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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.1870 /199 3

Date of Decision: 21-09-1998

Shri I.S. Ahluwalia ..

APPLICANT

(By Advocate Shri D.C. Vohra)

versus

Union of India & Ors. ..

RESPONDENTS

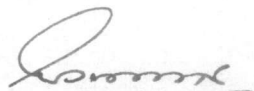
(By Advocate Shri N.S. Mehta

CORAM:

THE HON BLE SHRI A.V. Haridasan, Vice-Chairman (J)

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas),
Member (A)

Cases referred:

1. H. L. Trehan & Ors. Vs. U.O.I & Ors. (1998 (2) Scale 1376).
2. A. Radhakrishnan Vs. UOI (SIR 1988 (7) 334)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1870/93

New Delhi, this 21st day of September 1999

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

I.S. Ahluwalia
28, Staverton Road NW 2
London - U.K.

.. Applicant

(By Dr. D.C. Vohra, Advocate)

versus

Union of India, through
Foreign Secretary
Ministry of External Affairs
South Block, New Delhi

.. Respondent

(By Shri N.S. Mehta, Senior Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a retired official of the Ministry of External Affairs, is aggrieved by Annexure F-1 order dated 13.5.92 by which respondent has decided to effect necessary recoveries from him in respect of the alleged over payment of pensionary benefits. Consequently, applicant seeks (i) to quash the impugned order dated 13.5.92 and (ii) issuance of directions to the respondent to continue paying him pension which has already been fixed and being drawn by him.

2. Before we examine the legal issues involved, it will only be appropriate to mention briefly the background facts for the purpose of appreciation of the issues involved. Applicant joined services of Government of India on 15.9.54^{SA} and after serving in different Ministries as LDC, he was inducted to Indian Foreign Service (B) under the respondent since 1.8.56. He was subsequently promoted as UDC on 2.3.63 and Assistant on

2

24.5.69. Respondent retired the applicant compulsorily on 4.11.86 and fixed his pension as per rules. However, as per the applicant, he was promoted to the rank of Section Officer (SO for short) retrospectively since 6.9.80 pursuant to the decision of the apex court in the case of Karam Singh & Ors. Vs. UOI. Following the retrospective promotion as aforesaid, applicant's pension was revised from Rs.701 to Rs.872 per month vide Annexure A-1 dated 27.1.89. The order of promotion dated 15.6.88 was received by the applicant very late on 19.9.89. Annexures C and D refer in this connection. Respondent thereafter passed an order dated 5.10.89 (Annexure E) directing the Controller of Accounts (Pension Section) to release urgently the withheld amount of retirement gratuity in respect of the applicant. Applicant, however, got a bolt from the blue by the impugned order dated 13.5.92 by which respondent decided that the applicant would draw only that much of pension which he was originally drawing i.e. @ Rs.701 p.m. on the plea that payment to the applicant was made inadvertently. The communication in this respect is at Annexure F.

3. Applicant has assailed the impugned order dated 13.5.92 mainly on two grounds. Firstly, it is against the order of Government of India vide its U.O.No.D-2776/E.V/52 dated 8.5.59. The said order stipulates as under:

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"Pensions are not in the nature of reward but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct vide Art. 351, CSR (Rule 8, CCS(Pension) Rules, 1972) but it cannot be stopped or reduced for other reasons"

(17)

Secondly, the applicant would argue that Union of India has no right or power to cancel the appointment/promotion of the applicant without giving him even show cause notice as per the ratio of the judgement of the Hon'ble Supreme Court in the case of **H.L.Trehan & Ors. V. UOI & Ors. 1988(2) SCALE 1376** and specially with regard to promotion by mistake/error (as alleged in this case) as held in the case of **A.Radhakrishnan V. UOI SLR 1988(7) 334**.

4. In the counter, respondents have submitted that Shri I.S.Ahluwalia was not promoted pursuant to any judgement of court. There was one Shri L.S.Ahluwalia who was promoted and his name appears at Sl.No.75 in the notification dated 15.6.88 (Annexure R-IV). Applicant's name does not figure in this notification. However, while fixing the pay of the officer promoted vide order dated 31.10.88 (Annexure R-VII) name of the applicant was mistakenly mentioned at Sl.No.73 instead of L.S. Ahluwalia, who was actually promoted. This clerical error was not detected at the relevant time resulting in wrong upward revision of applicant's pension, computation of pension amount and other retiral benefits. When the said mistake was detected in 1992, remedial action was taken immediately and his pension, computation of pension and other retirement gratuity were reduced to the original amounts in terms of the provisions under Rule 70 of CCS(Pension) Rules, 1972.

