

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(9)

O.A. NO.1868/95
M.A. NO.2476/95

HON. SH. R.K. AHOOJA, MEMBER (A)

New Delhi, this 14th day of November 1996

Ajmer Singh, s/o Sh. Dalip Singh
Retd. Office Superintendant
'Computer Reservation
Norther Railway
IRCA Building
State Entry Building
NEW DELHI.

...Applicant

(By Advocate Shri B.S. Mainee)

VS.

Union of India, through

1. The Secretary
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi.

2. The General Manager
Northern Railways
Baroda House
New Delhi.

... Respondents

(By Advocate Shri Rajiv Sharma)

ORDER

The applicant who joined the Northern Railway
as a Clerk in 1952 was transferred to Computer Reservation
under the Chief Commercial Superintendent in

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For

October 1984 as a Head Clerk. In 1985, he was promoted as an Assistant Superintendent in the grade of Rs.1600-2660 on ad hoc basis as per Annexure A-2. He received another promotion on ad hoc basis in January 1986 as Superintendent in the grade of Rs.2000-3200 vide order at Annexure A-3. In that capacity, he superannuated on 31.3.1992. At the time of superannuation on 31.3.1992, the basic salary being received by him was Rs.2525/-. However, the applicant alleges that the respondent No.2 wrongly calculated his retirement benefits by taking his basic salary at Rs.2300/- instead of Rs.2525/-. His gratuity and ^{portion of} ~~leave encashment~~ were also calculated on the same basis resulting in recovery of Rs.3542/- from his gratuity. The applicant submits that this action of the respondents was illegal, contrary to rules and against natural justice since no opportunity whatsoever was given to him before reducing his basic pay on which his retirement benefits were calculated. Further, his representations were rejected by respondent No.2 vide order dated 26.11.93.

2. In their reply, the respondents have taken two grounds to justify their action. Firstly, they say that the applicant was wrongly given two ad hoc promotions and this was objected to by the Audit. Secondly, they say that the applicant received his substantive promotion to the post of Assistant Superintendent in the grade of Rs.1600-2660 w.e.f. 21.1.1991 and his pay was fixed in his substantive grade at Rs.2150/-

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from that date. The recovery of Rs.3542/- relates to the period between 1.1.86 to January 1990, that is, the period during which he was considered by the Audit to enjoy two ad hoc promotions. The respondents submit that as per rules, the terminal benefits are to be calculated on the substantive pay and not the pay in the ad hoc post. The pay of the applicant had been fixed at Rs.2375/- in the substantive grade and therefore all the terminal benefits have been calculated accordingly. For this reason, it is claimed that the applicant has no case.

3. I have heard the learned counsels on both sides. Shri Mainee submitted that the rules do not provide for any distinction whatsoever whether the last pay is drawn against a substantive post or ad hoc post held by an employee. He drew my attention to the correspondence at Annexure A-4 in respect of one Shri R.L. Arora who is officiating AEN/MTP, New Delhi. In the two letters quoted therein, the General Manager, Northern Railway, was advised by the Deputy Director (Estt.) that as per rule 2003(21) R-II, pay is the amount which the employee draws monthly as a pay in the substantive or officiating capacity, and therefore, pay drawn in the officiating capacity even on ad hoc basis has to be taken into account for counting retirement benefits. Shri Mainee submitted that in view of this decision, the respondents were bound to calculate the terminal benefits of the applicant on the last pay drawn by

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him irrespective of whether it was on an officiating basis or even against an ad hoc promotion. The ld. counsel also relied on Santosh Kumar Vs. UOI CSJ 1992 (1) CAT 25, Bhagwan Shukla Vs. UOI SLJ 1985 (2) SC 30, ATR 1991 (2) 265, ATR 1988 (1) 26 and ATR 1984 (2) 23 to establish that the respondents could not, without giving due opportunity to the applicant to show cause, reduce the pay and consequently the terminal benefits and also that in similar cases it has been held by the courts that the last pay drawn irrespective of whether it is received in an officiating capacity has to be taken into account for purposes of retirement benefits.

4. Shri Rajiv Sharma, ld. counsel for respondents, in reply argued that no reduction was made in the pay actually drawn and allowed to the applicant and all that was done by the respondents was only to comply with the rules and take into account the substantive pay for purposes of calculating the retirement benefits. Since this was done according to the rules, there was no need to give any notice to the applicant. He submitted that the pay of the applicant had been wrongly calculated as has been shown in para 13 of the reply. He submitted that the respondents were sympathetic towards the applicant and therefore had redone the calculations and fixed the pay for the purposes of calculation of terminal benefits at Rs.2375/- instead of Rs.2300/-.

See

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5. I have carefully considered the arguments and pleadings on both sides. The respondents have not been able to show any provision which lays down that the pension will be determined with the reference to to pay in substantive post and not the actual pay drawn by the retiring official. The pension is determined on the basis of "emoluments" which means basic pay which a government servant was receiving immediately before his retirement or on the date of his death. Admittedly, the applicant was receiving the pay of Rs.2525/- as Superintendent at the time of his retirement. Rule 200B (21) R-II also defines the pay as the amount which the employee draws monthly in substantive or officiating capacity. It is an admitted fact that the applicant was working as a Superintendent and his pay was therefore fixed at Rs.2525/-. Therefore, it was this pay which had to be taken into account for fixing his pension and other terminal benefits. Further, in this case, the respondents could not reduce even notionally the pay of the applicant in a manner that will result in severe consequences, without giving him due opportunity through a show-cause notice, as has been held by the Supreme Court in Bhagwan Shukla (Supra). I do not agree with the contention of the learned counsel for the ~~that~~ respondents that in correcting the pay according to rules, no such notice was required. As already discussed the order was in itself contrary to rules and this error was further compounded by taking the impugned action without giving the applicant due opportunity to make a representation against the order.

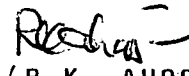
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6. In the light of the above discussion, I have no hesitation whatsoever in setting aside the impugned order No.724E/4434/Eiia dated 26.11.93. The respondents are directed to recalculate the retirement benefits of the applicant on the basis of basic salary of Rs.2525 drawn by the applicant at the time of retirement and to pay all the arrears within a period of three months, with interest at the rate of 12% from a date one year before the filing of this application till the date of actual payment.

The OA and MA are accordingly disposed of.
No order as to costs.


(R.K. AHOOJA)
MEMBER (A)

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