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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1671/90

Date of decision: 21.05.93.

Shri Kashmiri Lal

...Petitioner

Versus

Union of India & Others

...Respondents

Coram: The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri G.D. Bhandari, Counsel.

For the respondents

Shri B.K. Aggarwal, Counsel.

Judgement(Oral)

The petitioner Shri Kashmiri Lal was promoted Driver Grade 'C' vide order dated 25.5.1983 in the pay scale of Rs.330-560. He was further promoted as Driver Grade 'B' in the pay scale of Rs.425-600 w.e.f. 18.4.1985 when his pay was fixed at Rs.425/- in that scale. He got his next promotion vide order dated 19.6.1986 as Driver Grade 'A' in the pay scale of Rs.550-700. In the meantime, the Government decided to implement the recommendations of the Fourth Central Pay Commission and notified Railway Servants (Revised Pay) Rules, 1986 (this notification was published in the Gazette of India (Extraordinary) for Central Civil Services on 13.9.1986. Since Railway publishes its own notification following the publication of the notification by the Central Govt. they would have perhaps taken a week's or two/more to publish Railways' notification). A copy of the Railway notification has neither been filed by the petitioner nor by the

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respondents. However, the Revised Pay Rules are not in dispute. The Revised Pay Rules were given retrospective effect on the 1st day of January 1986. According to the rules a Government servant was to draw pay in the revised pay scale applicable to the post to which he is appointed unless he elects to continue to draw pay in the existing scale until the day he earns his next or subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. This option was, therefore, to have the pay refixed either from 1.1.1986 or from the date of next increment. The pay was to be refixed in accordance with the formula recommended by the Fourth Central Pay Commission. The rule for revised fixation of pay provided that an amount representing 20 per cent of the basic pay in the existing scale subject too a minimum of Rs.75 shall be added to the existing emoluments of the employee. The emoluments for this purpose are to include total of DA/ADA and instalments of interim relief. Thereafter the pay was to be fixed at the stage next above the amount so computed in the revised scale of pay, subject to certain conditions. Since the revised pay rules came into effect from 1.1.1986 and the pay of an employee has to be refixed either on 1.1.86 or from the date of the next increment in the existing scale, if he so opts, the pay of the petitioner was fixed on 1.1.1986 as under:-

Basic pay	Rs.425.00
D.A., A.D.A	Rs.831.50
Interim Relief	Rs.115.00
Total present emoluments	Rs.1371.50



20% of the basic pay subject
to Minimum of Rs.75/- Rs.85.00
Total Notional pay Rs.1456.50
Pay fixed in the pay scale
of Rs.1350-2200 Rs.1480

2. As the next increment of the petitioner fell due on 1.4.1986 his pay was raised to Rs.1520/-. As adverted to earlier the petitioner was promoted to the next higher grade of Rs.550-700 w.e.f. 20.6.86 at that time his pay was fixed at Rs.550 in that scale of pay. The new revised scale which replaced the scale of Rs.550-700 is Rs.1600-50-2300-EB-60-2660. His pay being Rs.1520 in the revised scale as on 19.6.1986 he was to be fixed in the next higher grade, giving him the benefit of FR 22-C. His pay would thus be fixed at Rs.1600 in the pay scale of Rs.1600-2660. The respondents, however, initially fixed the pay of the petitioner as Driver Grade 'A' afresh as if he had been in the pay scale of Rs.550-700 on 31.12.1985. He was thus allowed the pay of Rs.1900/- as per the table applicable to Dirver 'A' filed by the respondents today. The petitioner continued to draw this pay, earned from annual increments till the issue of the impugned order dated 5.7.90. The said order reads "

"Railway Board vide attached letter has instructed that the pay of the Drivers promoted between 1.1.86 and 25.9.86 is to be fixed on 1.1.86 first on the basis of their pay on 31.12.85 and all the promotions are to be given in the

New Scale. Accordingly the pay fixation of the staff in the attached list may be done as per the pay given against their names. Their pay may be immediately reduced by given their due increments from 1986 to 1990. The excess pay drawn in the last four years may be recovered at the rate of Rs.200/- per month."

