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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 579 OF 1999  
Cuttack this the 20th day of August, 2001

Sri Parsumam Mohapatra .....Applicant

Vrs.

South Eastern Railway and others ....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

←  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
20.8.2001

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 579 OF 1999  
Cuttack, this the 20th day of August, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....  
Sri Parsuram Mohapatra, aged about 61 years, son of  
late Manindramohan Mohapatra, Ex-Movement Inspector  
(Engineering)/Sr.Goods Guard, Grade-I, S.E.Railway,  
Cuttack, residing at Talatelenga Bazar,  
P.O-Talatelengabazar, P.S-Purighat,  
District-Cuttack.....  
Applicant

Advocates for applicant - M/s A.K.Mohapatra  
K.N.Parida  
M.R.Misra  
N.C.Rout  
S.K.Padhi

Vrs.



1. South Eastern Railway, represented through the General Manager, Head Office, Garden Reach, Calcutta-700 043.
2. Divisional Railway Manager, South Eastern Railways, Khurda Road Division, Jatni, Khurda.
3. Senior Divisional Personnel Officer, South Eastern Railway, Jatni, Khurda Road, Khurda.
4. Accounts Officer, for F.A. & C.A.O.(Pension), South Eastern Railway, Garden Reach, Calcutta-700 043.
5. Accounts Officer, for FA&CAO(Pension), South Eastern Railway, Garden Reach, Calcutta-700 04, At-Jatni, Khurda Road, Khurda.
6. Branch Manager, State Bank of India, Main Branch, Cuttack, At/PO/Disst.Cuttack

.... Respondents  
Advocate for respondents - Mr.R.Ch.Rath  
O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has  
prayed for setting aside the order dated 15.10.1999  
at Annexure-3 fixing his pension at Rs.5042/- per  
month with effect from 1.4.1997 provisionally. He  
has also made a grievance of not being paid

commuted value of pension within 90 days from the date of receipt of the above order on 1.11.1999 and has also asked for costs.

2. The case of the applicant is that he retired on superannuation as Senior Goods Guard on 31.3.1997. He had earlier filed OA No.151 of 1998, which was disposed of in order dated 1.1.1999 (Annexure-1). The Tribunal in their order directed that the applicant's leave salary, final pension and commutation should be worked out within a period of 90 days from the date of receipt of copy of the order. The applicant has stated that the matter relating to OA No.151 of 1998 is subjudice before the Hon'ble High Court as regards claim for payment of interest. In the meantime the applicant has been paid provisional leave salary and gratuity after deduction of Rs.9663/-, but commuted value of pension has not been paid. It is further stated that after his retirement, his provisional pension was fixed as per the Fourth Pay Commission pay scale. Later on this was revised to Rs.5371/- as per letter dated 4.8.1999 and the applicant has been receiving provisional pension at Rs.5371/-. This order sanctioning revised provisional pension at Rs.5371/- per month is at Annexure-2. The applicant has stated that out of the above pension Rs.1605/- has been commuted. The applicant's grievance is that his pension has been reduced to Rs.5042/- by order dated 15.10.1999 and before such reduction, no showcause notice has been given to

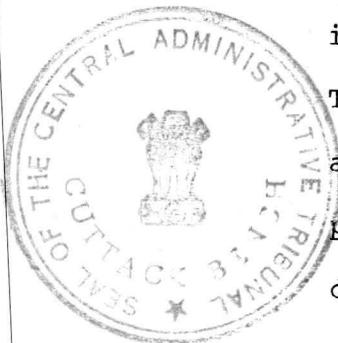
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him. It is further stated that he has also not been paid the commuted value. His third grievance is that before recovery of Rs.9663/- no showcause notice has been given to him. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that in obedience of the order dated 1.1.1999 of the Tribunal in OA No.151 of 1998, leave salary for Rs.81,432/- has been passed for payment on 12.5.1999. They have stated that the pension of applicant could not be determined finally because of refixation of pay after ~~5th~~ introduction of the Fifth pay Commission pay scale. They have stated that the commuted value of pension amounting to Rs.2,21,357/- has been authorised for payment. It is further stated that in a disciplinary proceeding against the applicant he was imposed with punishment of stoppage of increments for three years with non-cumulative effect. The applicant challenged this punishment in OA No.681 of 1993 during the pendency of which the punishment order was stayed. After OA No.681 of 1993 was dismissed in order dated 25.1.1999 the applicant's pension was recalculated and this has resulted in issuing of order dated 15.10.1999. The respondents have stated that the pension of the applicant has been correctly fixed at Rs.5042/- per month with effect from 1.4.1997 in the order dated 15.10.1999 and on these grounds, they have opposed the prayers of the applicant.

