



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/922/2019

(Order reserved on 09.03.2021)

Chandigarh, this the 17th day of March, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Virender Pal aged about 63 years S/o Sh. Jai Lal resident of village, Balrod Tehsil & Distt. Charkhi Dadri, Haryana. Pin-127022

.....Applicant

By Advocate: Sh. R.S. Sangwan

Versus

1. Union of India through its Secretary to Govt. of India, Ministry of Railways, DRM (Lit) Northern Railways, Delhi Division, New Delhi-110001.
2. Sr.Divisional Personnel Officer, Northern Railway Firozpur Division, Firozur, Punjab, Pin-152004.
3. Chief Project Director, Railway Electrification, Ambala Cantt. Ambala, Distt. Ambala, Haryana-133001
4. Senior Divisional Finance Manager, Northern Railway, Firozpur Division, Firozpur Punjab-152004.

.....Respondents

By Advocate: Sh. Suresh Verma

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Virender Pal seeking benefit of continuous qualifying service from 15.07.1986 to 31.07.2016 and refixation of his pension



accordingly. He has also sought release of amount of Rs. 2,20,174/- which has been withheld from his retiral dues along with interest at the rate of 12% per annum from the date of his retirement on 31.07.2016 till the date of payment.

2. The applicant has stated that he was appointed as Electrician Khalasi and joined his service as such w.e.f. 15.07.1986. Entry in this respect was incorporated in his service documents including service book. Nothing incriminating was communicated during his whole service period and there was no complaint against him. He earned his normal promotions, increments and upgradations and retired as Senior Technician on attaining the age of 60 years.

3. The applicant has further stated that a service certificate dated 31.07.2016 (Annexure A-1) issued by Chief Project Director indicates his service from 13.11.1986 to 31.07.2016. But this is wrong. The applicant joined service on 15.07.1986. As such, he had rendered more than 30 years of service. But, his qualifying service has been shown to be only 29 years and five months which is wrong. He needs to be granted service benefits taking his service right from 15.07.1989.

4. The applicant pleads that he made number of representations to the respondents. Thereafter, he was issued PPO dated 19.03.2018 and his retiral benefits had been credited in his bank account on 07.04.2018. However, the applicant is not at fault in any manner. He is therefore entitled to interest for the delay of one year and nine months in release of his retiral benefits. The applicant has alleged that the delay was willful and



intentional on part of the respondents and was not attributable to him in any manner. He has, therefore, claimed interest at the rate of 12% for delay in payment of retiral dues.

5. Besides above, the applicant has stated that a recovery of Rs. 2,20,174/- has been made from his retiral dues. However, the respondents have not stated any reason for making the recovery and no notice was given to him. He was also not given any opportunity of hearing which action of the respondents is wrong and illegal.

6. The applicant has also relied upon the judgement of the Supreme Court of India dated 18.12.2014 titled as **State of Punjab & Others versus Rafiq Masih and Others**, SCT 2015(1) 195 and DoPT instructions dated 02.03.2016 (Annexure A-4) in pursuance of the same. He has also relied upon judgement in case of **A.J. Randhawa versus State of Punjab and Others**, 1998(1) SCT 343.

7. In view of all above, the applicant claimed that he deserves the relief sought by him in the OA and the same deserves to be allowed.

8. The respondents have contested the claim of the applicant. They have stated that the OA is barred by limitation as the applicant has approached the Tribunal belatedly.

9. The respondents have further stated that the applicant was appointed as substitute Khalasi on 15.07.1986 and he was regularized as such on 13.11.1986. As such, he has been given benefit of qualifying service of 29 years and five months correctly.



10. The respondents have further stated that at the time of retirement of the applicant, the pay of the applicant as per 6th CPC, was shown as Rs. 17970/- with Grade Pay of Rs. 4200/-. Based on this, his pay was revised as per 7th CPC to 46200/-. However, objection was raised by accounts department that the pay w.e.f. 01.07.2006 was wrongly fixed. Hence, the same had to be reduced to Rs. 44900/- as per 7th CPC.

