

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BECH.

O.A. 312 of 1996.

Present : Hon'ble Dr. B.C.Sarma, Member (A)

JAGADISH CHANDRA GHOSH ..

Applicant.

Vs.

1. Union of India, through the General manager, E.Railway, Calcutta. 1.
2. F.A.& C.A.O., E.Railway, Fairlie Place, Calcutta.
3. Sr. divisional Accounts Officer, E. Railway, Dhanbad.
4. The State Bank of India, Govt. Accounts Section, Starnd Road, Calcutta.
5. Branch Manager, Sealdah Branch, State bank of India, Calcutta.

... Respondents.

For applicant : Mr. R.K.De, Counsel.

For respondents : Mr. P.K.Arora, Counsel.

Date of hearing : 21.11.96.

Date of order : 21.11.96.



O R D E R

B.C.Sarma, AM

The dispute raised in this application is about the downward revision of the applicant's pension and also recovery of excess amount of pension granted to him.

2. The applicant had retired voluntarily from service on 30.6.84 and he was granted basic pension of Rs.925/- with effect from 1.7.84 which was subsequently revised to Rs.1649/- with effect from 1.1.86. However, the respondents subsequently sometime in 1989 had downwardly revised the basic pension from Rs.925/- P.M. to Rs.677/- P.M. and the bank was also instructed to make recovery of the said amount. The applicant suddenly received a notice dated 29.3.90 from the Sr. Divisional Accounts Oficer, E.Railway, Dhanbad for a cut in the basic pension and the applicant had protested it by submitting a representation, but that did not elicit any favourable response from the respondents. The applicant contends that he is in no way responsible for the wrong fixation, if at all, of his basic pension and it was done undoubtedly by the respondents railway. Being aggrieved thereby, the instant application has been filed with the prayer that the impugned order as set out in annexures A2, A3 and A4 whereby there was a cut in his basic pension be quashed and set aside and the amount recovered from his pension be refunded to him.

3. The case has been contested by the respondents by filing a reply. The respondents contend that there was a court case bearing No.T.A. 378 of 1986 which was adjudicated by the Tribunal on 7.5.87 and certain revised scales of pay were ordered to be given to the applicants therein. In pursuance of that judgement of this Tribunal, the respondents had revised the pay-scales of ~~the~~ applicants and that had led to the detection of the mistake in fixation of the basic pension of the applicant. Thereafter, a notice was issued on the



applicant to the effect that his basic pension would have to be reduced since there was a genuine mistake in the fixation of the pension. The respondents contend that the mistake had occurred because of wrong calculation of the interim relief payable to him, which was Rs.70/- P.M. instead of Rs.700/- P.M., as was noted therein and the basic pension was calculated on that basis. Accordingly, his pension was revised and he was also informed to that effect. The respondents contend that there is nothing wrong in the cut in his pension and, therefore, the application deserves to be dismissed.

4. Mr.R.K.De, 1d. counsel, appearing for the applicant submitted that the respondents railway are not entitled to ~~cut~~ pension and such orders will have to be passed either by the President of India or by the Railway Board. Mr. De mainly confined his argument to the fact that the respondents, as per his contention, did not have any right to pass the impugned order. However, thereafter, he submitted that if such a prayer is ^{not} conceded, the respondents must be stopped from making any recovery and whatever amount has been recovered should be refunded to the applicant. In support of his such contention, he cited the following decisions :

1. 1995(1) ATJ 260 (Sahib Ram Vs. The State of Haryana & Ors.)

In this judgement the Hon'ble Apex Court held that even though higher pay-scale was given to the appellant by mistake, the amount paid till date was not recovered from the appellant.

2. 1994(2) SCC 521 (Shyam Babu Verma & Ors. Vs. U.O.I. & Ors.)

In this case the Hon'ble Apex Court held that after higher pay-scale was erroneously given to the petitioner since 1973 it was reduced in 1984, it shall only be just and proper not to recover any excess amount since the petitioner received the same not due to his own fault.

3. 1996(2) ATJ 440 (B.V.Ramana Vs. Chief Admn. Officer (Con.) &Ors

In this case the Single Bench of the Cuttack Bench of this Tribunal did not allow any recovery of the over-payment made and the order directing recovery was quashed.

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Mr. De, therefore, submitted on the basis of the above decisions to the effect that the respondents cannot be permitted to recover the excess amount of pension which has already been paid and enjoyed by the applicant.

5. Mr. P.K.Arora, 1d. counsel, appearing for the respondents relied on the provision of Section 72 of the Indian Contract Act, ^{that} which states a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Mr. Arora submits that this is a general provision of law and it must be followed if it is contended by the applicant that there is no provision under the Railway Pension Rules for recovery and also for downward revision of pension. Mr. Arora further argued that as per the provision of Rule 1042 of the Manual of Railway Pension Rules, 1950, the railway authorities are entitled to recover and also make adjustment of any pension amount, if it is paid in excess. Accordingly, Mr. Arora argued that there is nothing wrong in the impugned order passed by the respondents. Mr. Arora invited my attention to the annexures particularly annexure-A2 to the application itself and submitted that the mistake had occurred in the fixation of basic pay of the pension of the applicant because the interim relief was marked as Rs.700/- instead of Rs.70/- P.M., but the correct figure has been shown in respect of DCRG etc. and also in the right-hand column of page 14 of the application. Accordingly, Mr. Arora submitted that it was a genuine mistake and the respondents railway are entitled to correct the said mistake. Mr. Arora further argued that pursuant to the revision of his pension in a downward manner, the concerned Branch of the State Bank of India was informed and the applicant himself had agreed to the recovery and, in fact, from July, 1990 the recovery has been taken place. In this connection, Mr. Arora produced before me a letter dated 20.11.96 addressed to the Sr. Divisional Accounts Officer, E. Railway Dhanbad, by the Chief Manager, State Bank of India, Sealdah Branch, which states as follows :

