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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 457 of 1992

Date of Decision: April 12, 1993.

Shri Haribandhu Mohanty ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant ... M/s. C.M.K. Murty,
S.Kr. Rath,
B.D. Mohanty,
Advocates

For the Respondents ... Mr. Akshya Kumar Misra,
Addl. Standing Counsel
(Central).

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

1. Whether the reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *yes*.
3. Whether His Lordship wish to see the ~~air~~ copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order contained in Annexures-3 & 4 reducing the Pension of the Petitioner and to give a direction to the Opposite Parties to allow the petitioner to draw pension as fixed in Annexure 2.

2. Shortly stated the case of the petitioner is that ^{he} ~~who~~ was initially appointed as a Packer in the Military Engineering Service Eastern Command Ministry of Defence on 10th September, 1945. The Petitioner served the Government in different capacities and ultimately retired on superannuation with effect from 31st July, 1985. Before retirement the petitioner had filed an application under section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the Opposite Parties to count the services of the petitioner for a particular ^{period} during which he was ^{placed} ~~was~~ under suspension. Accordingly the pension of the petitioner should be calculated.

This application formed subject matter of Original Application No.93 of 1986. Judgment was delivered on December 15, 1988. In the said judgment, directions were given to the appropriate authority to calculate the pension on the pay etc. to be given to the petitioner during the period of suspension. The concerned authority calculated the Pension and it was determined that the petitioner is entitled to Rs. 1261/- per month. Subsequently, it was found that an administrative error had been committed in the matter of calculation of Pension and therefore, vide Annexure 3 dated 28th May, 1992 pension of the petitioner was reduced to Rs. 929/- per month and vide Annexure dated 13th July, 1992 the excess amount received by the petitioner was ordered to be recovered. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the Government had a right to correct its administrative error at any point of time and an administrative error having been detected

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by the concerned authority that an excess amount has been paid to the petitioner it was therefore, rightly ordered that the pension is fixed at Rs.929/- per month and the excess amount be recovered. In addition to above, it is maintained by the Opposite Parties that since the petitioner had retired after 31st March, 1985, he was not entitled to receive certain benefits which was given to him and hence there was a wrong calculation on the pension. In a ~~grux~~ it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Rath learned counsel appearing for the petitioner and Mr. Akshya Kumar Misra learned Additional Standing Counsel (Central) for the Opposite Parties.

5. Mr. Rath learned counsel appearing for the petitioner on the basis of the dictum laid down by Their Lordships in the case of State of Punjab Vs. K.R. Erry and others reported in AIR 1973 SC834 contended that the concerned authority has no further

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right to reconsider or revalue the pensionary benefits of a particular retired Government Officer after it has been once settled and further more the Government has no right to order recovery. It was further contended by Mr. Rath learned Counsel appearing for the Petitioner relying on the said judgment that such a cut of the pensionary benefits was illegal, improper and unjust because due notice was not given to the petitioner calling upon the petitioner to have his say in the matter and this procedure not having been followed, principles of natural justice has been violated and therefore, Annexures 3 and 4 should be quashed. It was further contended by Mr. Rath that as per the provisions contained in Rule 70 (1) of the Central Services Pension Rules, the Government has no right to make a revision of the pension after authorisation.

On the other hand Mr. Akshya Kumar Misra ^{appears} learned Additional Standing Counsel (central) for the Opposite Parties contended that neither rule 70 (1) has any application nor there has been any

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illegality in the matter of reduction of Pension because the Government has a right to correct the administrative error at any point of time, and it was further contended by Mr. Misra learned Addl. Standing Counsel (Central) appearing for the Opp. Parties that the principles laid down By Their Lordships in the case of State of Punjab Vs. K.R. Erry (supra) is clearly distinguishable and those principles have no application to the facts of the present case.

6. I have given my anxious consideration to the argument advanced at the Bar.

7. Rightly and fairly there was no dispute presented before me regarding the authority of the Government to correct the administrative error at any point of time but law is well settled that once any action is being proposed to be taken against a person or to the disadvantage of a particular officer, then due notice should be given to the person who may be affected and after hearing the person to be affected, orders according to law should be passed failing which principles of natural justice is violated.

