

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH N/DELHI

(13)

O.A.No.608/92
O.A.No.613/92 WITH

DATE OF DECISION.....
November 20, 1992

Shri Kirpal Singh
Shri Amar Singh

Applicants

V/s

U.O.I.

Respondents

FOR THE APPLICANT

Sh.S.S.Duggal, counsel

FOR THE RESPONDENTS

Sh. A.F.Mahajan, counsel

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(Hon'ble Sh.S.R.Sagar, Member(J)

As a common question of facts and law is involved in both these OA's the same are being disposed of accordingly by this common order.

The applicant of both these cases are retired persons. The applicant Sh.Kirpal Singh was retired from Govt.service on 1-5-1992. At the time of his retirement his pension was fixed as Rs 369/-P.M. and after deduction commutation money, the residual pension was fixed as Rs 246/-excluding D.A. In 1984 the said pension was revised as per Govt.order No. 50608/KS/Pen/EST/ NI) dt.03-9-84 w.e.f. August, 1984 from Rs 369/- to Rs 392/-P.M. and after deducting commutation money amounting to Rs 130/- his residual pension was fixed as Rs 262/-P.M. excluding D.A. Thereafter vide their letter No.IV/K/1099 led.No.K-291 dated 22-7-87, the pension of the applicant was re-fixed as Rs 896/-excluding D.A. After adjustment

of Rs 130/- as commutation money, the net residual pension of the applicant was thus re-fixed as Rs 766/-P.M. The applicant Sh. Kirpal Singh has contended that since then he has been drawing the said pension at the rate of Rs 766/- P.M. excluding D.A. His grievance is that after about six years a letter ^{dated 10-9-91 (Am. H2)} was issued by the Government to the Manager of Punjab National Bank, Tilak Nagar Branch that consequent on revision of pension as per 4th Pay Commission, the pension of the applicant was revised at the Rs 831/-P.M. w.e.f. 1.1.1986 and after adjustment of commutation money of Rs 130/- the residual pension is reduced to Rs 701/-P.M. and the over payment of pension amount at the rate of Rs 65/-P.M. w.e.f. 1-1-86 to 31-8-91 which has been worked out to Rs 4,420/-+ relief thereon should be recovered from the applicant Sh. Kirpal Singh. The applicant has contended that before revising his pension amount, no opportunity was given to him. He has also contended that pensionary benefits already received by him cannot be recovered on the grounds of over payment. Ld. counsel for the applicant has also submitted that even if there is mistake in fixation of pay as a result of 4th Pay Commission, the respondents have no right to correct it.

The applicant Sh. Amar Singh retired from Government service w.e.f. 1-3-1982. He has alleged that on his retirement, his pension was fixed at the Rs 455/-PM and after 4th Pay Commission report the pension of the applicant was revised as per order dated July, 1987 and his pension was fixed as Rs 1078/-P.M. and commutation amount was Rs 157/-P.M. After adjustment of commutation amount, the residual pension was Rs 921/-P.M. w.e.f. 1-1-86. The applicant has contended that since then he has been drawing pension at that rate through Punjab National Bank, Tilak Nagar, New Delhi excluding D.A. His grievance is that after about six years, a letter dated 10-9-91(A-A-2)

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was issued by the respondents to the Punjab National Bank informing them that pension of the applicant was Rs 1000/- and not Rs 1078/ and after commutation amount, the residual basic pension reduced to Rs 843/- P.M. They, therefore, directed the Punjab National Bank to recover the over payment to the applicant amounting to Rs 5304/- + relief thereon wef 1-1-86. He has taken similar pleas as have been taken in the aforesaid mentioned case of Sh. Kirpal Singh. He has also prayed for similar relief.

∠ The applicant has contended that it is illegal.

Both these application have been resisted by the respondents. The main contention which was urged before me by the learned counsel for the respondents is that consequent on revision of pension as per 4th Pay Commission report, the pension of both these applicants has been revised and re-fixed in accordance with the directions of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare dated 16-4-87 (Annexure D-I)

I have heard the arguments of the learned counsel for both the parties and have ^{gone} through the records.

Admittedly the common question whether the pension of the applicant ^{was} wrongly fixed earlier and if so whether any amount on account of over-payment to the applicant ^s can be recovered from them and whether respondents are competent to rectify the mistake without any notice to the applicant arise for determination in these cases.