3. Aggrieved by the said order the petitioner filed this Application under Section 19 of the Administrative Tribunals Act, 1985 on 22.8.1990. By way of interim relief the respondents were restrained from making any recovery in terms of the impugned order dated 5.7.1990. The learned counsel for the petitioner Shri G.D. Bhandari submitted that the petitioner's pay was rightly fixed initially in the revised scale of pay. In any case, if there was a mistake committed by the respondents it was allowed to perpetuate for a period of over 4 years. Thereafter without giving any show cause notice the respondents started effecting recoveries at the rate of Rs.200 per month. He also relies on the extraordinary OM issued on March 16, 1989. The extraordinary memorandum stated that:

"The Railway Services (Revised Pay) Amendment Rules, 1989 have been made to implement the recommendations of the Fourth Pay Commission with respect to pay scales of Group 'A', Group 'B', Group 'C' and Group 'D' Services/posts. They are being given retrospective effect from Ist January, 1986. It

is certified that the retrospective effect being given to these rules will not affect adversely any employee to whom these rules apply."

4. Based on the above extraordinary memorandum it was contended by the learned counsel that if the revised pay is allowed to be amended and recovery allowed to be effected this would adversely affect the petitioner. Such an action on the part of the respondents would be violative of the statutory provisions. He also relies on the decision of the Supreme Court in P.D. Aggarwal and Ors. vs. State of U.P. and Ors. reported in 1987 (4) SLR SC 134. Relying on paragraph-15 the learned counsel submitted that the Government has the power to amend rules retrospectively. Nevertheless such retrospective amendment cannot take away the vested rights and the amendments have to be reasonable in contradistinction to being arbitrary or discriminatory. The case of P.D. Aggarwal (supra) however relates to the seniority/promotion of Asstt. Engineers promotees and direct recruits. The facts of the case of P.D. Aggarwal's (supra) case are distinguishable and the law declared in that case is not applicable in the matter before me. The learned counsel also questioned the competency of the DPC to issue orders regarding effecting recovery consequent to the revocation of the pay of the petitioner in the revised scale w.e.f. 20.6.1986.

5. The respondents have produced the relevant record regarding fixation of pay etc. of the petitioner. Succinctly, the case of the petitioner is that he should first be fixed in the revised pay scale as on 1.1.1986 and he should be again fixed in the same manner as on 1.1.186, with effect


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from the date of promotion to the pay scale of Rs.550-700 in the revised scale of Rs.1600-2660. If this proposition is accepted, admittedly the petitioner will be entitled to draw Rs.1900/- per month but this proposition cannot be accepted as the right to re-fixation of pay in the revised scale under the Railway Services Revised Pay Rules mandates the fixation of pay as on 1.1.1986 or the date on which the next increment in the existing scale which the employee may choose. In this case the petitioner had not given his option to fix his pay in the revised scale of Rs.1350-2200 w.e.f. 1.4.1986. Accordingly his pay was fixed on 1.1.1986 in the revised scale of Rs.1350-2200 corresponding to the pay which he was drawing in the pre-revised scale of Rs.425-600 as on 31.12.1985. This pay amounts to Rs.1520/- According to the Revised Pay Rules his pay in the next promotional grade is to be fixed with reference to the pay as fixed in the revised scale after notionally adding one increment to his pay as on 19.6.1986. Thus the pay fixed by the respondents on 20.6.1986 at Rs.1600/- is in accordance with the Rules. The saving provision which has been referred to by the learned counsel for the petitioner that any retrospective effect should not affect adversely the petitioner is not germane to the issue, as the petitioner is not adversely affected. He is adversely affected only to the extent that his pay was wrongly fixed at Rs.1900/- which has been amended and rightly fixed at Rs.1600/-. His pay as such has not gone any reduction consequent to the implementation of the Revised Pay Rules. In fact pay as fixed on 1.1.1986 in revised scale of pay is beneficial to him. Wrong fixation as on 20.6.1986 which gave him undue benefit cannot be covered by the saving provision referred to above.

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Further the objection that impugned order is signed by the D.P.O. is not valid as he is not competent to order the recovery of the overpaid amount is misplaced. The impugned order is based on the Railway Board's instructions, as communicated vide letter dated 20.6.1990 (Annexure A-9) and, therefore, cannot be faulted.

In the above facts and circumstances the case does not merit our interference and the same is accordingly dismissed. No costs.


(I.K. RASGOTRA)

MEMBER(A)

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