

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1951/96
T.A. No.

199

(17)

DATE OF DECISION 13.02.98

<u>Sh. Hari Singh Yadav</u>	<u>Petitioner</u>
<u>Sh. G.D. Bhandari</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>UOI&Ors.</u>	<u>Respondent</u>
<u>Sh. Rajeev Sharma</u>	<u>Advocate for the Respondent(s)</u>

CORAM

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes* ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes* ✓

S.P. Biswas
(S.P. Biswas)
Member(A)

Cases referred

1. State of Haryana Vs. Padamabhan Nair (1985 SCC L&S 278)
2. Vithal Dagdoo Marathe Vs. G.M. Central Rly. (AIR 1989(2) CAT 65 (Bom.))
3. K.N. Ramamoorthy Vs. Director General Ministry of Defence (1991) 1 ATJ 459 (Mad)
4. Satyanand Sinha Vs. UOI (1989(4) SLJ CAT 272 (Patna)).
5. Bhagwan Shukla Vs. UOI (SLJ 1995(2) SC 30).
6. Shyam Babu Verma Vs. UOI (1994(L&S) 683).
7. Chairman Rly. Board & Ors. Vs. C.R. Ranga Dhamaiah & Ors. etc etc. (JT 1997(7) SC 180).
8. Deokinandan Pd. Vs. State of Bihar & Ors. (1971(Supp.) SC 634).
9. D.S. Nakara & Ors. Vs. UOI (1983(2) SCR 165).
10. Indian Ex-Services League & Ors. etc., Vs. UOI & Ors. etc. (JT 1991(1) SC 243).
11. State of MP & Ors. Vs. Tikma Das (AIR 1975 SC 1429)
12. UOI & Anr. Vs. Ganayutham (JT 1997(7) SC 572).
13. G.S. Fernandes & Ors. Vs. State of Karnataka & Ors. (SLJ 1995(1) 24).
14. Saheb Ram Vs. State of Haryana & Ors. (1995 SCC (L&S) 248)
15. Central Co-operative Consumers' Stores Ltd v/s Labour Court, H.P. Simla & Ors, 1993 (3) SCC 214

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1951/96

New Delhi this the 13th day of February, 1998.

Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Hari Singh Yadav,
R/o Vill. Bagdola,
P.O. Bagdola,
Palam, New Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Bikaner Division,
Northern Railway,
Bikaner, Rajasthan.
3. The Divl. Personnel Officer,
Bikaner Division, Northern Railway,
DRM Office, Bikaner, Rajasthan.
4. The Divl. Accounts Officer,
Bikaner Division,
Northern Railway,
DRM Office, Bikaner,
Rajasthan.

..... Respondents

(through Sh. Rajeev Sharma, advocate)

ORDER.

The facts and circumstances of this O.A.,
filed under Section 19 of the Administrative Tribunals
Act 1985; raise three very important questions of law.
They are as hereunder:-

- (i) What is the vested or accrued
rights for a Government servant in
respect of claim of pensionary
benefits?

g

(ii) Whether such rights could be taken away by means of an administrative order affecting pension through retrospective revision of pay without affording any opportunity of defence? and

19

(iii) Whether ordering recovery from DCRG of over payments arising out of the aforesaid revision and that too without putting the retired official on notice could be held legally valid?

For better appreciation of the issues involved, a brief elaboration of the background facts, as mentioned below, will be essential.

2. The applicant retired from the services of the Railways with effect from 30.6.96 as a running staff in the capacity of Guard Grade-"C" drawing salary in the scale of Rs.1350-2200/-. Before being appointed as a running staff, the applicant was working on regular basis as Sr. Train Clerk (STNC for short) w.e.f. 1.1.89. That was the feeder cadre in the grade of Rs.1200-2040/- for promotion to the category of Asstt. Yard Master (AYM for short) in the grade of Rs. 1400-2300/- and lateral appointment as Guard "C" in the grade of Rs. 1200-2040/-. But such promotions/lateral appointments are on the basis of "prescribed procedure of selection" as laid down by the respondents. The applicant worked as AYM from 15.6.90 to 1.1.93. From