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"With reference to your letter No.DHN/Pen/Court/96 dt. 18.11.96, we like to advise you that the excess pension payment made to the captioned pensioner for Rs.62,268/- only as assessed and as per your order No.DHN/pen/bank/JCG/24-167 dt. 29.3.90 was recovered w.e.f. july,1990 @ Rs.500/- PM upto Feb.1996, thereafter the recovery was stopped from March,1996 onwards as per your order No.DHN/pen/bank/96 dt. 17.5.96 in accordance with Hon'ble CAT/Calcutta's interim order No.312/96 dt. 7.3.96. Hence, total recovery was made from Sh.J.C. Ghosh for Rs.34,000/- upto Feb.1996.

As per Bank's record available at the Branch, Shri Ghosh also intimated the bank to deduct @ Rs.500/- PM from his pension as recovery towards excess pension payment made to him."

Mr. Arora, therefore, argued that the applicant has already agreed to the recovery at the rate of Rs.500/- per month from his pension and, therefore, he may not be permitted to raise the dispute now after a lapse of about six years.

6. I have carefully examined the matter after hearing the 1d. counsel for both the parties, perused records and considering the facts and circumstances of the case. The facts mentioned by the applicant have not been disputed at all by the respondents. As regards legal position, I find that relevant pension rules at the time of retirement of the applicant voluntarily is the Manual of Pension Rules, 1950 and Rule 1042 of the said rules states as follows :

"(i) Should the amount of pensionary benefits granted in any case be afterwards found to be in excess of that to which the beneficiary is entitled under the rules, he shall be called upon to refund such excess. For this purpose, the person concerned shall be served with a notice by the pension sanctioning authority requiring him/her to refund the excess payments within a period of 2 months from the date of receipt by him/her of the said notice. on his/her failure to comply with the notice, the pension sanctioning authority shall order that such excess payments shall be adjusted by short payments of pension/family pension in future in one or more instalments, as that authority may order."



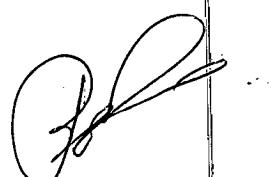
It is, therefore, clear that the railway respondents were entitled under the law to make recovery of excess payment in the matter of pension. Therefore, the submission of Mr. De to the effect that the impugned order was passed not in accordance with any legal provision is not sustainable. I note that before the recovery was effected, the matter regarding the wrong fixation of pension of the applicant was duly explained by the respondents railway in their letter in reply to the representation filed by the applicant and the matter was in full knowledge of the applicant.

7. As regards recovery, I note that the recovery has already been effected from 1990 and I have been given to understand that till date a sum of Rs.35,000/- has already been recovered from the applicant and a further sum of Rs.27,000/- is due to be recovered from him. It is to be noted that the original pension payment order was issued on 20.12.84 and the mistake was detected in 1989 and recovery made in 1990. Therefore, for long six years the applicant had enjoyed the pension at a higher rate. It is surprising that such a silly mistake could occur in the fixation of pension of a railway employee, specially when the railways have a vast establishment in which the pension and other cases are required to be examined and scrutinised. It is also interesting to note that perhaps the mistake in the fixation of basic pension of the applicant would not have come to light at all unless the Tribunal had delivered the judgement in T.A. 278 of 1986 directing the railways to give higher scales of pay to the applicants therein. In any case, the applicant was not at all responsible for the wrong fixation of his pension. In the judgement cited by Mr. De, I note that in Shyam Babu Verma's case the mistake was detected after a lapse of 20 years and the Hon'ble Apex Court had directed no recovery should be made. In this case, mistake was detected after a lapse of 5 years. In the other case Sahib Ram Vs. State of Haryana, the dates on which the wrong fixation was done and mistake was detected are not very clear from the judgement itself. However, the Hon'ble Apex Court had observed that the applicant himself was not at all in fault for the wrong



fixation of pay. In both the judgements the mistakes were confined only to the fixation of pay, whereas the instant case is about the fixation of pension. After retirement, a Govt. employee or a railway employee has to face various problems, mainly financial and in many cases the pension as well as interim relief are not adequate to make the both ends meet. I have, therefore, no doubt that the deduction of pension of the applicant as a result of revision of the basic pension even after a lapse of six years had caused ^{him} in hardship. The applicant contends that he was forced to agree ^{to} with the recovery at the rate of Rs.500/- pm. However, there is no order before me which shows that recovery is required to be made from the pension. I also note that recovery was started first in 1990 and since then till the date of the interim order passed by the Tribunal, i.e. 23.7.96, the applicant had allowed the bank to make the recovery from his pension. If the applicant was very much aggrieved of such deduction, he should have approached this Tribunal in time, but he did not do so. But considering the fact that the applicant is a retired person and basic pension has been substantially reduced as a result of mistake committed by the respondents only and the fact that he had enjoyed higher pension for about six years before the commencement of the recovery, I am of the view that it is a clear case in which no further recovery should be allowed.

8. In view of the above, the application is disposed of with the only direction that the respondents shall not make any further recovery from the pension of the applicant, but there shall be no refund of the amount already recovered from the pension of the applicant. I also pass no order as regards costs.



(B. C. Sarma)
MEMBER (A)