5. Respondent would also submit that the judgement in the case of Karam Singh (supra) does not cover applicant's case. In order to give effect to the judgement in Karam Singh's case, four select lists were

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issued by the Cadre Cell vide four orders (Annexures R-II to R-V) and applicant's name does not figure in any of these lists. It was on the basis of these four select lists that notification dated 15.6.88 promoting 130 officers of the integrated Grade II and III of Indian Foreign Service (B) was issued vide Annexure R-VI. Applicant's name is not there in R-VI. On the other hand, name of Shri L.S.Ahluwalia appears at Sl.No.111. Thus, the applicant was never promoted as SO as claimed by him.

6. Shri N.S.Mehta, learned senior counsel for the respondent also contended that there is a provision under Rule 70 of CCS(Pension) Rules, 1972 (R-IX) to revise a pension when authorised to the disadvantage of the pension sanctioning authority if such revision becomes necessary on account of detection of a clerical error subsequently. However, if this error is detected after two years from the date of authorisation of pension, the concurrence of the Department of Pension & Pensioners' Welfare has to be obtained. These procedures have been duly followed before issuing order dated 28.3.93 for revision of pension and directing the applicant to refund the overdrawn amount of pension. It has also been contended that there is no provision under Rule 70 of CCS(Pension) Rules, 1972 which requires that opportunity be given to the pensioner to show cause why his pension should not be revised to correct the clerical mistake. That apart, applicant was not a party to the case decided by the Supreme Court in Karam Singh & Ors.(supra). Those who were party to the aforesaid case were given the benefits of the judgement as per the Select List mentioned at R-II to R-V.

(19)

7. In the context of the aforesaid rival contentions, we are required to decide the legality or otherwise of the respondent's orders dated 13.5.92 (Annexure F1) as well as 23.3.93 (Annexure G). The order dated 13.5.92, inter alia, mentions the following:

"The excess payment on account of arrears of fixation of pay etc. is to be recovered from Shri I.S.Ahluwalia. Shri I.S.Ahluwalia will draw the same pay and allowances that he would have drawn but for his re-fixation of pay vide above mentioned order in the scale of Rs.425-800"

8. While issuing the order respondent appears to have given directions to the appropriate authority for preparing necessary "due and drawn" statement for the relevant period for making necessary recoveries from the applicant. We find that the impugned orders at F1 forces the applicant to face adverse civil consequences. We also find that an identical issue was examined by the Madras Bench of this Tribunal in ^{the case of} A.Radhakrishnan (supra). That was the case where promotion was made on the basis of an error on the part of the administration by treating the applicant as senior. The mistake was detected subsequently and orders of reversion were issued while rectifying the defect. The Tribunal held that even if the respondents have had the power to pass an order having adverse consequence on the petitioner, in order to rectify a benefit which had earlier been conferred erroneously, the principle of natural justice have to be followed and opportunity has to be given to the person who is going to be adversely affected, because such a person has acquired certain right in the meantime. The plea that even if an opportunity was given to such a petitioner he may not have a sound representation or a

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reason which will enable him to continue to reap the benefit, which has already acquired, cannot be legally accepted. (20)

9. We find that the orders at F1 and G have not been preceded with any pre-warning. It has been well settled for a long time in service jurisprudence that such an order to the detriment of an official cannot be made without affording him/her an opportunity to show cause against the proposed order. The affected person must know the reasons for which action is proposed. Authority is legion for this proposition and it is found in a long catena of decisions i.e. State of Orissa Vs. Dr.(Ms) Binapani Dei & Ors. AIR 1967 SC 1269. Admittedly, the impugned orders herein were passed without disclosing the reasons thereof to the applicant and without affording him an opportunity to represent his case against the orders having adverse civil consequences. That apart, applicant was apparently given promotion with retrospective effect from 6.9.86. The order of promotion, already effected and continued for over 5 years, could not have been reversed without obtaining explanation from the affected employee. For this reason alone, we have to quash the impugned orders being violative of principles of natural justice.

10. For the reasons aforementioned, the OA is accordingly allowed with the following directions:

- (i) Orders at Annexures F1 and G shall stand set aside;

2

(ii) Respondent are directed to restrain from recovering any further amount yet to be paid by the applicant. Respondent, however, are at liberty to show cause to the applicant if they propose to revert him from the post of SO and pass an appropriate orders after considering such representation as may be made by the applicant.

(21)

(iii) In case applicant's representation is decided by the respondent favourably, the amount recovered shall be refunded.

8. Application is disposed of as above. No costs.



(S.P. Biswas)
Member(A)



(A.V. Haridasan)
Vice-Chairman(J)

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