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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1579/89

New Delhi this 11th day of April 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. S.R. Adige, Member (A)

Shri Chaman Lal Chadha,
Retd. Sr. Depot Store Keeper,
Northern Railway,
Shakur Basti,
Delhi.

... Applicant

(By Advocate : Shri B.S. Mainee)

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Dy. Controller of Stores,
Northern Railway,
Shakur Basti,
Delhi.

... Respondents

(By Advocate: None)

ORDER (Oral)

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant retired as Senior Depot Storekeeper, Northern Railway on 31.12.1986. The grievance of the applicant is that after his retirement by the impugned order dated 6.1.1987, the pay of the applicant on promotion to DSKP Grade I has been reduced by refixation. It is said that the applicant was working in the grade of Rs. 700-900 and at the time of retirement he was in the maximum of the scale. This scale has been revised of Rs. 2000-3200 and the applicant was fixed in the revised pay scale at Rs. 2675/- . By the impugned order the salary of the applicant has been fixed on 1.4.1986 at Rs. 865/- and has been given a corresponding

replacement scale in the revised pay scale. In this application, the applicant has prayed for quashing of the impugned order and prayed that the salary of the applicant drawn at the time of retirement i.e. 31.12.1986 be fixed at Rs. 900/- (RS) and at Rs. 2675/- (RPS). He has also prayed for the grant of proportionate benefits in gratuity, leave encashment and corresponding increase in the pension. He has also prayed for the ~~reimbursement~~ ^{revision} of the amount which was recovered from the applicant from the leave encashment. He has also prayed an interest of 18% per annum on the deducted amount.

2. A notice was issued to the respondents who initially filed the reply. ~~On~~ ^{that} reply filed by the respondents was incomplete and was defective so the registry returned the letter on 24.7.1990 to the counsel for the respondents but ~~the same has not been filed thereafter~~ that he should file the counter after correction but the record shows that the respondents have not filed the counter/reply though the applicant has filed the rejoinder, Denying various averments of the counter and reiterating the facts already made in the original application.

3. Shri B.S. Mainee, learned counsel appeared for the applicant. None appeared for the respondents. The matter has been on board for the last more than a month. Since this was an old matter we have taken up for hearing on merits finally.

4. The learned counsel for the applicant argued that the respondents have passed the impugned order dated 6.1.1987 at a time when the applicant had already retired and the order has been given retrospective operation affecting the salary of the applicant to his disadvantage from much earlier period i.e. 6.4.1984. In view of this fact the

the learned counsel argued that the respondents should have given a show cause notice if there had been any mistake in fixation of the salary of the applicant while he was promoted to DSKP Grade I in the scale of Rs. 700-900. This by itself is a ground in favour of the applicant to hit the legality of the order passed without hearing the applicant.

5. The applicant has taken a number of grounds touching his seniority also and the learned counsel argued that the applicant was given seniority much higher and in that respect referred to the seniority list already filed on record where the applicant ^{was} shown senior to but the respondents have subsequently depressed the seniority of the applicant against which the applicant represented in March 1985. Though the learned counsel for the applicant referred to certain facts regarding the decentralization of the cadre of the Senior Storekeeper but we are not coming to the merit of the case purposely because there is nothing on record on behalf of the respondents to scrutinise and appreciate the averments made by the applicant in the original application. The learned counsel, however, argued that it is the fault of the respondents if they have not filed the counter after correction and there is still more fault on their part as not being represented today at the time of hearing. We do appreciate the arguments of the learned counsel but in the event of allowing this application on merit a direction has to be given to the respondents to refix the salary of the applicant as it was before the impugned order. This Tribunal cannot give any such direction unless there is material on record when it particularly touches the ^{financial} final aspects.

The mistake if it is on account of calculation can always be corrected on the motion of either side. However, the learned counsel pointed out that it is because of certain other factors touching the service career of the applicant. We are, therefore, not making any roving enquiry and only considering the aspect that the principles of natural justice, *audi alter partem*, have not been observed by the competent authority while passing the impugned order refixing the salary of the applicant from the retrospective date to *its* disadvantage and order for the recovery on the basis of refixation.

6. The application, therefore, is disposed of in the following directions:

1. The impugned order dated 6.1.1987 is quashed not on merits but on technical grounds but the provisional pension order or the other benefits given to the applicant shall not be affected and they shall be governed by the final order if passed as directed here under:
2. The respondents shall issue a show cause notice or the applicant may himself represent to the respondents in this case the General Manager, Northern Railway, Baroda House that the fixation of pay done in the case of of the applicant by giving promotion with effect from 1.8.1982 on notional basis and giving actual wages/salary from 1983 was correctly done and as a consequent the pay fixed in the scale for Rs. 700-900 was rightly fixed in accordance with the seniority of the list and the extent rules. The respondents/competent authority will dispose of this representation of the applicant by speaking order.

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In case the respondents find favour with the representation of the applicant then his salary be fixed as it was fixed earlier and there was no necessity to refix the same and the applicant to draw the pensionary benefits etc. at the stage of Rs. 900/- or the salary he last drew while in active service i.e. on 31.12.1986.
In case the representation of the applicant is rejected he shall have the right to assail the same according to law and this ^{order} ~~will not~~ ^{be a} hurdle in the way. The respondents shall dispose of the application within a period of three months from the date of the receipt of the copy of the judgement. ~~Cash in parties~~

Adige
(S.R. Adige)
Member (A)

Jain
(J.P. Sharma)
Member (J)

Mittal