offer Family Pension, Leave Encashment and Gratuity etc. on the basis of pay of Rs. 2300/- per month which her late husband was receiving before his death.

2. It is case of the applicant that following her husband's promotion as Chief Draftsman (Civil), the pay was initially fixed at Rs. 2060/- per month w.e.f. 30.9.1994. The said pay got fixed at Rs. 2240/- per month w.e.f. 30.9.94 and was further increased to Rs.2300/- w.e.f. 1.9.95 following annual increment. The applicant's husband continued receiving basic pay of Rs. 2300/- per month till he died on 20.8.96. Applicant claims retiral benefits on the basis of basic pay of Rs. 2300/- in terms of the Statutory Rule 49 of the Railway Services (Pension) Rules, 1993.

3. Besides claiming the pension and other post retiral benefits on the basis of relevant rules introduced by the Railways, the applicant has assailed the action of the respondents in reducing her pay without following the procedures laid down. The applicant submits that it is now well settled that if an employee has got higher fixation of pay while in service without any mis-representation or fraud on his part, recovery of

2/1

(19)

(3)

pay cannot be made after his retirement from his gratuity as held by the Hon'ble Supreme Court in the following cases:-

1. Shyam Babu Verma Vs. UOI & Ors.  
1994 SCC (L&S) 683.
2. Sahib Ram Vs. The State of Haryana  
1995 SCC (L&S) 1248
3. Gabriel Saver Fernandes & Ors. Vs.  
The State of Karnataka  
1995 (1) SSC SLJ/SC/24.

4. The applicant drew my attention to the relevant portion of the judicial pronouncements of the Apex Court in respect of the following, in particulars.

i) In the case of Shyam Babu Verma Vs. U.O.I. & Ors.  
1994 SCC (L&S) 683 Hon'ble Supreme Court has held:

"Since petitioners received the higher scales due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to him."

ii) In the case of Sahib Ram Vs. The State of Haryana & Ors. 1995 SCC (L&S) 248, Hon'ble Supreme Court decided as under:

"The Principal erred in granting him relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of mis-representation made by the appellant that the benefit of the higher pay scale was given to him by wrong construction made by the Principal for which the appellant cannot be held to be at fault."

2/11

iii) Hon'ble Supreme Court in the case of Gabiral Savor Fernandes & Ors. Vs. The State of Karnataka & Ors. SC SLJ 1995 (1) page 24 has held:

"Since the appellants have already been paid the scale of pay Rs.90-200 while they were in service and are retired now it would be appropriate that the Government may not recover though they are not eligible to the scale of pay Rs.90-200."

5. The learned counsel for the applicant also submitted that based on the judicial pronouncements of the Apex Court in the three case laws cited above, the Jodhpur Bench of this Tribunal in the case of R.V.Saxena Vs. Union of India (1996 (1) ATJ C.A.T. 1994 decided the claim of the petitioners therein in the following manner.

"Besides, he also quoted the judgement of this very Tribunal in OA No.477/94. Mahaveer Singh Vs. Union of India & Ors. decided on 20.9.95 in which the respondents were precluded from making recovery of overpayments made from a retired employee, which would have far more crippling effect than on a serving employee. Our attention was also drawn to a judgement of the Hon'ble Supreme Court cited at 1995 (L&S) 248 in the case of Sahib Ram Vs. The State of Haryana wherein it has been laid down that no recovery can be made from an employee if the overpayment was due to wrong construction on the part of the administration and not because of any misrepresentation on the part of the employee concerned."

2  
11

15

We are bound by this precedent.