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 It is clear from the records as well/^{as} submission of the learned counsel for the applicant that there is no dispute regarding pay of the applicants, which they had been drawing at the time of their retirement. After their retirement the applicants were granted pension and according to the applicants they had no grievance against the fixation of pension on such revision. Their main grievance is that after fixation of their pension on revision, the respondents had no powers to revise it again on the same basis, 4TH PAY COMMISSION report w.e.f. 1-1-1986 without any notice or without ^{affording} any opportunity to the applicant. The respondents do not dispute the contention of the applicant that the pension of the applicants fixed earlier was revised. Subsequently vide impugned order dated 10-9-91, on the basis of Government orders dated 16-4-1987 (Annexure D-I), ^{the pension has been revised.} It has also been contended that previously the pension ^{on} of revision was fixed by the Punjab National Bank itself and not by the respondents. ^{rather revised the pension} They have fixed consequent ~~upon~~ on revision of pension as per 4th PAY COMMISSION report in accordance with the directions of the Government in Annexure D-I. Accordingly the pension amount fixed by the Punjab National Bank has been reduced to the extent it has been found in excess of the pension amount which has been fixed on the basis of the Government directions dated 16-4-87 (A-D-I). It has further been contended that because of this overpayment, made to the applicant, ^{it} has been ordered to be recovered from them.

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It appears from the above, that pension fixed earlier has been revised vide impugned order dated 10-9-91 on the basis of Government directions vide letter dated 16-4-1987 (Annexure D-I) without ^{affording} ~~any~~ afforded any opportunity to the applicant. I have gone through these directions which indicate some criteria for revision of pension in accordance with the date of retirement of the pensioner and in some cases with respect to exercise of their option as required by the Ministry of Finance. Thus the applicants had right to place their case before the authority concerned to show as to under what category their case ^{would} fall. It is pertinent to note here that previously pension of the applicant Sh. Kripal Singh was fixed at Rs 896/-. As ^{well} ~~as~~ it appears from Annexure-I of his application, ^{previously} his pension was Rs 392/-. Thus from Rs 392 his pension was fixed at Rs 896/- Now vide order dated 10-9-91 (Annexure A-2) his pension has been fixed at Rs 831/- If the table given in the Government direction dated 16-4-87 (annexure D-I) is seen, it will appear that in Col. No. 1 against the amount of Rs 392/- the amount of Rs 896/- has been shown in Col. No. 3 and amount of Rs 831 is shown under Col. No. 4. It appears that formerly the pension was fixed from Rs 392/- to Rs 896/- and now it has been reduced from Rs 896 to Rs 831/- The similar ^{is true} ~~facts~~ ~~and~~ ~~through~~ with respect to the pension amount of the applicant Sh. Amar Singh. These facts clearly show that there would have been much for the applicant to say against the reduction in their pension amount which they had been drawing from Punjab National Bank. The applicants have ^{thus} ~~therefore~~, been deprived of their valuable right to ^{depend} ~~proceed~~ against reduction of their pension amount as the same has been reduced without ^{affording} ~~afforded~~ any opportunity to them.

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In connection with the above, the learned counsel for the applicant has drawn my attention to the decision dated 22-5-92 rendered by the Principal Bench of the -Central Administrative Tribunal in OA No.2201/90, Satnam Singh V/s U.O.I. and Ors. A copy of this judgement is on the file. There was also dispute regarding re-fixation of pay. In that case Hon'ble Single Member observed as follows

" I find that there is a gross violation of principles of natural justice as the respondents have passed the order without giving an opportunity, after almost 20-years and no person can be condemned unheard. "

Besides the above, in ATR, 1988(2) CAT 510, Sh. C.S.Bedi V/s U.O.I. and Ors also the Principal Bench of the Central Administrative Tribunals made following observations:-

" Before an authority proposes to rectify its orders which would result in serious civil consequences to the applicant, it cannot do so without issuing him a show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case which is one of the basic requirements of the principles of natural justice is now well settled. Without any doubt that had not been done by the authority. On this short ground itself, the orders made against the applicant are liable to be interfered with by me "

I entirely agree with the above proposition of law and hold that the impugned orders dated 9-10-91 are bad in law as the same had been passed without affording any opportunity to the applicants. The impugned orders are therefore quashed. The applicant should be entitled to all the consequential benefits.

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As a consequence of the above ~~order~~, the applicants are entitled to the refund of all the amount recovered from them on the ground of over-payment of the pension amount. The respondents are directed accordingly. In the facts and circumstances of these cases, no order as to interest or costs is made. This will not, however, preclude the respondents to revise or refix pension of the applicants in accordance with the Government directions dated 16-4-1987(Annexure A-1) after affording reasonable opportunity to the applicants.

The applications stand disposed of accordingly. A copy of this order be kept in each of the OA No.608/92 and 613/92 for records.

S.R. Sagar
(S.R. SAGAR)
MEMBER(J) 20/11/92

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