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4. The applicant in his rejoinder has complained of revision of his pension several times that too on provisional basis and has also complained of delay in payment of commuted value of pension. On the above grounds, the applicant has reiterated his prayers in the rejoinder.

5. We have heard Shri A.K.Mohapatra, the learned counsel for the petitioner and Shri R.C.Rath, the learned Additional Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioner has filed written note of submission which has been taken note of. He has also relied on the decisions of the Hon'ble Supreme Court in the case of K.I.Shephard v. Union of India, AIR 1988 SC 686, and in the case of Uma Agrawal v. State of Uttar Pradesh, AIR 1999 SC 1212. We have perused these decisions.

6. From the above recital of pleadings of the parties, it is clear that the applicant's grievance is in respect of reduction of his monthly provisional pension from the level of Rs.5371/- to the level of Rs.5042/-. The respondents have mentioned in their counter that the applicant was imposed with punishment of stoppage of three increments without cumulative effect. From the order of the Tribunal in OA No.151 of 1998 it is seen that the punishment was imposed on 2.11.1993. During the pendency of OA No.681 of 1993 this punishment order was stayed. During the pendency of OA No. 681 of 1993 the applicant got his annual increments notwithstanding the

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imposition of the above punishment because the order of punishment was stayed by the Tribunal. After OA No.681 of 1993 was dismissed, the punishment had to be given effect to. The Tribunal in their order dated 1.1.1999 in OA No.158 of 1998 noted that the punishment was imposed with effect from 1.11.1993 by stoppage of three increments without cumulative effect. It was noted that after three years from 1.11.1993, the applicant's pay would, therefore, be restored to the normal level and on that basis the respondents were directed in the order passed in OA No.151 of 1998 to finalise his pension. The respondents have stated that as during pendency of OA No.681 of 1993 the applicant was allowed increments, these incremental amounts along with overpayment during the service period were deducted from the dues of the applicant and these amounts came to Rs.9663/- As the applicant is aware of imposition of punishment of stoppage of three increments, the order of the Tribunal staying the punishment, and thereafter dismissal of OA No.681 of 1993, for recovering the quantum of incremental amounts paid to the applicant no showcause notice was required to be given. The punishment was imposed at the conclusion of a departmental proceeding in course of which all reasonable opportunity was given to the applicant. The respondents have stated that after expiry of the above period of three years his pay would have ordinarily got restored to the normal level. But the applicant remained unauthorisedly absent from

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duty for a period of three months prior to 1.3.1997 and this shifted the date of his increment. As such unauthorised absence was not taken as service counting towards increment, we find no illegality involved in this. Respondents have enclosed Paragraph 1320 of the Indian Railway Establishment Code, Volume II, which is similar to FR 26, providing that all duty in a post on a time-scale counts for increments in that time-scale provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment. By this reckoning the period of the applicant's absence for more than three months prior to 1.3.1997 could not be counted towards increment. Naturally, this resulted in reduction of his pension from the provisional pension so fixed. The respondents have filed a calculation sheet showing the manner in which the applicant's pension has been fixed and we have perused the same and found the same in order. In view of the above, we hold that the order dated 15.10.1999 fixing his revised provisional pension at Rs.5042/- is in order. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in K.I. Shephard's case(supra) to urge that before such reduction, a showcause notice should have been given following the principles of natural justice. We are unable to accept this proposition.

Provisional pension is granted to Government employees and Railway servant as in this case, when final pension cannot be immediately determined and this presupposes that final pension will be determined at a later stage. Rules also envisage that final pension can conceivably be less than the provisional pension. But there is no provision that before fixing final pension, a showcause notice has to be given if it is less than the provisional pension. This is because it is entirely based on calculation and not on any circumstance which can be explained away by the concerned employee. In view of this, we hold that the order dated 15.10.1999 is not liable to be impugned on the ground that before passing such order, no showcause notice has been given to the applicant.

7. In the result, the Original Application is held to be without any merit and the same is rejected. No costs. The interim order stands vacated.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)

20.8.2001  
VICE-CHAIRMAN

CAT/Cutt.Bench/ 20th August, 2001/AN/PS