1.4.94, the applicant was placed in the grade of Rs.1350-2200/-. As on 1.6.95 the applicant's basic pay was Rs.1600/- and with an annual increment granted on 1.1.96, the amount of basic pay came to Rs.1640/- P.M. which he continued drawing till the date of superannuation on 30.06.96. By an order dated 11.10.96 the respondents effected recovery of Rs.17657/- from the DCRG. And by an order dated "nil" applicant's monthly pension was fixed at Rs.1107/- by means of reducing his pay spanning over a period of six years as indicated in para 7 of this order. These two communications were received by the applicant much after his retirement. Except group insurance amount and part of commuted value of pension received on 1.7.96, the applicant alleges non-receipt of gratuity, leave encashment, corrected amount of monthly pension and accident free record award till the filing of the O.A. on 12.09.1996. In addition to pay, the running staff in Railways like Drivers, Guards & Shunters etc. are entitled to payment of Running Allowance. Under the relevant rules computation of pension after retirement is made on the basis of average emoluments and a part of the Running Allowance is included in average emoluments. Provisions as to how pension of a running staff shall be calculated are available in clause (g) of Rule 2544 of the Indian Railway Establishment Code and in instructions of the Railway Board vide their letter No. E(P&A)11-80/RS-10 dt. 17.7.81.

9

3. The applicant alleges that calculations of his monthly pension as well as determination of the gratuity amount have been adversely affected on account of refixation of his basic pay after retirement at Rs.1440/- instead of Rs. 1640/- as on 1.6.96. And the retrospective application of the order of refixation have had the effect of unmeritted slashing down of his basic pay from Rs.1640 in June 1996 to Rs.1290 in June 1991. 21

4. As per Shri G.D. Bhandari, learned counsel for the applicant, the aforementioned details bring out the following adverse civil consequences which the applicant had to face avoidably:-

(a) Delay in payment of retiral benefits;

(b) Wrong fixation of the pay for over six years prior to applicant's retirement and the consequent reduction in monthly pension amount; and

(c) Illegal recovery of over payments arising out of retrospective revision of pay.

5. The learned counsel would argue that the delay in payment of the retiral dues is in violation of the Railway Board's instructions contained in letter No. F(E) III 76 PN 1/3 of 8.4.76 (NR S.No.6523). Any

1/2

culpable delay in settlement and disbursement of pension & gratuity must be visited with the penalty of payment of interest in terms of law laid down in State of Haryana Vs. Padamnabhan Nair (1985 SCC L&S 278) at the current market rate till actual payment. The retrospective refixation of pay spreading over six years and that too without a pre-decisional hearing is in violation of the orders of this Tribunal. To lend support to his aforesaid contention, he drew our attention to the decision of this Tribunal in cases: (1) Vithal Dagdoo Marathe Vs. G.M. Central Railway (ATR 1989(2) CAT 65(Bom.)); (2) K.N. Ramamoorthy Vs. Director General Ministry of Defence (1991) 1 ATJ 459 (Mad); (3) Satyanand Sinha Vs. U.O.I. (1989) 4 SLJ (CAT 272 (Patna). In these Tribunal held:-

"It is now well settled that higher fitment already granted to the employees cannot be cancelled to the prejudice of the applicants and that too without giving them an opportunity to respond."

6. The recovery of the excess amount of salary (Rs.17657) from DCRG at the back of the applicant is in violation of principles of natural justice and the law laid down by the Hon'ble Supreme Court in the cases of Bhagwan Shukla Vs. U.O.I. (SLJ 1995(2) SC 30) & Shyam Babu Verma Vs. U.O.I. (1994(L&S) 683).

7. Shri Rajeev Sharma, learned counsel for respondents submitted that the applicant was promoted as AYM in the scale of Rs.1400-2300/- (RPS) purely on ad hoc basis with conditions that it would not have any benefit in future and since his substantive pay as STNC

was Rs.1200-2040 and was finally taken as Guard in the same grade, the applicant's pay could not be fixed at Rs.1640/-. Based on the above position, the respondents recalculated the schedule of salaries enjoyed by the applicant admittedly noticing the mistake after 30.6.96. Respondents' counsel argued that the schedule of payment should have been as hereunder:-

	Scale originally fixed by respondents from year to year	Scale that should been fixed by res- pondents as noticed after retirement
1.6.91	1440	1290
1.6.92	1480	1320
1.6.93	1520	1350
1.6.94	1560	1380
1.6.95	1600	1410
1.6.96	1640	1440

8. Heard rival contentions of both parties.

I shall now proceed to discuss the three legal issues in seriatim.

Para 2301 of Indian Railway
Establishment Code (IREC for short)
incorporates the following principle:-

"A pensionable railway
servant's claim to pension is
regulated by the rules in force
at the time when he resigns or
is discharged from the service
of Government."

