

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1164/1996

Present : Hon'ble Mr.D. Purkayastha, Judicial Member

Hon'ble Mr.C.S. Maingi, Administrative Member

MAHADEB MITRA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.P.B.Misra, counsel

For the respondents: Mr.K.C.Saha, counsel

Heard on : 29.3.2000

Order on : 29.3.2000

ORDER

D. Purkayastha, J.M.

Heard ld. counsel for both sides.

2. According to the applicant, he retired from service on superannuation w.e.f. 31.5.1996(AN) while he was working in the office of the respondents as Sr.Welfare Inspector. His pay was Rs.2150/- on 31.3.96 and an increment of Rs.50/- was due on 1.4.96. So, his pay ought to have been fixed at Rs.2200/- on 1.4.96 and on 31.5.96 ^{respectively} and he ought to have been given pensionary benefits on pay of Rs.2200/-. But surprisingly his pay for the month of April, 1996 was reduced and fixed on Rs.2150/- instead of Rs.2200/- in the pay slip which is annexed as Annexure A/1 to the O.A. However, after his retirement from service, the Assistant Divisional Accounts Officer, Kharagpur, S.E.Rly. on wrong fixation had certified his DERG amount of Rs.66,644/- deducting certain amounts on the ground of over-payment made to him from 21.12.73 and fixed his pension at Rs.1025/- i.e. half of his basic pay of Rs.2050/- vide ADAO/KGP's Memo. No. Pen/SE/KGP/1996/B - 488/PS/E dated 4.6.96 marked as

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marked as Annexure A/2 to this O.A. Thereafter, a showcause notice has been issued to the applicant vide letter dated 25.6.1996 (Annexure A/3) whereby the Sr. Divisional Personnel Officer, S.E. Rly., Kharagpur wanted explanation from the applicant as to why the overpayment of Rs.31,522.00 should not be recovered from his DCRG since his pay has been reduced/ fixed at Rs.2050/- in view of the wrong fixation of his pay from 21.12.73. Being aggrieved by the said notice, he made representation to the authorities on 8.7.96 stating his grievances therein. Before that, he retired from service on 31.5.96. The respondents have paid his retirement dues on the pay of Rs.2050/- except his DCRG amount. It is stated by the applicant that the respondents did not act in accordance with the rules regarding fixation of his pay and pensionary benefits and illegally deducted the alleged amount of overpayment from his retirement benefits. Thereby, he has come before this Tribunal seeking appropriate relief.

3. Respondents denied the claim of the applicant by filing written reply to the O.A. It is stated by the respondents that while working as Jr. Steno in scale of Rs.110-180/- the applicant's pay was fixed at Rs.334/- in scale of Rs.260-400/- as may be seen from fixation of pay in 3rd pay commission scale but while posting his rate of pay it became Rs.370/- on 21.12.73 and Rs.380/- on 1.4.74 figures instead of Rs.334/- and Rs.342/- respectively. The Rs.370/- and Rs.380/- had been written tampering figures Rs.334/- and Rs.342/-. From that time onwards, his incremental pay, promotional pay, etc. have been drawn accordingly resulting in excess payment. This mistake was detected during review of service before his retirement. Since he was a staff of Personnel Branch, he was called and convinced the matter, ^{therefore} and from April 1996 his pay was reduced to Rs.2150/- ~~and~~ after thorough calculation, to Rs.2050/- from May, 1996.

His pay should have come to Rs. 2050/- instead of Rs. 2200/- and thereby, his pensionary benefit has been calculated on Rs. 2050/-. It is further stated by the respondents that the applicant was issued showcause notice as to why the excess amount of Rs. 31522/- paid to him would not be recovered from his DCRG (Rs. 66644-34282/-) on 25.6.96 and he has already been paid Rs. 32362/- towards his DCRG as per order of the Tribunal advising him that the disputed amount of Rs. 31522/- would be settled as per direction of the Tribunal. So, the applicant should not have any grievance in this regard since refixation of his pensionary benefits was done in accordance with the rules after giving him ~~the~~ opportunity of being heard.

4. We have considered the submissions made by the 1st counsel for both sides and have perused the records. 1st counsel for the applicant has relied upon the judgment of the Hon'ble Apex Court reported in (1994) 28 ATC 747 (Shib Ram Vs. State of Haryana & Ors.) and the judgment reported in (1994) 27 ATC 121 (Shyambabu Verma & Ors. Vs. Union of India & Ors.) and submitted that the applicant should be allowed the benefits as prayed for in this application in view of the aforesaid judgments of the Hon'ble Apex Court. He further submitted that the applicant was issued showcause notice after recovery of the alleged overpayment after his retirement. 1st counsel, Mr. K.C. Saha appearing on behalf of the respondents, submits that the department detected the mistake regarding fixation of pay of the applicant at the time of review of the service book before his retirement and they have corrected the wrong after issuing showcause notice to the applicant as per rules. Therefore, the application should be dismissed. He further stated that the department has the authority to make correction of the wrong, and thereby the amount of overpayment made to the applicant has duly been deducted from the retirement benefits of the applicant.

5. In view of the aforesaid submissions of the 1st counsel for both sides, we find that, the showcause notice was issued

to the applicant on 25.6.96 (as appears from Annexure A/3) i.e. after the date of his retirement on 31.5.96. Facts remain that the mistake regarding wrong fixation of his pay was detected by the respondent-authorities just before the date of retirement of the applicant though such wrong was done by the respondents in the year 1973 and the applicant was allowed to enjoy the consequential benefits including increments on the basis of wrong fixation of the pay scale from time to time. We have noted that the pay was sought to be refixed after lapse of 23 years, and during his fixation his was ~~was~~ reduced to Rs.2050/- from Rs.2200/- and recovery was suggested to be made after 23 years of such wrong fixation of the applicant. It was obvious, the applicant has been visited with some consequences but has not been given opportunity to state his case before correction and reduction of the pay. Notice of show cause was issued after his retirement and after reduction of the pay. We are not denying that the respondents have the power to correct they wrong but that should be done following the principles of natural justice. We have perused the judgments of the Hon'ble Apex Court as relied upon by the ld. counsel for the applicant. On a perusal of the aforesaid judgments, we are of the view that the applicant should not suffer due to the mistake committed by the respondents. The respondents stated that there was a tampering in respect of the entry made in the service book. That tampering was done by the applicant. In support of the allegation, we do not find supporting evidence that the applicant was involved in this matter, but on perusal of the records, it is found that the fixation was done wrongly on the basis of the wrong entry of pay in the service book; the respondents corrected the wrong. So we are not interfering with the order of refixation. ^{entry} So, the order of recovery should be quashed.

6. Considering the above position and circumstances, we hold that the show cause notice dated 25.6.1996 (Annexure A/3) in respect of recovery only is not sustainable, and the order of recovery should be quashed. Accordingly we set aside the show cause notice dated 25.6.1996 (Annexure A/3) and the order of recovery.

7. Accordingly, the amount of Rs.315,22/- which has been recovered from the retirement benefits of the applicant shall be paid to him within three months from the date of communication of this order, but he will be entitled to payment on the basis of refixation only. The O.A. is hereby disposed of awarding no costs.

Ch. S. Swami
29.3.2020
MEMBER (A)

Ch. S. Swami
29.3.2020
MEMBER (J)