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Hon'ble Mr. Justice R.N. Misra (as my Lord Chief Justice of India then was) speaking for the Court in the case of K.I. Shephard Vs. Union of India and others reported in (1987) 4 SCC 431 at paragraph 12 of the judgment was pleased to observe as follows:

"On the basis of these authorities it must be held that even when a State Agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

This view of the Hon'ble Supreme Court has been ^{repeated} recommended and reaffirmed while elucidating the principle of 'LEGITIMATE EXPECTATION' in the case of Navjyoti Co-operative Group Housing Society

etc. V. Union of India and others reported in JT 1992(5)SC 621. At paragraph 15, ^{Their Lordships were} was pleased to observe as follows:

"It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in".

In the present case admittedly the petitioner had not been given any notice that his pension is proposed to be reduced. In such circumstances, I am of opinion that the principles laid down by Their Lordships in the above quoted judgments ^{are} have fullest application to the facts of the present case. Therefore, Annexures 3 and 4 are hereby quashed and it is directed that the petitioner should be noticed of the actions proposed to be taken and after giving opportunity to the petitioner to file show cause and after giving personal hearing to the petitioner orders be passed by the competent

authority according to law.

8. Mr. Rath learned ~~Scansel~~ counsel appearing for the petitioner vehemently contended before me that in the case of K.R. Erry (supra) Their Lordships have categorically held that the Government has no right to change the quantum of pension already given to the petitioner before Their Lordships and therefore, the same principle should be made applicable to the facts of the present case.

9. I have carefully gone through the judgments of K.R. Erry (supra). The said judgment was passed on different circumstances. At one point of time the concerned authority had given a circular to all the petitioners before Their Lordships that Their Services ^{was} ~~had~~ ^{to be} ~~held~~ ^{to be} ~~satisfactorily~~ but later the concerned authority changed its views and gave contrary opinion because certain allegations having been levelled against the petitioners before Their Lordships. In such circumstances Their Lordships held that once it has been ^{held} ~~circulated~~ ^{known} that the petitioners had rendered satisfactory service and ^{cannot be} ~~it is not~~ ~~replied~~ / changed unless it is conclusively ~~ve-~~


by established that those allegations are nothing but true. Since no departmental proceeding was initiated against the petitioner before Their Lordships and no order according to law was passed against the petitioners before Their Lordships holding that the petitioners were guilty of the allegations, In such circumstances Their Lordships held that reduction of pension amounts to a punishment. Mr. Akshya Kumar Misra learned Additional Standing Counsel (Central) has rightly contended that on this basis the facts of the case of K.R. Erry (supra) and the facts of the present case are clearly distinguishable and the principles laid down by Their Lordships have no application to the facts of the present case.

10. Before parting with this case, I would observe that after due notice is given to the petitioner to file his show cause and till final orders are passed by the competent authority on the show cause, if filed by the petitioner, the petitioner will be entitled to receive a pension of Rs. 929/- per month which according to Mr. Rath

has been settled to be paid to the petitioner after reduction order was passed. Till the final decision is taken by the concerned authority, there would be no recovery ^{of} ~~from~~ the alleged excess amount said to have been drawn by the petitioner. The concerned authority would pass a reasoned order according to law and a copy of the said order should be served on the petitioner within fifteen days from the date of passing the final order. In case the petitioner still feels aggrieved, liberty is given to the petitioner to approach this Bench.

11. **Lastly it was told to me** by Mr. Rath learned counsel appearing for the petitioner that ^{arrear} ~~that~~ pension of the petitioner and arrear gratuity has not been paid to the petitioner as yet. If it is so, the arrear may be paid to the petitioner within thirty days from the date of receipt of a copy of this judgment failing which defaulting officer would be personally liable to pay interest at the rate of 12 per cent per annum.

12. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.


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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
12.4.93.