के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नि: शुल्क प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 09.04.2002

1. O.A. No. 10/2001.

Pawan Kumar Anand son of Late Durga Das, aged about 60 1/2 years, resident of I-D-68, J N Vyas Colony, Bikaner, last employed on the post of Asst. Engineer (C-I), Jodhpur, in the office of Dy. CE (C), Jodhpur, Northern Railway.

... APPLICANT.

versus

1. Union of India through General Manager, N/Rly Baroda House, New Delhi.

2. The Chief Administrative Officer (Const), Northern Railway, Kashmere Gate, Delhi.

3. Dy. Chief Engineer (C-I), Northern Railway, Jodhpur.

... RESPONDENTS.

2. O.A. No. 109/2001.

Pawan Kumar Anand son of Late Durga Das, aged about 61 years, resident of I-D-68, J N Vyas Colony, Bikaner, last employed on the post of Asst. Engineer (C-I), Jodhpur, in the office of Dy. CE (C), Jodhpur, Northern Railway.

... APPLICANT.

versus

1. Union of India through General Manager, N/Rly, Baroda House, New Delhi.

2. The Chief Administrative Officer (Const), Northern Railway, Kashmere Gate, Delhi.

3. Dy. Chief Engineer (C-I), Northern Railway, Jodhpur.

4. Financial Advisor and Chief Accounts Officer, N/Rly Baroda House, New Delhi.

... RESPONDENTS

Shri B. Khan counsel for the applicant.
Shri Kamal Dave, counsel for the respondents.

CORAM

Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

These two OA's were taken up together for hearing as the relief prayed for by the applicant in these two applications was interconnected and in fact overlapping. We had disposed of the relief in OA No. 10/2001 by making the following order :-

" The claim of the applicant has been satisfied during the pendency of this OA except the amount of Gratuity in respect of which the applicant has filed a separate O.A. which is still pending. Mr. B. Khan, pointed out that the applicant is entitled to interest for the delayed release of the dues. This application is, therefore, disposed of with a direction to the respondents that they shall calculate the amount of interest on the delayed payment of retiral dues according to the rules and pay the same to the applicant within a period of two months from the date of receipt of a certified copy of this order. No costs."

and the order in the other OA kept reserved.

Learned counsel for the parties met us jointly on

02.04.2002 and brought to our notice that the order given in OA No. 10/2001 has apparently been issued from the file dealing with the OA No. 109/2001, inadvertently. We have perused the two files and we find that a mistake has, in fact, occurred while recording the order. The order passed by us in OA No. 10/2001 has been placed by the office in file relating to OA No. 109/2001. This clerical error, naturally, is likely to cause some confusion. Shri Kamal Dave, Learned counsel for the respondents, has also submitted an application, seeking recalling of the order dated 08.03.2002. In order to set the position right, we are recalling this order and are diposing of these two Original Applications by this common order.

The applicant was promoted as Assistant Engineer vide notice dated 11.10.1994 and was posted as Assistant Engineer (AEN, for short), Construction, Jodhpur, vide order dated 18.10.1994. Before this promotion as AEN, he was working as CPWI/Construction, Lalgarh. He retired on superannuation on 31.07.2000. The relief prayed for by him in OA No. 10/2001 was in respect of his settlement dues which include pension, computation of pension, DCRG and other pensionary benefits alongwith the interest at the market rate.

2. In OA No. 109/2001, he has sought quashing of the order dated 17.04.2002 (Annexure A-2) by which his pay has been refixed and a recovery of an amount of Rs. 1,09,208/- has been ordered to be made from his settlement dues. His further prayer is that the PPO (Annexure A-1), issued on

the basis of the revised pay, be directed to be modified with all consequential benefits.

3. Since the settlement dues or other retiral benefits are dependent on the pay last drawn by the retiree and in this case that pay has been revised by the respondents, we consider it appropriate to first decide the issue raised by the applicant in OA No. 109/2001.

4. On the point of refixing of pay of the applicant on his promotion to the post of AEN, the respondents have explained that when the applicant was initially promoted as AEN in 1994, his pay got fixed wrongly. He was already holding an ex cadre post as CPWI and on his further promotion he was again posted in an ex cadre post i.e. in the construction organisation. Learned counsel for the respondents stated that the pay of an employee on promotion is regulated under the relevant Fundamental Rules. This also include the manner of pay fixation when an employee is posted from one ex cadre post to another ex cadre post in a higher grade. In this case, on promotion of the applicant as AEN, his pay got fixed erroneously with respect to the pay he was drawing as CPWI, which again was an ex cadre post. This mistake came to the notice of the department when his pension papers were processed. They have taken steps to rectify the anomaly by refixing his pay on the basis of the pay thus revised the pension pay order (Annexure R-1), has been issued. The respondents maintained that this PPO has been issued on the correct pay and the applicant has no cause of grievance.

