

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 28th day of September, 2000

Original Application No. 685 of 1996

CORAM:-

Hon'ble Mr. Rafiuddin, J.M.

K.N. Prasad S/o Late J.N. Prasad,
R/o Shakun Shankerpuri,
Sector 3, P.O. Jungai
Salig Ram, Gorakhpur.

(Sri Sanjay Kumar Om, Advocate)

..... Applicant

Versus

1. The Union of India,
Through General Manager,
N.E. Railway, Gorakhpur.
2. The Chief Personnel Officer,
North Eastern Railway, Gorakhpur.
3. The Financial Adviser, Chief Accounts Officer,
North Eastern Railway, Gorakhpur.

(Sri Prashant Mathur, Advocate)

..... Respondents

O R D E R

By Hon'ble Mr. Rafiuddin, J.M.

The applicant, who retired as Deputy Chief Vigilance Officer (Traffic), N.E. Railway, Gorakhpur, on attaining the age of superannuation on 31-1-1996, has filed this OA for quashing the order whereby basic pay of the applicant has been reduced from Rs. 43275/- to Rs. 4125/- per month and for a direction to the respondents to pay the entire amount of gratuity, pension, Provident Fund and GIS, leave encashment and other retiral benefits calculated @Rs. 43275/- per month as salary.

Correction
made w/o order
dated 18.4.01
Rn
18.4.01

Rn

2. The applicant was initially appointed as a Signaller in Group 'C' service w.e.f. 1-7-1958 in the N.E. Railway, Gorakhpur. During the course of his career he came to be promoted to Senior Scale Rs.3000-4500 of Grade 'A' service on ad hoc basis and for Junior Scale of Group 'A' w.e.f. 10-4-1991 in the scale of Rs.2200-4000. The date of increment of the applicant for time scale was notified w.e.f. 10-4-1986 by the respondents whereby he was placed senior to direct recruitment of 1985 examination batch whose date of increment in time scale was 22-12-1986. The applicant was promoted in Junior Administrative Grade on ad hoc basis on 12-9-1994. The salary of the applicant, while he was posted as Chief Transportation Passenger Manager, was fixed @Rs.4250/- per month plus Rs.200/- as charge allowance. The applicant continued to receive this salary till 1-11-1995 when his salary was raised to Rs.4375/- plus Rs.200 per month and he continued to receive this salary till his date of retirement.

3. The applicant, however, after his retirement found that the respondents have reduced his pay scale of Rs.4375/- to Rs.4125/- and also calculated his gratuity and other retiral benefits on the basis of his basic salary of Rs.4125/- per month instead of Rs.4375/- per month. The respondents also made recovery of Rs.25,000/- from his gratuity stating that the same has been over paid to the applicant.

4. The applicant claims that he has not been issued any show cause notice nor afforded any opportunity by the respondents before reducing his pay. The respondents have also not even issued any written order reducing his pay. Thus, the action of the respondents is arbitrary illegal and is liable to be quashed.

5. I have heard counsel for both the parties and perused the record carefully.

6. Learned counsel for the respondents has contended on the basis of the pleadings of the respondents that the respondents have valid reasons to recover the amount from the DCRG of the applicant. It is pleaded that the pay of the applicant was erroneously fixed in Grade 'A' service from the date of increment and time scale i.e. from 10-4-1986 whereas as per the Railway Board letter dated 10-9-1992, 22-6-1993, 15-2-1996 and 16-2-1997, it is admissible only from the date of substantive appointment to the Junior Scale of I.R.T.S. and not from the date of increment on time scale. On detection of the erroneous calculation of arrear, the pay of the applicant was fixed in accordance with the existing rules and the overpayment already made to the applicant was ordered to be recovered from his DCRG.

