

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No.527 of 1997  
this the day of 14th, May 2000.

HON'BLE MS. MEERA CHHIBBER, MEMBER JUDICIAL

Naresh Chandra Verma, son of,  
Late Sri Harischandra Verma,  
Resident of House No.60, Ganga,  
Bhawan Mohalla-West of Chhaya,  
Talkies, Bheriagarh, P.O. Geeta,  
Vatika, District-Gorakhpur.

...Applicant.

By Advocate:-Sri Bashist Tewari.

Versus.

Union of India & through the General Manager,  
"North Eastern Railway, Gorakhpur(H.Q).

2. Chief Personnel Officer, (G.M.)(P) North,  
Eastern Railway, Gorakhpur.

3. Financial Adviser and Chief Account Officer,  
North Eastern Railway, Gorakhpur.

...Respondents.

By Advocate:- Sri P. Mathur.

O R D E R (ORAL)

By Hon'ble Ms. Meera Chhibber, J.M.

By this O.A. the applicant has challenged the  
reply dated 15.12.1995 (Annexure-1) and pay fixation done  
on 6.12.1995 and Annexure A on the ground that when he  
retired on 31.3.1995 his last pay drawn was Rs.4375/- and

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to substantiate this averment he has annexed page 31 of the OA whereby on 31-3-1995 even a Service Certificate was issued to the applicant mentioning therein that he was drawing last basic pay Rs.4375/- on the day when he superannuated. The grievance of the applicant is that by an order dated 6-12-1995 his basic pay which was earlier fixed Rs.4375/- has been reduced to Rs.4250/- by the respondents without giving him show cause notice and when he represented before the Pension Adalat even they have not taken a final decision in the matter. The remarks given in Annexure-1 dated 15-12-1995 read as under :-

"Your fixation at Rs.3750/- in scale Rs.3000-4500 was done erroneously as you were drawing pay Rs.3500/- in scale Rs.2000-3500 at the time of your fixation in scale Rs.3000-4500 while fixing up your pay in scale Rs.3000-4500 you were awarded two increments, one of the lower scale and the other of the higher scale which has resulted wrong fixation of your pay at Rs.3750/- whereas you should have been given only one increment of the lower scale and thereafter your pay should have been fixed at the next stage of the higher scale i.e. at Rs.3625/-. This has caused reduction of your pay from Rs.4375/- to Rs.4250/- at the time of your retirement and your settlement dues were paid at Rs.4250/-. As a result you have been overpaid Rs.8589/- for which Rs.9000/- has been withheld from your DCRG.

2. The issue of fixation of your pay in Gr. A service has been referred to Rly. Board by the Accounts & the decision of Rly. Board is awaited. As soon as it is received needful action will be taken for fixation of pay and revision of pensionary benefits.
3. The payment of Rs.1000 out of the withheld amount of Rs.10000/- has been arranged to you vide cheque no.018743/D937102 dated 3-8-95. After affecting the Govt. dues to the tune of Rs.8589/- on account of over payment from the rest withheld amount of Rs.9000/- the balance of Rs.411/- has been paid to you vide cheque no.018745/D 937232 dated 8-12-95".

2. It is submitted by the applicant's counsel that the law is well settled on the point that once the pay is fixed by the respondents without any misrepresentation by the applicant the same could not be changed without giving show cause notice to the employee even though in this case according to the applicant there was no wrong fixation of pay at all when it was fixed at Rs.4375/-.

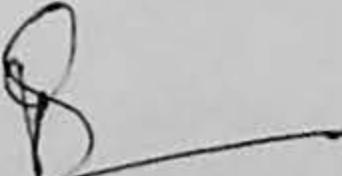
The respondents on the other hand contested this OA by stating that since his pay was erroneously fixed by giving

increments whereas he should have been given only one increment of the lower scale. Thus, it was correction of mistake for which no show cause notice is required and simply on the erroneously fixed pay he does not get any right to claim the benefits on the basis of such fixation of pay.

3. I have heard counsel for the parties and perused the ~~SM~~ documents. The law on the subject is already settled by the various judgements of Hon'ble Supreme Court. The learned counsel for the applicant has also given a judgement of this Bench decided on 28-9-2000 in OA No.685/1996 wherein the applicant had also challenged the orders whereby his pay was changed without giving him show cause notice. In the said judgement the Hon'ble Member after discussing every thing including the judgement of Hon'ble Supreme Court has quashed the impugned order therein and directed the respondents to pay the entire amount of gratuity, pension, provident fund, GIS, leave encashment and other retiral benefits calculated on the basis of Rs.4375/- per month as salary alongwith interest @12% till the date of payment to the applicant within a period of three months from the date of communication of this order. The learned counsel for the respondents has, however, submitted that this judgement cannot be taken as binding as respondents have already filed a review against the said order which is as still pending. Even if the above said OA may not be final order but the fact remains that even the Hon'ble Supreme Court has held in 1994 (28) ATC 258 Bhagwan Shukla Vs. Union of India & Others, that 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. It was held that the order is passed in flagrant violation of the principles of natural justice. As such the Hon'ble

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Supreme Court quashed the impugned order therein. The same view was taken by the Hon'ble Supreme Court in the case of Shyam Babu Verma, 1994 (27) ATC 21 and in the case of Saheb Ram Vs. State of Haryana, 1995 SCC(L&S) 248. The law is settled by the Hon'ble Supreme Court that even if the pay scale was required to be corrected the same cannot be changed without giving show cause notice to the applicant. In the instant case admittedly no show cause notice was given to the applicant. As far Annexure-1 is concerned these are only remarks given by the respondents before the Pension Adalat. There is no final order passed by the Pension Adalat nor the same has been shown to have been passed by either side. Thus, it is seen that the matter is still pending with the Pension Adalat. Therefore, the order dated 6-12-1995 is quashed and set aside. Since Annexure-A-1 are only remarks which have not been decided by the Pension Adalat, therefore, there is no need to quash the same as the case is being remanded back to the respondents to issue appropriate orders after following due process of law i.e. by issuing a show cause notice to the applicant and giving him opportunity to file reply and personal hearing as well. This exercise shall be completed by the respondents within a period of two months from the date of communication of this order. With the above direction the O.A. is allowed. No costs.



Member (J.)

Amit/