

Central Administrative Tribunal
Principal Bench

O.A.No.1229/94

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

New Delhi, this 18th day of October, 1996

Shri G.H.Swami
s/o late Shri Pandit Haridwari
Lal Swami
Ex. Superintendent
Personnel Branch
Northern Railway
Headquarter Office
New Delhi.
r/o C-17, New Gandhi Nagar
Ghaziabad. Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India: through

1. The Secretary
Ministry of Railways
Railway Board
Rail Bhawan
New Delhi.
2. The General Manager
Northern Railway
Baroda House
New Delhi.
3. The Chief Administrative Officer(Constrn.)
Northern Railway
Kashmeri Gate
Delhi. Respondents

(By Shri B.K.Agarwal, Advocate)

O R D E R

The applicant seeks quashing of the impugned order A1 dated 4.6.1993 whereby his pay has been reduced from Rs.2525/- to Rs.2180/- as on 1.10.1988.

2. The applicant who had joined as a Clerk in Northern Railway in 1955, was in due course promoted as Superintendent (P. Branch) Grade Rs.700-900 (pre-revised)/ Rs.2000-3200

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w.e.f. 29.6.1984 on adhoc basis. The applicant sought a transfer on deputation to Indian Railway Construction Co. Ltd. (IRCON) in October, 1986 in the same capacity. This was approved vide A7 order dated 11.9.1986. On deputation, the applicant was posted as Superintendent in the same grade and he continued to draw the last pay drawn as Superintendent. On the implementation of the Fourth Pay Commission recommendations, the pay of the applicant was refixed and he was allowed to draw ^{paying scale} Rs.2000-3200 from 1.1.1986. Vide A10 order, his promotion as Superintendent was regularised. Subsequently the pay of the applicant was reduced by six stages to Rs.2060/- ^{monthly in} ~~against~~ a representation, filed by the applicant. Indian Railways, thereafter accepting the representations, issued letter A11/A dated 27.3.1989 addressed to the IRCON stating that the pay had been fixed as follows:

Rs.2375/- w.e.f. 1.8.1986
Rs.2450/- w.e.f. 1.8.1987
Rs.2525/- w.e.f. 1.8.1988

3. Applicant was absorbed in IRCON w.e.f. 4.10.1988. He thereafter, claimed settlement dues from the Railways on the basis of a monthly pay of Rs.2525/-. However, the respondents did not do so and calculated his terminal benefits on the basis of the lower pay. Again applicant sent a representation to the Railways but on their failure to give a reply to his representation, the applicant filed an OA No. 1522/91 before the Tribunal and the same OA was partly allowed and the respondents were directed to consider refixation of the pay of the applicant on 1.1.1986, on 4.10.1986 and ultimately on 4.10.1988. It was also directed that the settlement dues be recalculated and the applicant be paid the balance amount, if

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any, found due along with 10% interest till the date of payment. The respondents were also directed to give the applicant due opportunity to represent his case for refixation of pay while on deputation to Construction Wing and also to IRCON, giving liberty to applicant if he was still aggrieved, to seek remedy in proper forum. The Respondent No.2 thereafter, passed the order A17, dated 23.6.1992 refixing applicant's pay Rs.2525/- w.e.f. 1.8.1988. However, on 4.6.1993, respondents ~~had~~ modified the order dated 23.6.1992 and passed the impugned order A1 reducing his pay from Rs.2525/- to Rs.2180 + Rs.345/- as a personal pay in the grade of Rs.2000-3200. It is in these circumstances that this OA has been filed by the applicant challenging the impugned order A1.

4. The respondents in their reply claim that his pay has been correctly refixed by the impugned order. They submit that the pay of the applicant was not correctly fixed while he was working in the Construction Wing and with the IRCON. When he proceeded on deputation to IRCON he was first reverted back to his parent wing and his pay had to be fixed on deputation accordingly.

5. I have heard the counsel on both sides. The learned counsel for the applicant, Shri B.S.Mainee pointed out that the order of this Tribunal in OA No.1522/91 was that the respondents would refix the pay after giving the applicant due opportunity to represent his case, and this opportunity would include even a personal hearing, if necessary. As a follow up of the Judgment in OA No.1522/91, the second respondent issued

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an order A17 dated 23.6.1992 whereby his pay was correctly fixed at Rs.2525/- w.e.f. 1.8.1988. Since this was in accordance with the representation of the applicant, he had not objected to this refixation. But the respondents acting contrary to the directions of the Tribunal, passed the impugned order modifying the order of 23.6.1992 and while doing so, gave no opportunity to the applicant to explain his case. He submitted that the respondent could not change the order which was passed on 23.6.1992 purportedly in compliance of this Tribunal's order. On the other hand, Shri B.K. Aggarwal, learned counsel for the respondents states that the impugned order was also in pursuance of the directions of the Tribunal keeping in view the options given by the applicant while working in the Construction Wing for fixation of his pay. Furthermore, his emoluments have not been revised, since instead of fixing his pay at the consolidate figure of Rs.2525/- the same has been splitted between Rs.2180/- basic pay plus Rs.345/- as personal pay giving the same total of Rs.2525/-.

6. I have carefully considered the matter. It is not denied by the respondents that while passing the impugned order the applicant has not ^{been} given an opportunity to be heard. I do not agree with the contention of the learned counsel for the respondents that since the applicant had already given a representation, its consideration would sufficiently meet the requirement laid down by the Tribunal. The applicant had filed a representation and on that basis the order dated 23.6.1992 had been passed. The same was in accordance with the representation of the applicant who was therefore fully

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satisfied. It is the impugned order dated 4.6.1993 which has sought to reduce the basic pay. Such variation adverse to the interest of the applicant is being done without giving an opportunity to the applicant to explain his case which even otherwise is against the principle of natural justice. On this score alone the impugned order is liable to be set-aside.

7. I also do not agree with the contention of the learned counsel for the respondents that since the total emoluments of the applicant have not been reduced, the applicant should have no objection. Such a splitting up of emoluments between basic pay and personal pay can affect the terminal benefits of the applicant at the time of retirement. If in the view of the respondents such a splitting up would not adversely affect the interests of the applicant, they could as well have allowed the order dated 23.6.1992 to stand.

8. In the light of the above discussion, the appeal is allowed. The impugned order dated 4.6.1993 is set-aside. The Respondent No. 2 will calculate the terminal benefits of the applicant on the basis of their order dated 23.6.1992 and pay the differential amount to the applicant within three months from the date of receipt of a copy of this order along with 10% interest from the date of the amount was due till the date of actual payment. No order as to costs.

Rao
(R.K. AHOOJA)
MEMBER(A)

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