

Central Administrative Tribunal, Principal Bench

O.A.No.1006/97

10

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 13th day of November, 1997

Shri S.K.Arora
s/o Shri P.L.Arora
Office Supdt./Stores (Retd.)
Northern Railway Construction
Headquarters Office,
Kashmiri Gate
Delhi.
(By Shri M.L.Sharma, Advocate)

Applicant

Vs.

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. FA & CAO
Northern Railway
Headquarters Office
Baroda House
New Delhi.

4. Chief Administrative Officer (Const.)
Northern Railway
Headquarters Office
Kashmiri Gate
Delhi.
(By Shri P.S.Mahendru, Advocate)

Respondents

O R D E R

The applicant, working as Office Superintendent in the scale of Rs.2000-3200, was in receipt of a basic pay of Rs.2600 at the time of his retirement on 31.3.1995. His grievance is that though as per Rule 49 of the Railway Services (Pension) Rules, 1993 he was entitled for pension on the basis of this pay of Rs.2600/- per month, the respondents in utter violation of this Rule have reduced his pay retrospectively after his retirement without any notice or information to him. Consequently, his Pension/Commutation have also been fixed at the reduced rates vide impugned Pension Payment Order (PPO), Annexure A1 and a huge amount on this account is being recovered from his

Gratuity.

2. The facts of the case in brief are that the applicant was originally appointed as Clerk in Grade Rs.260-400 on 8.6.1959 in the Construction Organisation of Railways. Since Construction Organisation is by its nature deemed to be a temporary organisation, the posts created are treated as Ex-cadre posts. The applicant after his appointment in the Construction Organisation as Clerk in grade Rs.60-130 w.e.f. 8.6.1959 was given a lien in Store Branch in Northern Railway. He officiated as Sr. Clerk in the Construction Organisation in grade Rs.130-300 w.e.f. 01.05.1973 which was regularised under NBR in his parent cadre i.e. Stores Organisation, w.e.f. 2.6.1980. He was promoted as Head Clerk in grade Rs.425-700 in Construction Organisation w.e.f. 3.7.1984 which was regularised under NBR in his parent cadre w.e.f. 2.3.1987. He was further promoted as Assistant Superintendent in Grade Ra.1600-2660 (RPS) w.e.f. 11.2.1991 in the Construction Organisation which was regularised under NBR in his parent organisation w.e.f. 30.6.1993. The applicant thereafter officiated as Office Superintendent Grade-I in the pay scale of Rs.2000-3200 w.e.f. 9.3.1995 from which position he retired. The contention of the respondents is that through out this period the pay of the applicant had been wrongly fixed at the time of each of his promotions in the Construction Organisation since according to the Railway Board's Circular No.831-E/123-IV(Div.) dated 15.10.1971, Annexure R3 in cases of appointment/promotion from one ex-cadre post to another ex-cadre post, where the Railway servant opts to draw pay in the scale of the ex-cadre post, the pay in the second or subsequent ex-cadre posts should be fixed under the normal rules with reference to pay in the cadre post only. In other words, each time the applicant was promoted in the Construction Organisation his pay therein had to be refixed on the basis of his substantive pay in the Stores Organisation. On the other hand, according to the

respondents his pay was refixed in the higher posts in the Construction Organisation on the basis of the pay he was already drawing in the lower post in the Construction Organisation itself. It is on the basis of this refixation, right from 3.7.1984 that the respondents have calculated the recoveries to be made from the applicant and have also refixed his pay in the post of Office Superintendent Grade-I, thereby affecting his retiral benefits.

3. I have heard the counsel on both sides. The learned counsel for the applicant has pointed out that the applicant had, from the very beginning, served in the Construction Organisation and had at no stage worked in the Stores Department. He submitted that all his service as well as all of his promotions were in the Construction Organisation and therefore there was no question of refixing of his pay on what was considered to be notional pay in the Stores Department. He also relied on the ratio of the Judgment of the Supreme Court in Bhagwan Shukla Vs. Union of India & Others, 1994 SCC (L&S) 1320 and submitted that in the present case the pay of the applicant has been reduced without affording any opportunity and was thus violative of the principle of natural justice. He also submitted that vide Rule 49 of the Railway Service (Pension) Rules, 1993 the retiral benefits of the applicant have to be determined on the basis of his actual Last Pay Drawn at the time of retirement; in the present case the pay was drawn by him at the time of retirement was Rs.2600/- per month and no change could be effected in the retiral benefits by adopting some other notional pay at the time of retirement. The learned counsel also relied on the judgment of this Tribunal in OA No.2329/96, delivered on 5.8.1997, J.P.Sharma Vs. Union of India & Others, wherein it was held that the reduction of pay made retrospectively without granting of notice or opportunity to hear, rendered the impugned order bad in law. It was also held relying on catena of judgments, both of

R

the Supreme Court and this Tribunal that recoveries could not be ordered after a long lapse of time.

4. The learned counsel for the respondents, on the other hand, submitted that there is no estoppel or limitation regarding a claim for recovery of public money. The pay of the applicant has been refixed in accordance with the Rules. The applicant is therefore liable to repay the over payments made to him. His pensionary benefits ^{have} similarly to be reworked on the basis of his revised pay.

5. I have carefully considered the matter. Admittedly the impugned order has been issued without affording the applicant any opportunity to be heard. Further the refixation of pay is being sought to be done from 1984 in other words, after a lapse of over 10 years. In the circumstances the present case is squarely covered by the Judgment of this Tribunal in J.P.Sharma's case (Supra). Accordingly the OA is allowed. The impugned order is quashed and set-aside. The respondents are directed to recalculate the retiral benefits including pension and commutation of pension, gratuity, etc. on the basis of the pay of Rs.2600/- drawn by the applicant at the time of his retirement. They will also pay interest at the rate of 12 per cent from the date it was due, ~~drawn~~ on the arrears of pension ^{and} gratuity from the period three months from the date of retirement of the applicant to the date of actual payment. This shall be done within three months from the date of receipt of a copy of this order. Accordingly, OA is disposed of. No costs.


(R.K. AHOOJA)
MEMBER(A)

/rao/