



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.N0.060/01017/2019 Order pronounced on:16.02.2021
 (Order reserved on: 09.02.2021)

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Faqir Chand aged 88 years Group-C S/o Sh. Harbans Lal, Ex-Head Clerk, R/o 127A, Near Gurdwara, Baba Budha Sahib Ji, Dakoha, Jalandhar Cantt (Punjab) PIN-144005.

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Applicant

(BY ADVOCATE: MR. KARNAIL SINGH)

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi-110001.
2. Executive Engineer / Bridge Northern Railway Bridge Workshop Jalandhar (Punjab) PIN-144005.
3. Senior Manager (Pension Cell), Punjab National Bank, CPPC, Ludhiana (Punjab) PIN-141001.
4. Financial Advisor & Chief Accounts Officer/Pension, Northern Railway, Baroda House, New Delhi-110001.

Respondents

**(BY ADVOCATE: MR. L.B.SINGH FOR RESPONDENTS
 NO.1,2&4
 NONE FOR RESPONDENT NO.3)**



ORDER
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

1. The present Original Application has been filed by the applicant Faqir Chand seeking quashing of the order dated 17.7.2019 as well as Revised Pension Payment Order dated 13.12.2018 (Annexure A-1) whereby his pension has been reduced retrospectively and recovery has been ordered. He has also sought restoration of pension to old level and refund of the amount recovered with interest @ 12% per annum.
2. The applicant was an employee of the Respondent Railways. He retired on superannuation as Head Clerk on 31.5.1986. He was drawing pre-revised pay scale of Rs.425-700 which was revised to Rs.1400-2300 in IVth CPC. This was further revised to Rs.5000-8000 at that time in Vth CPC. He started drawing pension in this scale as per old PPO. However, the respondents have now issued PPO dated 13.12.2018 (Annexure A-1) vide which his pension as per Vth CPC has been reduced by fixing his pension on the basis of pay scale of Rs.4500-7000. Similarly, as per VIth CPC, his notional pay has been fixed in PB Rs.5200-20,200 with GP Rs.2800 instead of earlier PB Rs.9300-34,800 with GP of Rs.4200. Again as per VIIth CPC, his notional pay has been fixed at level-5 in PB of Rs.29200-92300 at Rs.30,100/- in VIIth CPC w.e.f. 1.1.2016 and consequently pension has been fixed at Rs.15,050/- per month w.e.f. 1.1.2016.
3. The applicant submitted a representation dated 27.4.2019 (Annexure A-3) against the reduction of his



pension. However, the respondents have rejected his claim vide order dated 17.7.2019 (Annexure A-1).

4. The case of the applicant is that the respondents have passed impugned order, Annexure A-1 reducing his pension after a long period of 32 years that too without following the principles of natural justice. He has alleged that this is a non-speaking order. According to him, this action of the respondents is contrary to the judicial pronouncements in the case of **UNION OF INDIA VS. R. SETHUMADHAVAN & ANOTHER**, (2018) 2 SCC (L&S) 749 and decision of High Court of Delhi in W.P. (C) No.3035/2016 **RAM PHAL VS. UNION OF INDIA & OTHERS**. Reliance is also placed upon **STATE OF PUNJAB VS. RAFIQ MASI** H, 2015 (1) RSJ 177. It is also alleged that action of respondents is in violation of Rule 30 of Fundamental Rules and Rule 90 of Indian Railway (Pension) Rules, 1993.

5. The respondents have contested the claim of the applicant. They state that the impugned order, Annexure A-1, is in conformity with Railway Board clarificatory circulars RBE No.24/2010 dated 2.2.2010 (Annexure R-1) and RBE No.42/2010 dated 18.3.2010 (Annexure R-2). These Circulars clarify that the corresponding scale of Rs.1400-2300 in Vth CPC is Rs.4500-7000 for staff who retired prior to 01.01.1996.

6. The respondents further submit that pension of applicant was wrongly revised w.e.f 1.1.1996 as per Vth CPC in the pay scale of Rs.5000-8000 instead of actual replacement scale of Rs.4500-7000 for Head Clerks who



retired before 1.1.1996. This mistake continued in further revision also w.e.f. 1.1.2006 as per VIth CPC and w.e.f. 1.1.2016 as per VIIth CPC. When the mistake came to the notice of authorities, corrective steps were taken and pay of applicant has now been correctly fixed by the respondents. The respondents have not made any recovery from the applicant so far.

7. The respondents have finally concluded that in view of all above, the O.A. has no merit and the applicant does not deserve the relief sought in the O.A.

8. I have heard the learned counsel of opposing sides and have carefully gone through the pleadings on record. I have also given my thoughtful consideration to the entire matter.

