

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXXX~~ No.2405 of 1995 Decided on: 4.3.95

Shri Suresh Kumar SaxenaApplicant(s)

(By Shri M.L. Sharma Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri B.S. Jain Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (J)

THE HON'BLE SHRI T. BHAT, MEMBER (A)

1. Whether to be referred to the Reporter or not? 7B
2. Whether to be circulated to the other Benches of the Tribunal? b

4/3
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2405 of 1995

New Delhi this the 4th day of ^{March} February, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

HON'BLE MR. T.N. BHAT, MEMBER (J)

Shri Suresh Kumar Saxena
S/o Late Shri Narbada Prasad Saxena
R/o B/143 Ashok Nagar,
Ghaziabad.

...Applicant

By Advocate Shri M.L. Sharma

Versus

1. Union of India through
General Manager,
Northern Railway,
Hd.Quarters Office Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Hd.Quarters Office,
Baroda House,
New Delhi.
3. Chief Administrative Officer (Construction),
Northern Railway,
Kashmiri Gate,
Delhi-110 006.

..Respondents

By Advocate Shri B.S. Jain

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant's grievance in this case is that after his retirement on 31.10.1994, the respondents had unilaterally refixed his pay with effect from 21.10.1991 at a reduced stage and accordingly had reduced the pension and DCRG

.2.
entitlement and had also ordered recovery of overpayments made to him in the impugned order dated 30.06.1995. (14)

2. The brief facts in this case are as follows:

The applicant who initially joined as a Tracer under the Chief Mechanical Engineer, North Eastern Railway, Gorakhpur, was transferred to the Northern Railway's Head Office and was promoted as Junior Draftsman and later on as Senior Draftsman. He was also appointed to officiate as Head Draftsman with effect from 21.7.1983 and also as Chief Draftsman with effect from 24.10.1991. He had worked in the above capacities under the Northern Railway Construction Organisation and was also shown in the provisional seniority list of Senior Draftsman. On his promotion as Chief Draftsman in the grade of Rs.2000-3200 his pay was originally fixed at Rs.2180/- w.e.f. 20.10.1991 with next date of increment as 1.10.1992 and on the date of retirement, he was in receipt of Rs.2375/in the scale of Rs.2000-3200 in the aforesaid grade. By the impugned letter, the respondents had refixed the pay fixing his pay at Rs.2000 plus personal pay of Rs.100 on 20.10.1991 with next date of increment as 1.10.1992 and his pay at the time of retirement was reduced to Rs.2180/for specific directions of this Tribunal, the respondents have filed a statement indicating the monthly rate of pension and the details of DCRG due to the applicant and the amount of overpayments etc.

3. The applicant contends that the respondents

.3.

have infringed the provisions of Railway Servants (Pension) Rules, 1993, inasmuch as it was only the President of India who could withhold or reduce the pension and that too, on the outcome of the disciplinary case in which the applicant was found guilty of grave misconduct. He also contends that his pay cannot be refixed retrospectively when the respondents originally have fixed it on his promotion as Chief Draftsman and he had drawn amounts in a bona fide manner and, therefore, the authorisation of the pension on the basis of the last pay drawn cannot be reduced except by recourse to Rule 9 of the Railway Servants (Pension) Rules, 1993 *ibid* which is, however, not applicable in this case. The applicant also contends that he has been continuously working in the Construction Organisation w.e.f. 5.1.1983 and retired on 31.10.1994 and, therefore, action of the respondents in refixing the pay without giving him a hearing and ordering recovery of alleged over-payments, would be contrary to law. In this application he has also prayed that due to illegal action of the respondents and the delay caused in settlement of his pensionary dues, he should be allowed interest on the delayed payment.

4. The respondents have contested the averments of the applicant and have held that the applicant was all along working in an ex-cadre post in the Construction Organisation which was not a permanent organisation and his pay was fixed from time to time in the ex-cadre post which was not according to rules

.4.