6. The respondents have opposed the claim. It has been submitted that the applicants' husband was put to officiate locally as Head Draftsman w.e.f. 29.6.84. Subsequently, he was regularised in the parent cadre as Head Draftsman in the pay scale of Rs. 1600-2600 (revised) and his pay was fixed at Rs.1700/- P.M. The husband of the applicant was promoted as Chief Draftsman (CDM for short) in the grade of Rs. 2000-3000/- (revised) w.e.f. 31.9.1994 in Construction Organisation against the ex-cadre post and his pay was wrongly fixed at Rs.2240/- w.e.f. 30.9.1994 and after granting annual increment, the same was fixed to Rs. 2300/- w.e.f. 1.9.95. The salary of Sh. Pareek in the parent cadre was required to be fixed at Rs.2060/- taking into account his pay of lower grade in his parent cadre. In other words, the benefit of adhoc promotion in the ex-cadre post cannot be extended in his parent cadre as per rules.

The legal issue that falls for determination is whether the impugned orders at Annexures A-1 and A-2, reducing the salary of the late husband of the applicant could be issued without alerting the applicant/ her husband in advance. It is well settled in law that an order to the detriment of a Govt. official, cannot be issued without offering him/her an opportunity to show cause against the proposed orders. Affected persons must know the reasons upon which the action is proposed. Not only affected persons but the Court/Tribunal who are required to exercise the powers of judicial review on administrative action are supposed to know the reasons

for administrative actions having adverse and consequences. If any authority is required for this proposition, it is found in the case of State of Orissa Vs. Dr.(Miss.) Binapani Dey & Ors., AIR 1967 SC 1269. The respondents in their reply dated 6.4.99 admits that "husband of the applicant was not given a show cause notice while re-fixation was done in the parent cadre but a notice of pay fixation of Sh. Pareek in his parent cadre as well as in the ex-cadre post was issued vide notice No.724/E/18723/IIIBI, dated 14.1.1997".

7. That apart, I find paras 1013 to 1019 of Indian Railway Estt. Manual (IREM for short) deal with recovery of payments. Waiver of over payments has been suggested if the over payment had occurred for long periods and the amount involved was very heavy and would require many years to recover. The nature of irregularity is also required to be considered. Even in the case of Gazetted Railway Servants, the General Manager is given the power to waive recovery of the amounts over drawn/ over paid; if erroneous payment is discovered by the Accounts of Audit more than one year after date on which payment is made. In the present case, over payment continued to be made right from August 1996. There is no indication and not even a whisper that the above provisions under the Manual were taken into consideration before the recovery was ordered in July 1998. On the basis of materials placed before this Tribunal. I find this to be one such rare case where the appropriate authorities (respondent No.1 & 2) have been kept in the dark regarding provisions of IREM as aforesaid. If brought to their knowledge, this OA

d.p.

17

(7)

perhaps would not have surfaced. Some functionaries at the field levels decided to remain silent <sup>and</sup> ~~as~~ committed a bonafide mistake. <sup>^ done</sup>

8. Admittedly, none of the impugned orders were not proceeded by any formal pre-warning to the applicant. In the light of the law laid down by the Apex Court in the case of Binapani Dey (Supra), the respondents' action in issuing the impugned orders cannot be sustained in the eyes of the law.

9. Because of the details of the legal position as aforesaid, the OA deserves consideration on merits and is accordingly allowed with the following directions.

- i) The impugned Pension Payment Orders at Annexures A-1 and A-2 dated 01.02.97 and 01.01.98 shall stand set aside.
- ii) In the light of the law laid down by the Apex Court in the case of Shyam Babu Verma (Supra), respondents shall calculate and make payments of Family Pension, Leave Encashment and Gratuity etc. on the basis of basic pay of Rs.2300/- per month applicant's husband was drawing immediately before death.
- iii) The respondents shall also pay differences of arrears on Family Pension, Leave Encashment, Gratuity so becoming due to the applicant on the basis of basic pay of Rs.2300/- per month.


q  
p

18

(8)

- iv) The over-payment amount, already recovered from the gratuity, shall be paid back to the applicant forthwith.

Our orders in respect of (ii), (iii) & (iv) above shall be complied within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

  
(S.P. BISWAS)  
MEMBER (A)

/sunil/