11. Regarding delay, the respondents have stated that as per instructions in their department, three retiral payments, namely, Provident Fund, Leave Encashment and GIS are to be made by Construction/RE department where the employee was last working. The remaining three retiral payments, namely, Pension, Gratuity and Commutation are to be made by the concerned division. In the case of the applicant, his three payments of Provident Fund, Leave Encashment and GIS were processed within stipulated period by respondent No. 3. However, when the case was received by respondent No. 4 on 11.08.2016 and was verified by the accounts branch, it was found that both his pay fixation and No Demand Certificate were as per 6th CPC. Meanwhile, report of the 7th CPC had been received and hence, the case of the applicant had to be sent back to respondent No. 3 for refixation of his pay as per 7th CPC. Refixation was done on 21.11.2016 as per fixation chart at Annexure R-2. Respondent No. 3 thereafter sent the service record again to respondent No. 4, but this was without No Demand Certificate as per 7th CPC. The respondent No. 4 thereafter wrote a letter to Dy. CPO, Ambala on 25.04.2017 and



the No Demand Certificate was received on 05.05.2017. Thereafter, the case of applicant was processed for settlement dues, but the same was returned by the account branch with the observation that his pay was wrongly fixed w.e.f. 01.07.2006. As such, the case had again to be returned to respondent No. 3 for correct fixation of his pay. Respondent No. 3 was also asked to intimate the date of appointment in I-Pass and recovery if any made from his settlement along with revised No Demand Certificate after 04.08.2017. These were received by respondent No. 4 on 19.02.2018 and his case for settlement of dues was processed thereafter.

12. The respondents have further pleaded that the applicant was paid Gratuity of Rs. 6,75,521/- and Commutation of Rs. 8,82,986/-. From the Gratuity, Rs. 2,20,174/- was deducted. This recovery/deduction comprises of Rs. 1,75,274/- towards overpayment of pay and Rs. 44,900/- towards Railway Employees Liberalized Health Scheme which is mandatory as per Rules.

13. The respondents have further stated that on a scrutiny of service record of the applicant, it came to notice that he had opted for revised 6th CPC w.e.f. 01.04.2006 - that is the date of his promotion as Tech-1. But his pay was wrongly fixed at Rs. 11840/- instead of Rs. 11170/- w.e.f. 01.07.2006. Therefore, his pay had to be revised and excess amount had to be recovered from his pensionary benefits. As such, the question of grant of opportunity does not arise.



14. The respondents have relied on number of cases to support this view. They have quoted judgement in case of **Chairman, Board of Mining Examination and Chief Inspector of Mines and Another vs. Ramjee**, AIR 1977 SC 965. They have also relied on case of **Sunder Lal and Others vs. State of Punjab**, AIR 1970 P H 241 as well as judgement of **Chandi Prasad Uniyal and Others versus State of Uttarakhand**, (2012) 8 SCC 417 and judgement in the case of **High Court of Punjab and Haryana and Others vs. Jagdev Singh** in CA No. 3500/2006 decided on 29.07.2016.

15. In view of all above, the respondents have concluded that the applicant does not deserve the relief sought in the OA and the same needs to be dismissed on merits as well.

16. I have heard the counsel of the opposing parties and have also gone through the pleadings of the case. I have also given my thoughtful consideration to the entire matter.

17. Firstly, I observe that basically there are three issues involved in this case – (i) total length of service of the applicant (ii) recovery made from him and (iii) interest on delayed payment of retiral dues. Each of these issues is being dealt with in the subsequent paragraphs.

18. Regarding the first issue of length of service, I find that the only dispute is regarding initial date of appointment. While the applicant is claiming his qualifying service right from 15.07.1986, the respondent department is taking the same from 13.11.1986. There is no other difference or discrepancy in the qualifying service except this as per the pleadings in the OA.



Regarding date of initial appointment, the respondents have clearly stated that the applicant was appointed as substitute Khalasi on 15.07.1986 and he was regularized on 13.11.1986 and as such, his qualifying service has been worked out accordingly to be 29 years and five months which is correct.

19. I also find from the service record appended by the applicant himself at Annexure A-1 that his services have been certified from 13.11.1986 to 31.07.2016. Thus, this certificate is not w.e.f. 15.07.1986 as claimed by the applicant. So, this does not support his case. I also find that the service book of the applicant annexed at Annexure A-2 also records as follows:-

"He has been appointed as a sub khalasi in Gr. Rs. 196-232 (RS) w.e.f. 13.11.86 Vide CEE/N.Rly/Baroda House/New Delhi Authority letter No. 186 E/Elec/G/3T dt. 22-11-85

Pay fixed Rs. 750/pm wef 13/11/86
Pay raised Rs. 762/pm wef 01/11/87"