and, therefore, when he retired, the wrong pay fixation was detected and, therefore, the applicant's pay had to be refixed and his pension and gratuity and retirement benefits on the basis of the refixation of pay were also refixed. They also rely on the Railway Board's circular dated 29.4.1988 annexed as Annexure R-1 to application in which it has been specifically provides that in case of appointment from an ex-cadre post to another ex-cadre post if an employee elects to draw the scale of pay attached to that post, his pay had to be fixed under the normal rules with reference to his pay in the cadre post to which he was appointed on a regular basis and on his appointment to a second ex-cadre post in a higher pay scale than that of the previous ex-cadre post, the pay may have to be fixed with reference to the pay drawn in the cadre post and if the pay so fixed happens to be less than the pay drawn in the previous ex-cadre post, the difference may be allowed as personal pay to be absorbed in future increases in pay and this was also subject to the condition that on all these occasions, the employees should have opted to draw pay in the scale of pay attached to the ex-cadre posts. In the case of the applicant, he had opted to draw the pay in the scale of excadre post from time to time and he was allowed pay in the scales of the ex-cadre post from time to time with reference to the pay drawn in the cadre post and accordingly his pay had to be refixed as the original fixation on his promotion to next

14
.5.

higher excadre post was not in accordance with the aforesaid Railway Board's circular dated 17.2.1989 applicable to all Railway Employees drawing pay in the ex-cadre post. In view of this position, the applicant has no case inasmuch as the mistake in the fixation had to be set right. They also allege that the applicant had not on his own approached the authorities concerned for his correct fixation of pay in accordance with the rules from time to time and had taken advantage of the irregular fixation all this time till his retirement and had not acted in a bona fide manner.

5. We have heard the learned counsel for the parties and have also perused the records carefully.

6. Although the respondents have averred in their counter-reply that the Construction Organisation is not a permanent organisation and PS 9824 of the Railways is applicable to the staff who are working in the ex-cadre post such as, Construction Organisation etc., the applicant had all along been shown in the seniority list of the Construction Organisation from time to time and had also received his promotions from time to time right upto the level of Chief Draftsman w.e.f. 24.10.1991 in the grade of Rs.2000-3200 and the respondents had also allowed him to draw pay in the ex-cadre post. The contention of the respondents that the applicant was aware that his pay fixed was not in accordance with the PS 9824 issued on 17.2.1989 and that ^{his} ~~that~~ connivance in the wrong fixation of pay cannot be ^{ruled out, is not} acceptable.

h

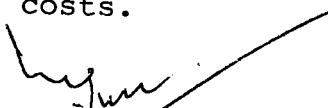
These averments are more in the nature of conjectures as these are not substantiated by the respondents

Besides, having allowed the wrong fixation of pay right from 21.10.1991 onwards, the respondents have chosen to refix the pay downward after his retirement on 31.10.1994 and that too, after a lapse of almost 8 months by their order dated 30.06.1995, which is impugned in this application. The said order does not purport to be a notice for recovery of overpayments but is in the nature of recovery order consequent on such refixation. In the order regularising the applicant as Chief Draftsman in the grade of Rs.2000-3200, no reference has been made to the Circular No.PS 9824. On the other hand, he was to opt for fixation of pay in terms of PS 7937 vide Annexure A-5. The action of the respondents in refixing his pay long after his retirement and reducing his pay without notice, cannot be sustained. We do not, however agree with the contention of the applicant that the respondents have not taken action under the relevant provisions of Rule 9 of the Railway Servants (Pension) Rules, 1993, as the action was not in pursuance of any departmental proceedings. However, the fact remains that the applicant's pay has been revised downward after his retirement without notice and arrears are also ordered to be recovered. The applicant was promoted in the excadre post as Chief Draftsman on 20.10.1991 and it was open to the respondents Construction Organisation to have his pay refixed in accordance with the rules well in

.7.

time while he was in service. There is no evidence of the original fixation of pay having been made by way of any misrepresentation on the part of the applicant. The applicant had opted to draw pay in the ex-cadre post and the respondents had not applied the provisions of PS 9824 at the relevant point of time.

7. Law is well settled that ^{belated} recovery on account of wrong fixation ^{is not} and that too, after the retirement of the employee cannot be sustained. We are guided by the decision of their Lordships in the Punjab State Electricity Board and Another Vs. V.N. Sharma, 1995 SCC (L&S) 250 and also Bhagwan Shukla Vs. U.O.I. & Others, 1994 SCC (L&S) 1320. The decision in Dr. Mihir Banerjee Vs. Union of India and Others, (1987) 3 ATC 441 CAT (Calcutta) will also be relevant. In the light of this, we hold that the impugned order cannot be sustained. In the circumstances, the O.A. is allowed and the impugned order is quashed. The respondents are directed to arrange payment of pension and other retirement benefits ^{of the applicant} in the light of this order within 3 months from the date of receipt of a copy thereof. In the facts and circumstances of the case, we do not consider it appropriate to allow interest, as prayed for. There shall be no order as to costs.


(T.N. BHAT)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

'Rakesh'