

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.825/87

CL.04.1992

SHRI J.P. THAKUR

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

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HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SHRI B.S. MAINEE

FOR THE RESPONDENTS

...SHRI B.K. AGGARWAL

1. Whether Reporters of local papers may be allowed to see the Judgement? ^h
2. To be referred to the Reporter or not? ^h

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant retired as Superintendent from Northern Railway on superannuation in February, 1986. After retirement, the respondents have deducted certain amount, namely Rs.1,006 from his DCRG on the ground that the pay of the applicant was wrongly fixed and the same was reduced from Rs.830 to Rs.795 w.e.f. 1.3.1985. The impugned order was issued in December, 1986 (Annexure A1) and the applicant has prayed that the deduction effected in the pay of the applicant from the stage of Rs.830 to Rs.795 retrospectively w.e.f. 1.3.1985 be restored, and the

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amount deducted from the DCRG, i.e., Rs.1,006.35

be ordered to be refunded to the applicant. It is also prayed that the revised terminal benefits be issued taking the pay of the applicant at the time of retirement in February, 1986 at Rs.830.

2. The brief facts are that the applicant joined as LDC in 1946 and was promoted as UDC in 1960. On the specific request of Deputy Chief Electrical Engineer (Works), the applicant was sent to the construction work being a Senior Clerk in November, 1975 in the interest of the Railway administration. While working on the construction side, the applicant was given the work of the Head Clerk since July, 1976. However, the applicant was promoted as Head Clerk on the regular side in February, 1980. The applicant was subsequently promoted as Assistant Superintendent on the regular side w.e.f. December, 1981. At this stage, the emoluments of the applicant as basic pay Rs.765 were fixed.

The applicant was promoted as Superintendent on account of restructuring and the pay of the applicant was fixed as Rs.760 by the Memo at Annexure 14 (p-15 of the paper book). Page-2 of this Annexure is missing. However, it

appears to be dated 27.2.1985. It is not disputed that the applicant at the time of retirement in February, 1986 was drawing a basic pay of Rs.830. The learned counsel for the applicant argued that his salary could not have been reduced unilaterally and in this connection he has referred to a number of authorities-1989 ATR Vol.2 p-23 (M.Vankayya Vs. Union of India), ATJ 1991 (1) p-459 (K.N.Ramavatty Vs. Director General, Defence), 1989 SLJ Vol.2 p-40, ATR 1990 (1) 265 (Ram Nath Sinha Vs. Union of India) and lastly the case of Chaman Singh Vs. Union of India reported in 1992 SLJ Vol.1 p-315 and also another authority of the Principal Bench in the same journal at p-317 in which certain authority of Hon'ble Supreme Court has also been cited. All these authorities referred to the proposition of law that any disadvantageous order which affects the final emoluments of a person cannot be passed unilaterally without giving any opportunity to such affected persons. The principles of natural justice have also been emphasized in the above quoted authorities.

3. The learned counsel for the respondents conceded this proposition of law and fairly admitted that no opportunity or show cause notice was issued to the applicant. However, the learned counsel for the respondents pointed out that

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the mistake has arisen in the fixation of pay of the applicant on account of the fact that the applicant was given the promotion to the post of Head Clerk in the regular line in February, 1980 and this mistake was detected only in the increment sheet for the month of February, 1986. This increment sheet of February, 1986 has been filed as Annexure R-1 to the counter and the mentioning of this fact has also been at p-4 in para-1(w) wherein it is stated that the pay of the applicant was wrongly fixed in the grade at Rs.675 while it should have been fixed as Rs.630. The learned counsel for the respondents argued that much before the retirement of the applicant, this mistake was detected and since the applicant reached the superannuation in March, 1986, so under the various circulars of the Railway Board issued in 1982, 1987 and para-323 of the Pension Manual, the amount has been deducted from the DCRG.

4. I have gone through the contention of the learned counsel for both the parties. The learned counsel for the applicant has referred to the citation of Himanshu Kumar, 1992 SLJ Vol.I CAT p- 43 laying emphasis on the fact that

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the recovery cannot be effected in any case of any over payment by the respondents and, therefore, desired that on the basis of the said authority, the relief of restraining the respondents from reducing the pay from Rs.830 to 795 be allowed. I am in full agreement with the above quoted authority of Division Bench of Himanshu Kumar's case (supra). But in that case, the matter was racked up after 15 years and in the present case even before the applicant reached the age of superannuation the mistake has been detected. Let us take a corollary where an employee has been wrongly paid lesser pay during the tenure of service, cannot he come and that his pay which has been wrongly fixed be corrected and he be paid the emoluments as per his entitlement. Mistakes, if any, are not allowed to be corrected, then persons similarly situated in the same department have been paid less and even there may be senior to the applicant who would have drawn less and that is against the principles of natural justice that if a mistake has crept in, that should not be allowed to be corrected though after notice to the affected person. The affected person may place his case and may assert as has been argued in the last by the learned counsel for the applicant, that the increments a person has drawn on ex-cadre post should also be counted under FR 22 while fixing his pay in the parent cadre when promoted in a regular line.

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Since the matter is not being touched on merit, it is left open. This matter is only taken upon the point whether the matter should be remanded and opportunity should be given to the applicant and as well as the respondents may decide regarding the fixation of pay or the final emoluments of the applicant justifying their order passed unilaterally in December, 1986 (Annexure A1).

5. The learned counsel for the applicant has also referred to that DCRG cannot be touched being a property as held in many cases and he has referred to the case of Wazir Chand, a Full Bench decision decided by the Central Administrative Tribunal in [✓]1991 6A 2573/89 D. 25.10.90. The learned counsel in that respect has also referred to the case of Ganpat Rao in ATR 1991 (1) 300. It shall be premature to say whether the respondents can deduct any amount from DCRG in the case of the applicant because it is not yet clear whether the applicant has been overpaid nor it can be said that the deductions desired by the respondents are justifiable in accordance with the Extant Account Rules of fixation of pay.

6. Be^{as}_h that may be, without discussing the matter on merit, the application is allowed to the extent that the impugned

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order dt. December, 1986 (Annexure A1) is quashed and set aside, so also the reduction of the applicant from the stage from Rs.830 to Rs.795 w.e.f. 1.3.1985, but with a right to the respondents if they are so advised, to give a fresh notice to the applicant giving full facts and showing the reasons therein if they want to make any deductions by reducing the salary of the applicant last drawn from the stage of Rs.830 to Rs.795 and if any such step of giving show cause notice is taken, the applicant shall be free to make representation and the same should be decided after giving a personal hearing to the applicant. The respondents should finalise all this matter within a period of twelve weeks and if no such step is taken and the matter is not decided, then no deduction will ever be made and the amount realised from the applicant-Rs.1,006.35 shall be refunded to the applicant. In case the action is taken as stated above, the refund of this amount shall be governed by the final outcome of the result of the show cause notice. In the event of the applicant being aggrieved by any such order of the respondents, he shall have a right to agitate the matter again by coming to the Tribunal. In the circumstances, the parties shall bear their own costs.

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J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

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