8

24

The expression vested rights or accrued rights flow from the above rule. The impugned order, issued after superannuation of the applicant, seeks to reverse from an anterior date a benefit which had been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively. I find the concept of vested rights stand well explained in the Constitution Bench judgement of the Apex Court in the case of Chairman, Rly. Board & Ors. Vs. C.R. Ranga Dhamaiah & Ors. etc. etc. (JT 1997(7) SC 180). The relevant portions, useful for our purpose here are reproduced below:-

27. "In Deokinandan Prasad Vs. State of Bihar & Ors., 1971(Supp.) SC 634, decided by a Constitution Bench it has been laid down:-

"pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant."

28. In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

29. In D.S. Nakara & Ors. Vs. Union of India, 1983(2) SCR 165, this Court, after taking note of the decision in Deokinandan Prasad (supra), had said:-

"Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge Vs. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and

2

serves the purpose of helping the recipient meet the expenses of living."

"Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered."

It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See: Indian Ex-Services League & Ors. etc., Vs. Union of India & Ors. etc., JT1991(1)SC243=1991(1)SCR 158 at p. 173)."

9. The applicant retired from Railways w.e.f. 30.6.96. At that time he was drawing the basic pay of Rs.1640 P.M., fixed on 1.6.96. Prior to that from 1.6.95 onwards he was drawing Rs.1600 P.M. "Running Allowance" permissible at the time of his superannuation stood at 55% of the basic pay. Average emoluments, for 10 months prior to retirement are to be worked out by taking into account the basic pay as well as aforesaid percentage of Running Allowance. The applicant has the right to have his pension and other retiral benefits commuted on the basis of emoluments worked out as above.

10. As indicated earlier, Rule 2301 of IREC prescribes in express terms that pensionable railway servant's claim of pension is regulated by the rules in force at the time when he resigns or is discharged from the service of the Government. Applicant who retired on 30.6.96 was entitled to have the pension paid on the date of his retirement on the basis of Rule 2544 as it stood then. As has been mentioned in Devi Nandan's

case (supra) it was applicant's fundamental right to receive his pension according to rules in force on the date of his retirement. By making retrospective administrative order revising applicant's pay four months after his retirement, what was done was to reduce the payable pension. The impugned order dated "Nil" reducing the said pension is violative of the rights granted under Article 14 and 16 of the Constitution. What is important is that executive orders cannot have retrospective effect unless the rule making authority in the concerned statute expressly or by necessary implication confers powers in this behalf. If any authority is needed for this proposition, it is available in the case of State of M.P. & Ors. Vs. Tikma Das (AIR 1975 SC 1429). From the forgoing discussion it is evident that receiving pension is a vested right for a pensionable Government servant rendering spotless services and it cannot be infringed except under due process of law. 2b

11. The next important issue for consideration is withdrawal/withholding of the DCRG amount. It is admitted that Rs.17657/- has been deducted/withheld from applicant's receivable DCRG on account of alleged over payment of salary. I find that provision of para 316(1) of Manual of Railway Pension Rule 1950 (MRPR for short) and Rule 2308(A) of IREC Vol.II contain the conditions for withholding the DCRG. Under provisions of para 316(1) of the aforesaid MRPR, it is permissible to withhold DCRG. The condition precedent is the prevalence of departmental or judicial proceeding. Thus the position of Pension Rules in Railways is akin

of
P

to Rule 9 of CCS (Pension) Rules 1972 which permits application of definition of Pension in Rule 3 and held that under Rule 9, DCRG can be withdrawn wholly or in part. Both sides admit that no chargesheet was issued to the applicant either in a departmental proceeding or in any judicial proceeding. Neither the applicant has been held guilty of any "Misconduct" nor even a disciplinary proceeding is contemplated against him. Applicant's representation dated 20.8.96 did not evoke any response from respondents. 27

In the light of the above provisions, withholding of DCRG to the extent of Rs. 17657/- by the respondents without a prior notice is arbitrary and without any authority of law. Such a view gets support from the judgement of the Apex Court (Para 6-Point No.1) in the case of U.O.I. & Another and Ganayutham, JT 1997(7) SC 572.

12. The third issue relates to wrong fixation of basic pay. On this point we are required to follow the dictum of the Supreme Court in the case of Divisional Superintendent, Eastern Railway, Dinapur and Ors. Vs. L.N. Kashri and Others, AIR 1974 SC 1889. In that case, the pay of the government servant was sought to be fixed on the ground that there was some mistake which was to be rectified. The Supreme Court held that the Government department could not reduce the pay without giving an opportunity to the government employee. In my view the government employee has no vested right to draw wrongly fixed higher scale merely

9

because he has drawn it for a long time. It was always open to the government to correct the pay scale of the government employee in accordance with the rules. However, before any such re-fixation the Government department ought to have give an opportunity to the Government servant to be heard ~~and~~ ^{long} since refixation involved recurring financial loss in the present case. In the case of G.S. Fernades & Ors. Vs. State of Karnataka & Ors., SS SLJ 1995(1) 24 it has been held that:

"Since the applicants had already been paid the scale of pay of Rs.90-200 while they were in service and are retired now, it would be appropriate that Government may not recover from them the salary which had already been received, though they are not eligible to the scale of pay of Rs.90-200."

