

T.A.NO.

Shri Lalashanker Ambalal Trivedi Petitioner

Mr. V. S. Mehta Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Mr.N.S.Shevde Advocate for the Respondent [s]

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T.N.Bhat : Member(J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Lalashanker Ambalal Trivedi,
Village-Santej,
Taluka - Kalol, Dist: Mehsana

: Applicant

(Advocate: Mr.V.S.Mehta)

Versus

1. General Manager,
Western Railway,
Churchgate, Bombay-20.
2. Divisional Railway Manager(E)
Western Railway, Rajkot Division,
Kothi Compound, Rajkot.
3. Divisional Accounts Officer,
Western Railway, Rajkot Division,
Kothi Compound, Rajkot.
4. Divisional Commercial Superintendent,
Western Railway, Rajkot Division,
Kothi Compound, Rajkot.

: Respondents

(Advocate: Mr.N.S.Shevde)

Date: 22.10.1998

JUDGMENT

O.A.518/92

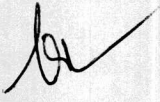
Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

The applicant retired from service with the respondents on 30.11.1991. At the time of retirement he was drawing pay of Rs.1960/- p.m. However, at the time of retirement when his pension documents were processed, his pay was revised as Rs.1800/- only. The applicant represented against the reduction but no reply was received from the administration. He learnt from the documents relating to final settlement of pension period of three years, 7 months and 11 days was treated as not qualifying service for pension. Being aggrieved by the action of the respondents,

the applicant has filed this O.A. confining himself to reliefs 7 (a) & (b).

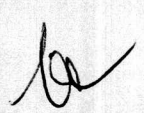
The respondents have filed reply. They have stated that at the time of retirement of the applicant, the service particulars were reviewed and it was found that he had taken leave without pay for number of days as given in the Exhibits I & 2. Because of the adjustment of leave without pay, his pay was reduced by two increments. In so far as the other two increments are concerned, it was on account of penalty imposed on him in 1961 when his increment was withheld for two years with future effect and which was not effected at that time. Accordingly, the pay of the applicant was correctly worked out at Rs.1300 per month at the time of retirement and his retirement benefits were calculated accordingly.

Mr.Mehta, the learned counsel for the applicant during the arguments stated that the fact of the applicant availing of leave without pay was not brought out to his notice any time during his service and even at the time of retirement no show cause notice was given to him and no opportunity to be heard was given to him. In so far as the question of stoppage of increments as penalty is concerned, he stated that while it was true that he had been issued with charge of memo in 1961 and he had given his defence denying



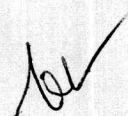
the charges he had not heard anything further from the respondents and no communication imposing penalty was received by him. Mr. Shevde, learned counsel for the respondents stated that the Chief Accounts Officers reviewed the case of the applicant at the time of retirement. From his service book it was seen that he was awarded penalty of stoppage of two increments with cumulative effect in 1961 which was not effected at that time and the applicant had taken leave without pay as given in Exhibit I & 2 which had the effect of postponing the increment. Accordingly, the respondents have justified the reduction of his pay from Rs. 1960 to Rs. 1800 per month at the time of retirement and accordingly, his pension benefits were worked out.

We have heard the learned counsels for both the parties and gone through the records. There is no dispute about the fact that the applicant was not given any show cause notice or opportunity to be heard when his pay was reduced from Rs. 1960 to 1800 at the time of his retirement. We see that as per the exhibits produced by the respondents, the applicant has alleged to have taken leave without pay on several occasions from 1959 to 1974. The respondents had enough opportunity given at the particular occasion to regulate



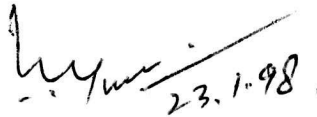
his increments. There is no patent suggestion that the applicant was responsible for his over payment. Having allowed the wrong fixation of pay from 1959 the respondents have chosen to refix the pay downward at the time of retirement in 1991 after lapse of considerable length of time even that has been done without any show cause notice. Similarly, the case of adjusting his penalty of stoppage of increments he was supposed to be done in 1961 but actually adjusted at the time retirement. The Respondents have not been able to produce any copy of the penalty order nor acknowledgement thereof from the applicant. The action of the respondents in refixing his pay at the time of his retirement and reducing his pay without notice cannot be sustained especially keeping in view that there is no evidence of original fixation of pay having been made on account of any misrepresentation on the part of the applicant.


Law is well settled that belated recovery on account of wrong fixation of pay and that too after the retirement of the employee cannot be sustained. We are guided by the decision of their Lordships in the Punjab State Electricity Board v. V.N.Sharma and Bhagwan Shukla v.Union of India. The decision in Mihir Banerjee (Dr) vs. Union of India will also be relevant. In the light of this, we hold that the impugned order of the respondents is unsustainable.



Accordingly, the O.A. is allowed. The respondents are directed to refix the pension and retirement benefits of the applicant on the basis of his drawl of pay at Rs.1960/- at the time of retirement and pay the consequent arrears within three months from the date of receipt of a copy of this order.

With the above directions, O.A. stands disposed of. No costs.


(T.N. Bhat)
Member(J)


(V. Radhakrishnan)
Member(A)

aab