

⑧

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.700 of 2007

Friday, this the 14th day of November 2008

Hon'ble Mr. K.S. Menon, Member (A)

Puttu Lal aged about 80 years son of late Sri Ganesh r/o Village Potle Bagichi New Abadi P.O. Kali Ka Nagla Deoria Road, Agra District Agra.

Applicant

By Advocate: Sri B.N. Singh

Vs.

1. Union of India through its General Manager, North Central Railway, Allahabad.
2. Senior Divisional Accounts Officer, North Central Railway, Allahabad.
3. Assistant Divisional Finance Manager, North Central Railway, Allahabad.

Respondents

By Advocate: Sri Prashant Mathur

ORDER

By K.S. Menon, Member (A)

The O.A. is filed against the Order dated 09.05.2005 passed by respondent No. 3 by which the applicant's pension was reduced from Rs.4431/- to Rs.3046/- w.e.f. 01.01.1996 and the excess amount of pension paid was ordered to be recovered from the applicant.

2. The facts of the case in brief are that the applicant retired as Driver 'B', North Central Railway, Tundla on 30.09.1985 and his pension was fixed as Rs.812/- per month w.e.f. 01.10.1985. This pension was first revised to Rs.855/- on 22.07.1988 and subsequently to Rs.4431/- w.e.f. 01.01.1996 in October 1999. In January 2005, the State Bank of India where the applicant was drawing his pension wrote to the respondents seeking clarification regarding the payment of pension to be effected based on the revised Pension Payment Order dated October 1999. It appears that the State Bank of India had

2

further indicated in their letter to the respondents that if suitable action is not taken and the pensioner approaches a Court of law then the department concerned (respondents in this O.A.) would be responsible for the same.

3. In response to the aforesaid letter of the State Bank of India, the respondents issued the impugned order reducing the applicant's pension from Rs.4431/- to Rs.3046/- and effecting recovery of excess payments so made. The Bank was asked to recover Rs.2,04,042/- from the pension of the applicant at the rate of Rs.1950/- per month w.e.f. June 2006. The State Bank of India informed the respondents on 27.07.2006 that recovery of Rs.1950/- per month in respect of the applicant had commenced and a sum of Rs.17,700/- had already been recovered leaving a balance of Rs.1,86,302/- (Annexure-8 to Compilation No.2) The matter was taken up by the Union of retired Railway Workers' Welfare Committee, Tundla besides the applicant represented against the said order on 18.10.2005.

4. The applicant submits that the said recovery from his pension is being made after 20 years from the date of his retirement (30.09.1985) besides the recovery so being made ^{is &} without any opportunity or show cause notice being given to him and on account of a wrong fixation of pension made by the respondents themselves and the applicant had no role in the same. The said recovery from his pension is therefore malafide, arbitrary and not sustainable in law, hence the impugned order is liable to be quashed and set aside.

5. The respondents in their reply at the outset submit that there is no malafide or arbitrariness in the impugned order dated 09.05.2005. The order of recovery from the pension of the applicant was passed in pursuance of a clarification/instruction received from the Railway Board vide their letter dated 29.12.1999 (Annexure-1 to Counter Affidavit) and the respondents had no option but to refix the pension of the applicant in terms of the clarification given in the aforesaid letter of the Railway Board, accordingly the revised Pension Payment Order (PPO) dated 02.02.2004 superseding the previous PPO dated October 1999 was issued. The refixation of pension and the consequential recovery of excess pension paid amounting to Rs. 1385/- per month, to which he is not entitled, was communicated to the State Bank of India

and to the applicant vide the impugned order dated 09.05.2005, which is self-explanatory. The respondents aver that consequent upon re-fixation of pension of the applicant based on Railway Board's instructions there was no option but to reduce his pension. Since the re-fixation of pension resulting in a reduction and consequent recovery of the excess amount of pension made was as per rules and orders of Government, the grounds on which the claim of the applicant has been assailed, are not at all tenable. Consequently the applicant is not entitled to any relief as prayed for in paragraph No. 8 (i) to (v) and the O.A. is liable to be dismissed.

6. Heard Sri B.N. Singh, learned counsel for the applicant and Sri Prashant Mathur, learned counsel for the respondents and perused the pleadings on record.

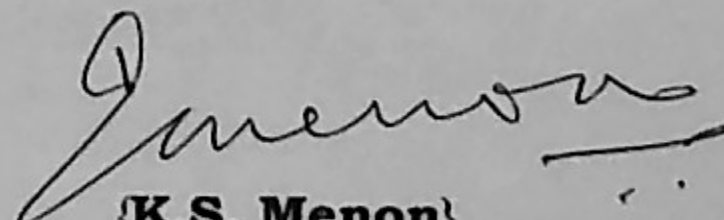
7. Admittedly a PPO was issued in October 1999 fixing the applicant's pension at Rs.4431/- per month w.e.f. 01.01.1996 after including the element of running allowance in the pay, as mentioned in para-6 of the Counter Reply of the respondents. The Railway Board subsequently, based on representations received regarding inclusion of the Running Allowance, examined the issue in detail and issued a clarification, that Running Allowance is not to be taken into consideration for re-fixation of pay on the basis of 5th Pay Commission's recommendation^s vide their letter dated 29.12.1999 (annexure-1 to C.A.). The answering respondents in pursuance of the aforesaid Railway Board letter had to re-fix the applicant's pension. This was done and communicated to the State Bank of India and the applicant vide the impugned order dated 09.05.2005.

8. While the action of the respondents is strictly in accordance with the orders of the Government and the Pay Commission's recommendations and cannot be found fault with, it is not clear as to why re-fixation of Pension (2005) took almost six years after issue of Railway Board's Clarificatory Orders (1999). Since the pension was to be reduced by a substantial amount of Rs.1385/- per month and given the period for which the excess amount was paid, the respondents as a model employer^s ought to have informed the applicant immediately on receipt of Railway Board's Clarificatory Orders.

9. The Bangalore Bench of the Central Administrative Tribunal in O.A. No. 148 of 2002 L. Nara Hari vs. Union of India and others (decided on 19.01.2002) had held that downward revision of pension can be done if earlier fixation of pension was erroneous and it falls within the definition of clerical error under Rule 71 of CCS (Pension) Rules. In the instant case also pension was fixed erroneously in 1999 by inclusion of running allowance in the pay. Therefore a downward revision of pension was necessitated by virtue of the clarification given by the Railway Board in its letter-dated 29.12.1999. Since this action of the respondents comes under the category of clerical error defined in Rule 71 of CCS (Pension) Rules, 1972, the re-fixation of pension and consequent downward revision of pension is held to be in order. However, since the applicant has not in any way been responsible for the said clerical error by means of providing false information or suppressing certain facts, it is said that he has had no role in the aforesaid erroneous fixation of pension. Therefore, no recovery for over payment can be made from the pension, so revised. The applicant has been enjoying an interim relief/stay on the aforesaid recovery of pension since 13.07.2007, as per the order of this Tribunal.

10. In view of the above, I am of the considered view that the impugned order dated 09.05.2005 is correct to the extent of downward revision in pension only. The respondents are, however, directed not to recover the excess pension, so paid to the applicant. Excess payment recovered so far, shall be refunded to the applicant with 10% interest per annum, from the date of initial deduction of recovery till the date of refund of excess payment. This exercise shall be completed within 3 months from the date of receipt of a certified copy of this order.

11. With the above directions, the O.A. stands disposed of. No order as to costs.


{K.S. Menon}
Member 'A'

/M.M/