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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1568 of 1997

New Delhi, date this the 21st July, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Shri Manbir Singh,
Highly Skilled Gr. I Block Fitter (Retd.),
Northern Railway,
C/o Shri Udaibir Singh ((Dairy Wala),
House No. 260, Gali No. 6,
Jwala Nagar, Shahdara,
Delhi. APPLICANT

(By Advocate: Shri M.L. Sharma)

Versus

Union of India through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.
3. Chief Workshop Manager,
Northern Railway,
Signal Workshop,
Ghaziabad. RESPONDENTS

(By Advocate: Shri B.S. Jain)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks payment of pension and other retiral benefits including commutation, leave encashment and gratuity on a basic pay of Rs.1600/- p.m. and prays for direction to respondents to pay the amount of difference and arrears on this connection with 18% interest w.e.f. the date of retirement till the date of actual payment as well as repayment of sums already recovered from his gratuity.

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2. Applicant was appointed in Class IV on the Northern Railway on 31.5.1957 and was promoted to the grade of skilled and to the highly skilled Grade I Block Fitter (Rs.1320-2040) from October, 1994. His pay was fixed at Rs.1600 per month in the aforesaid scale w.e.f. October, 1994 which he continued to receive till the date of his retirement on 30.6.1995. He alleges that respondents have illegally and arbitrarily reduced his pay from Rs.1600/- to Rs.1560/- unilaterally, and have ordered this reduction retrospectively without issuing any formal letter of notice to him and have thereby violated the laid down principles of natural justice. In this connection the impugned order reducing applicant's pay from Rs.1600/- to Rs.1560/- is appended at Annexure A-2.

3. Respondents in their reply have taken the preliminary objection that the O.A. is time barred and also that the applicant has approached the Tribunal without exhausting the departmental remedies available to him.

4. As regards the merits of the O.A. Respondents contend that applicant retired from service on 30.6.95 while working as HS I Block Fitter. They state that he was drawing the basic pay of Rs.1600/- in the Scale of Rs.1320-2040 upto May 1995 and even for the month of June, 1995, his pay slip was issued on the basis of his pay as Rs.1600/-. His pay had to be refixed to Rs.1560/-

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consequent upon withdrawal of the benefit of increment granted earlier on account of day to day officiating period accumulated to 257 days. It is contended that a section of the staff was granted this benefit which was otherwise not admissible on day to day officiating basis. This discrepancy was taken up by Accounts Branch who also recommended for effecting recoveries of overpayment and upon the matter referred to Headquarter Officer they advised that the benefit of increment on day to day officiating basis was not admissible vide letter dated 7.4.94 (Ann. R-1) and accordingly all such cases were reviewed and the benefit of increment was withdrawn. Recoveries of overpayment were started in instalments from the serving employees, whereas in the case of the retiring staff including the applicant the amount of overpayment was adjusted out of the gratuity. Reliance in this connection is also placed on the Rule 15(4)(b) Railway Servants Pension Rules.

5. I have heard Shri M.L. Sharma for applicant and Shri B.S. Jain for respondents.

6. As the reduction in applicant's retiral benefits constitutes a continuing cause of action, the plea of limitation raised by respondents is rejected.

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7. Shri Sharma invited my attention to the CAT, PB Single Bench decision dated 2.9.96 in O.A. No. 483/96 Budh Singh Vs. UOI & Ors. That applicant retired while working as Turner (Highly Skilled Grade I) in the scale of Rs.1320-2040 and was drawing the basic pay of Rs.1760/- w.e.f. 1.11.94. His grievance was that respondents had unjustifiably and illegally made deductions from his salary and had reduced his pension treating his pay as Rs.1720/- instead of Rs.1760/-. He had prayed that the impugned PPO dated 5.9. 95 be set aside and respondents be directed to refix his pay and retiral benefits on treating his basic pay as Rs.1760/- and also pay the amount of difference as arrears on account of revised retiral benefits with interest @ 18% p.a. thereon.

8. Allowing that O.A. the Tribunal had held as follows:

"It is permissible and is also necessary to rectify mistakes committed, but before such rectification it should be made clear what is the exact mistake to be rectified. No such attempt towards this has been made by the respondents before reducing the applicant's pension and making recovery of alleged over payment. This action of the respondents is not justified and is, therefore not sustainable. In a series of decisions the Hon'ble Supreme Court has held that if an employee while in service is paid salary and allowances at a particular rate recovery should not be made from his retiral benefits, later finding out that the pay was wrongly fixed if the employee was not

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in any way responsible for such wrong fixation. In the following decision the Supreme Court has held so, in the case of Gabriel Xavier Fernandes & Ors. Vs. State of Karnataka 1995 (1) SC SLJ/SC 24, Shyam Babu Verma & Ors. Vs. UOI & Ors., Sahib Ram Verma Vs. State of Haryana & Ors. 1995 SCC (L&S) 148 and Bhagwan Shukla Vs. UOI & Ors. 1994 (L&S) 1320.

In the light of what is stated above, the application is allowed and the respondents are directed to ssie revised pension payment order to the applicant calculating his pension on the basis of his pay at Rs.1760/- and to pay him the resultant arrears. The respondents are also directed to calculate the remaining retiral benefits of the applicant accordingly and pay him the balance as also the amount, if any, which they have recovered from the gratuity of applicant on the basis of the alleged over payment much before his retirement. The above directions shall be complied with by the respondents as expeditiously as possible but at any rate within a period of two months from the date of communication of this order. No costs."

9. Nothing has been shown to me to establish that the aforesaid judgment dated 2.9.1996 has been stayed, modified or set aside.

10. On the other hand Rule 15(4)(b) Railway Servants (Pension) Rules specifically allows for recoveries and adjustment of Govt. of Railway dues from a retiree's pensionary benefits and Govt. dues include overpayments on account of pay and allowances and the contents of this rule cannot also be disregarded.

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11. Under the circumstances I have no hesitation in holding that the action of the Respondents in unilaterally making recoveries from retiral benefits on the ground that there had been some over payments, the details of which were never made known to the applicant is arbitrary and is not sustainable in law. If at all any recoveries are to be made from applicant's applicant's retiral benefits the same can be made only after giving the applicant a reasonable opportunity to show cause by means of detailed, speaking and reasoned order in accordance with relevant rules and instructions on the subject.

12. Accordingly the impugned order unilaterally revising applicant's pay slip for the month of June, 1995 from Rs.1600/- per month to Rs.1560/- per month and thereafter fixing his pension on the basis of pay of Rs.1560/- is quashed and set aside. In the event respondents intend to reducing applicant's pay and consequent pension and make recoveries if any from pension already paid to him, they will set out the detailed reasons why they propose to do so and indicate the same to applicant, ^{7 within 2 months from receipt of a copy of this order} and after giving him a reasonable opportunity to represent against the same, dispose of that representation by means of detailed, speaking and reasoned order in accordance with law, including the judicial pronouncements referred to in Para 8 above, the

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rules and the relevant instructions within three months from the date of receipt of such representation.

13. The O.A. is disposed of in terms of Para 12 above. No costs.

S.R. Adige
(S.R. ADIGE)
Vice Chairman (A)

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