9. The applicant retired as a Head Clerk on 31.5.1986 on superannuation. At the time of his retirement, he was drawing pre-revised pay scale of Rs.425-700. This pay scale was replaced with pay scale of Rs.1400-2300 w.e.f. 1.1.1986 under IVth CPC. This was granted to the applicant as he was still in service on 1.1.1986. In the Vth CPC, this pay scale was replaced with pay scale of Rs.5000-8000 and VIth CPC it was revised to PB Rs.9,300/-34,800/- with GP Rs.4200/-. However, the Railway Board issued Circular dated 2.2.2010 (Annexure R-1) clarifying that scale of pay/pay band with grade pay corresponding to IVth CPC pay scales of Rs.1400-2300 in Vth CPC and VIth CPC are Rs.4500-7000 and Rs.5200-20200 with GP Rs.2800/- respectively. The replacement scales of Rs.5000-8000 and Rs.9300-34800 with GP Rs.4,200/- were for in service officers and staff. For pre-1996 and pre-2006



retirees, these were not the replacement scales. This was made clear by DoP&PW in its O.M. dated 14.10.2006 (S.No.9 of Annexure-I) which was adopted by Railways vide their letter dated 18.11.2008.

10. Similarly, in terms of DoP&PW's O.M. dated 11.5.2001, adopted by Railways vide letter dated 20.8.2001, pension/family pension of all pensioners irrespective of their date of retirement shall not be less than 50%/30% of the minimum of the corresponding scale as on 1.1.1996 of the scale of pay held by the pensioners at the time of retirement / death while in service. These instructions were upheld by the Hon'ble Supreme Court vide their judgement dated 23.11.2016 in the case of **UNION OF INDIA VS. K.S. KRISHNASWAMY**, 2005 SCC Online Mad Mad 358. Again vide Circular dated 18.3.2010 (Annexure R-2), it is clarified that pay scale of Rs.5000-8000 in Vth CPC was allotted to the Head Clerks who were in service on or after 1.1.1996. It was also stated therein that the corresponding scale of pre-revised IVth CPC of Rs.1400-2300 is Rs.4500-7000 in Vth CPC and not Rs.5000-8000, as has been reiterated in item No. 9 of DoP&PW's O.M. dated 14.10.2008, circulated by Ministry of Railways vide letter dated 18.11.2008.

11. In view of above factual position, it is clear that the applicant was not entitled to higher pay scale of Rs.5000-8000 which was for in-service employees. The revised pay scale for Rs.1400-2300 for pensioners was Rs.4500-7000 which was further revised in the CPCs from time to time. Thus, clearly an error had crept in on the part of the respondent Railways



which has now been corrected. A court of law cannot allow perpetuation of an administrative error as it would cause administrative chaos. Thus, this Court does not find any fault in the action of the respondents in fixing the pension of the applicant from due date in the correct pay scales meant for pensioners for revision of pension. In fact, the judgement relied upon by applicant himself in the case of R. Sethumadhavan (supra) makes it clear that the pension of a pensioner could not be on par with the pay scale of an employee in service.

12. It is observed that applicant had submitted a detailed representation dated 27.4.2019 (Annexure A-3) which was considered and then impugned order, Annexure A-1 has been passed by the respondents. Thus, the plea of the applicant that there is violation of principles of natural justice is also not true. On this ground as well, the impugned orders cannot be interfered with. Also, the impugned order though short, does give the gist of reason for revision of pension of the applicant and hence cannot be quashed on the ground of being non-speaking.

13. As to whether the respondents could correct an error or not is no more res-integra. Hon'ble Supreme Court in the case of **CHANDIGARH ADMINISTRATION AND OTHERS VS. NAURANG SINGH AND OTHERS** (1997) 4 SCC 177, has held that a mistake committed by the Administration cannot furnish a valid or legitimate ground for the Court or the Tribunal to direct the Administration to go on repeating that mistake. The Administration no doubt could rectify that



mistake. A similar view has also been expressed by a Full Bench of the Hon'ble Punjab & Haryana High Court in the case of **SUNDER LAL AND OTHERS VS. STATE OF PUNJAB AND OTHERS** AIR 1970 Punjab & Haryana 241. Therefore, the Railways had the authority to rectify the mistake committed by it.

14. By filing rejoinder the applicant has submitted that RBE no.24/2010 dated 2.2.2010 (Annexure R-1) issued by Railway Board is liable to be quashed and set aside. However, this Circular has not been challenged by the applicant in the O.A. or by way of amendment of the O.A. And by way of rejoinder, no new relief can be sought by the applicant.

15. Having upheld the action of the respondents in re-fixation of pension of the applicant I propose to deal with the recovery issue involved in this case. In the case of **SYED ABDUL QADIR & ORS. VERSUS STATE OF BIHAR & ORS.** 2009(3) SCC Page 475, the Apex Court has held that the issue of recovery revolved on the question of action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the detection of excess payment had been made after a long duration of time, it would be iniquitous to make any recovery and held that such arbitrary actions are truly actions in violation of Article 14 of the Constitution of India. Subsequently, the issue was considered in the case of Rafiq



Masih (supra) and Court has carved out exceptions where recovery is not permissible which read as under:-

- "(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service);
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery;
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued;
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post;
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover".

A perusal of the above extracted part of the judgment reveals that the case of the applicant squarely comes within the four corners of the said law. It is also to be noted that the applicant had no hand in the mistake which was purely an administrative mistake.

16. In view of above discussion, I am left with no other option, but to invalidate the action of the respondents in proceeding to recover the excess payment while upholding the action of respondents in carrying out the correction of administrative error by re-fixing the pension of applicant with reference to correct replaced pay scales. The O.A. accordingly stands partly allowed.

17. There shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh
Dated: 16.02.2021

HC*