7. Learned counsel for the applicant has, however, contended that action of the respondents in reducing the pensionary benefits to the applicant reducing his salary till his retirement is illegal because it amounts to a measure of punishment without any disciplinary proceeding against the applicant. It is also contended by the learned counsel for the applicant that the pay of the applicant was correctly fixed in Group 'A' Service Junior Scale w.e.f. 10-4-1986 in the pay scale of Rs.2200-4000. Learned counsel for the applicant has also denied that the applicant is entitled to fixation of pay w.e.f. 10-4-1986 in terms of the circulars dated 10-9-1992, 22-6-1993, 15-2-1996 and 16-2-1997 because the letter was issued to him on 10-1-1991 but the same

was given benefit of seniority for the grade w.e.f. 10-4-1986. Therefore, the applicant shall be deemed to have been appointed from 10-4-1986. Thus, the pay of the applicant was correctly fixed from the date of his appointment i.e. 10-4-1986. It is also claimed that the circular dated 15-2-1996 and 16-2-1997 do not apply to the facts of the present case because the applicant had already retired prior to the issuance of the said circulars. Learned counsel for the applicant also contended that in the absence of any rule or provision which empowers the respondents to deduct or reduce the salary of the applicant after his retirement, the action of the respondents is wholly illegal and arbitrary.

8. It is evident that there are two main points to be determined in the instant case, firstly, whether the respondents are justified and are empowered to recover the amount of alleged overpayment having been made to the applicant on account of wrong fixation of his pay. Secondly, whether the pay of the applicant was not correctly fixed.

9. It is admitted case that the respondents have reduced the pay scale of the applicant without issuing him any show cause and that too after his retirement. The contention of the learned counsel for the respondents that since wrong fixation of the pay scale of the applicant was deducted during the verification of the entire record on the eve of the settlement of the retirement benefits applicable to the applicant. Hence, the necessary refixation was done in accordance with the standing orders and rules on the subject. However, I am not impressed by this contention because the respondents are not legally justified to refix the

Qy

the pay scale of the applicant at the end of his career when his retiral benefits were being determined without issuing show cause notice. The action of the respondents deducting the amount of alleged settlement after refixing his pay is illegal and arbitrary, because such order which entails civil consequences would not have been passed by the Railway Administration without observing the principles of natural justice. I find support from the decision of the Apex Court on this point which is reported in 1994(28) ATC 258 (Bhagwan Shukla Vs. UOI & Ors). In that case also the pay of the official had been fixed from a particular date. Subsequently, the Railway Administration refixed his pay and reduced his basic pay from a particular date. It was stated that due to administrative lapse the mistake had occurred in fixing the pay of the officer wrongly and it had been subsequently corrected. After refixation order was passed, the official challenged that order before the Bench of this Tribunal at Patna. The Patna Bench dismissed the application. Hence, the applicant carrit forward the matter before the Hon'ble Supreme Court in appeal. The Apex Court held that the order of refixation of pay retrospectively will entail civil consequences and since the applicant was not given an opportunity to show ^{cause} as to why his pay should not be reduced and as such the order was passed without any notice to the concerned officer, it was held that the order is passed in flagarant violation of the principles of natural justice and the officer was made to suffer huge financial loss without being heard. The appeal was allowed and the impugned order was quashed by the Apex Court. Thus the views expressed by the Hon'ble Supreme Court are squarely

Ry

~~are~~ applicable to the facts of the present case. Besides, similar view has also been expressed by the Apex Court in number of cases including Shyam Babu Verma, 1994(27), ATC 21, Saheb Rav Vs. State of Haryana, 1995 SCC (L&S) 248 and UUI Vs. M. Bhasker, 1996(4) SCC 416. Consequently, the order of the respondents is liable to be quashed on this ground alone.

10. I, therefore, do not consider it necessary to the next question, namely, whether the pay has been fixed correctly or not because that is not necessary for decision of the DA.

11. For the reasons stated above, the DA is allowed and the respondents are directed to pay the entire amount of gratuity, pension, Provident Fund, GIS, leave encashment and other retiral benefits calculated @Rs.4375/- per month as salary alongwith interest @12% ^{R. till} ~~since~~ the date of payment to the applicant within a period of three months from the date of communication of this order. There shall be no order as to costs.

Dabir Wadda
Member (J)

Dube/