20. I do find that in the bio-data of the applicant, it is recorded in form of note below that the applicant was appointed as a CPC Khalasi in Grade of Rs. 196-232 (RS) w.e.f. 02.07.1986. However, firstly, the date of 02.07.1986 does not match with the own pleadings of the applicant as he has claimed that he joined service on 15.07.1986. Secondly, in this record, the word 'CPC' has been incorporated later after cutting the word 'Sub'. Besides, date of appointment on the top in this proforma had been indicated as 15.07.1986. Considering that on the next page, there is a medical certificate declaring the applicant as fit is dated 14.07.1986, I believe that this must be the routine required for fitness prior to the engagement of the candidates as



substitute Khalasi. Hence, not much credence can be given to these stray and self-contradictory indications in bio-data. This is especially so in view of the specific entries made in the service book giving details of date of appointment and pay fixation etc. The pay of the applicant has also been fixed at Rs. 750/- p.m. w.e.f. 13.11.1986. It has been raised to Rs. 762 w.e.f. 01.11.1987. Thus, it is clear that the applicant was appointed only w.e.f. 13.11.1986 and not 15.07.1986. In such a case, the qualifying service worked out by the respondents till his date of retirement on 31.07.2016 is correct. This settles the first issue.

21. Regarding the second issue of recovery, the respondent department had clearly stated that recovery had to be made as the pay of the applicant was wrongly fixed in 6th CPC and thereafter in 7th CPC right from 2006 onwards. The respondents have also relied upon the case of **Chairman, Board of Mining Examination** (supra) which clearly states that natural justice is not unruly horse, no lurking land line, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and fundamentals of such essential process properly being conditioned by facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction.

22. The respondents have further relied on the case of **Sunder Lal and Others** (supra) where it is held that "if owning



to some bona fide mistake, the Government has taken a decision, regarding the confirmation of an officer, it can certainly revise its decision at a subsequent stage, when the mistake comes to its notice. The mistake can be corrected and it cannot be said that it should be allowed to perpetuate even when the same is discovered". In the present case, there was a mistake in pay fixation of the applicant from 2006 onwards. Respondents were, therefore, within their right to correct the mistake made earlier.

23. Regarding recovery of the amount, the respondents have relied upon judgement in **Chandi Prasad Uniyal and Others** (supra) where it is squarely held that amount paid or received without any authority of law can always be recovered barring a few exceptions of extreme hardships. Such extreme hardships are not noticeable in this case as the applicant has received substantial sum of over Rupees fifteen lakhs as his retiral benefits. Even in the case of **Jagdev Singh** (supra), it is held as follows:-

"This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made."

24. In view of all above, I notice that in its various judgements, the Apex Court has held that recovery can be made barring only few exceptions of extreme hardships. Such hardships are not there in the instant case. As such, the



respondents were within their right to make the recovery from the retiral dues of the applicant.

25. It is further noticed that the recovery of Rs. 2,20,174/- being indicated by the applicant is not all towards overpayment of pay. Out of this amount, Rs. 44,900/- is towards Railway Employees Liberalized Health Scheme which is mandatory as per Rules. Only the balance Rs. 1,75,274/- is towards overpayment of pay. As such, the applicant is not right when he indicates the amount of recovery without excluding the payments made for health scheme. Even the deduction sheet in Annexure A-3 shows the deduction amount to be only Rs. 1,75,274/- and not Rs. 2,20,174/-. Thus, it is clear that the applicant is guilty of misleading the Tribunal.

26. Regarding the last issue of interest on delayed payment, it is noted that the applicant retired in July 2016. But the PPO was issued only on 19.03.2018 (Annexure A-3). Thus, there was a delay of over 1-1/2 years in payment of retiral dues. This was undoubtedly on account of processing involved as well as wrong fixation of pay of the applicant in 6th CPC which was detected by the accounts department at a very late stage. The delay was also due to coming into operation of 7th CPC right when the case of the applicant under 6th CPC was getting finalized. Be that as it may, even the respondents have not found the applicant responsible for the delay. They have nowhere stated that the delay is attributable to the applicant. They are only explaining the reasons for delay by giving a detailed chronology which has been partially reproduced in this



order when their version is being discussed. As such, I find that this part of the claim has some merit.

27. Regarding statement of the respondents that the OA is beyond limitation, I do not find the same to be true. The PPO has been issued on 19.03.2018. The recovery was made in April 2018. The OA has been filed on 03.09.2019. Thus, it can be said that there is some marginal delay in filing of OA. However, the same is not considered substantial considering that the issues raised in the OA would have involved a recurring cause and also the applicant is only a class III level worker and is pleading for his retiral dues.

28. In view of above, the OA is partially allowed. The applicant is allowed interest at the rates applicable to GPF for the delay in payment of his retiral dues beyond three months from his date of retirement till the date of actual payment. The payment shall be made within two months of receipt of a certified copy of this order.

29. There shall be no order as to costs.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh
Dated: March 17th, 2021
ND*