Again, in the cases of Saheb Ram Vs. State of Haryana & Ors. 1995 SCC (L&S) 248, the principle laid down was as under:-

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

In the rejoinder, the counsel submitted that as per Railway Board's circular (A9) when one is put to work in a lower grade on promotion and while he was working in a higher grade, the pay of the employees can be protected. This plea advanced by the applicant was

not controverted by the respondents. Thus, a higher
fixment in scale once sanctioned and continued cannot
be altered without complying with the principle of natural justice. (29)

13. Coming to rules and regulations for effecting recovery of over payment being made from the DCRG, it is seen that the recovery effected on 11.10.96 was not preceded by any formal warning. On the issue of such belated recoveries for no fault of applicant or due to wrong construction by the respondents, the Apex Court have held in the case of Shyam Babu Verma Vs. UOI&Ors. 1994 SCC (L&S) 683 that:-

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

In the instant case, respondents admit (counter at page 2) that both DCRG and encashment of earned leave have been paid late in August and October 1996. It is also not in dispute that the applicant was never asked to show cause why his scale of pay should not be altered and the recovery affected. A system governed by the rule of law reckons no decision, without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves ordinances. This is a basic requirement of natural justice which has already been part of adjudicatory process. The Hon'ble Supreme Court has highlighted this requirement in a

2

long line decisions i.e. State of Orissa Vs. Dr.(Miss) Binapani Dei (AIR 1967 SC 1269). The recovery effected is, therefore, void in the eyes of law. In such matters what is crucial is that an order affecting adversely the interest of an official cannot be made without an opportunity to show cause notice as to why the action proposed need not be taken.

14. 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 or Audit more than one year after date on which payment is made. In the present case, over payment continued to be made right from June 1991. 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 October 1996. On the basis of materials placed before this Tribunal, I find this to be one such rare case where the appropriate authorities (Respondents No.1 & 2) have been kept in the dark regarding IREM provisions aforesaid. If brought to their knowledge, this O.A. perhaps would not have surfaced. Some functionaries at the ^{field} ~~lower~~ levels decided to remain silent.

15. In the light of the foregoing, the O.A. is allowed with the following directions:-

31

(i) The orders of the respondents dated 11.10.96 and "Nil" are quashed only to the extent it effect recovery (Rs.17657) and fixes pension at Rs.1107 P.M.

(ii) The amount (Rs. 17657/-) wrongly recovered shall be refunded with 12% interest from the date it was due till the date payment is made.

(iii) Monthly pension shall be re-determined correctly in the light of the law aforequoted and the additional amount due on this account, after adjustment with provisional pension paid, if any, shall be paid. In case the applicant continues to recieve provisional pension, the same shall not be discontinued.

(iv) Other terminal benefits-like leave encashments and accident free record award etc. shall be released, if not already done, alongwith re-adjusted amount.

9

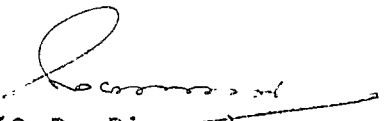
Actions in respect of our orders in para(ii), (iii) & (iv) herein above shall be complied with within 3 months from the date of receipt of a copy of this order.

32

- (v) Because of the reasons in para 14 above, this is eminently a fit case where cost should be awarded in favour of the applicant. Respondents shall pay Rs.3000/- to applicant as cost as the latter has been forced to go in for costly litigations because of the failures of some field level officers/officials in dealing with this case. This Tribunal would leave it to respondents No.1&2, to recover the aforesaid cost from the pockets of those responsible. This is because the public exchequer cannot be burdened for the lapses of some erring officials. The law laid down by the Hon'ble Supreme Court in the case of Central Co-operative ~~Consumers~~ Stores Ltd. Vs. Labour Court, H.P. Simla & Ors., 1993(3) SCC 214 suggests such a course of action.

2

(iv) Our orders, however, do not prohibit the respondents to initiate fresh recovery proceedings strictly in terms of rules but that shall be done only after relevant provisions of IREM aforequoted have been applied in the facts and circumstances of this case and a decision has been taken accordingly.


(S.P. Biswas)
Member (A)

/vv/