5. The applicant in support of his case has stated that on his retirement on 31.07.2000, the service certificate was given to him, which indicated his pay as Rs. 11,000/-. He was also paid leave encashment in the month of July 2000 on the basis of his last pay drawn. However his other settlement dues were not released for which he has moved the Tribunal separately by filing OA No. 10/2001. He has stated that when he received his Pension Pay Order, he found that the same order was based on his last pay as Rs. 10,000/- instead of the pay actually drawn by him which was Rs. 11,000/-. When he requested for correction of the mistake, he was informed vide impugned letter dated 17.04.2001 that his pay has been refixed w.e.f. 01.11.1994 and he has been asked to refund an amount of Rs. 1,09,208/- , which the respondents claim to have paid to him in excess. Learned counsel for the applicant has primarily assailed the action of the respondents for the reason that before refixing the pay of the applicant, no opportunity of hearing was given to him, thus there has been a clear breach of Principle of Natural Justice. In respect of the recovery, the learned counsel submitted that there has been no misrepresentation on the part of the applicant at any stage and his pay on promotion to the post of AEN was fixed by the respondents themselves in the year 1994. He strongly emphasized that in view of the settled legal position, in such a situation no recovery could be made. He further, reiterated that the pay of the applicant had been correctly fixed by following the Provisions of FR 26.

6. We have heard the Learned counsel for the parties and given our anxious considerations to the rival contentions and the rulesapplicable in the matter before us. It is not in dispute that pay of an employee, on promotion, is fixed under the Fundamental Rules. The provisions for pay fixation in the event of promotion, has been laid down in FR 22 (J) (a) (1).

7. Our attention was drawn by the Learned counsel for the respondents to Annexure A-2 and the enclosure therein, stated that the plea of the applicant that the pay has been refixed without notice is not correct. By letter dated 17.04.2001 he was informed that his pay has been refixed and he was asked to explain as to why an amount of Rs. 1,09,208/- be not deducted from his DCRG. According to the respondents, the applicant replied to this notice by way of the representation dated 08.05.2001, which was considered and replied to by the competent authority vide communication dated 13.06.2001. In face of these facts it cannot be said that the applicant was not informed that it was proposed to make a recovery from his DCRG. It was also indicated in the notice issued to him that out of this total amount, a amount of Rs. 95,408/- was on account of difference of pay already drawn by him and the pay he should have drawn, balance amount of Rs. 13,800/- was on account of the difference in leave encashment which had already been received hy him and which required to be corrected because of the pay revision.

8. First on the point of the pay revision as we have mentioned above, the same is regulated by the Fundamental Rules. The enclosure Annexure A-2 clearly reveals that his pay on promotion to the post of AEN has been fixed with respect to the pay he would have drawn in his cadre. It has already been mentioned by the respondents that this principle has been followed in view of the instructions contained in Printed Serial No. 5456. Ofcourse a copy of this printed sl. No. has not been produced before us, but it there has been no contradiction of this by the applicant. Learned counsel for the applicant could not make out any case as to how the pay revision, as carried out by the respondents, was erroneous. The particular order under which this revision done i.e. P.S. No. 5456 is also not in challenge before us. Since the pay fixation is governed by the Fundamental Rules, it is not necessary to give any notice to the affected employee, in case it is discovered that the procedure enjoined the Fundamental Rules has not been correctly followed and that the correction is called for. In such a case, even if the applicant had been given notice before actually carrying out the pay fixation, the result would have been the same. Under these circumstances, we are of the considered view that no prejudice has been caused to the applicant, by not first warning him about the required pay revision. Our conclusion on this issue is that his pay has been correctly revised and refixed under the provisions of FR.

9. Now the second issue which arises is whether on account of this revision a recovery of the amount of Rs.

1,09,208/- could have been made from the applicant. Learned counsel for the applicant submitted that legal position in this respect is settled by pronouncement of the Apex Court that if any over payment has been made because of no fault of the applicant, such payment cannot be recovered. The learned counsel for the respondents, on theother hand, referred to the case of V. Gangaram v. Regional Joint Director & Ors. (1997) 6 SCC 139, by which Hon'ble the Supreme Court has permitted recovery of the amount paid to the appellant in that case, who was erroneously given additional increment which was not due to him.

10. An amount of Rs. 95,408/- has been shown as difference of pay already drawn and pay which should have actually been drawn as per the respondents. The intimation about this was given to the applicant vide letter dated 17.4.2001, while he had already retired from service on 31.7.2000. In the notice it was also indicated that an amount of Rs. 13,800/- is to be recovered as difference in leave encashment. Apparently, all this exercise has been done by the respondents during pendency of this OA. Railway servants (Pension) Rules do permit, in certain events, withholding of gratuity in case some government dues are outstanding against the employee. The series of events indicate lackadaisical approach on the part of the dealing staff and officers of the department who have processed the pension papers of the applicant. The action of correcting his pay was taken rather belately and it is not the case of the respondents that there was any misrepresentation on the

part of the applicant which resulted in wrong fixation of his pay. In fact it is a case in which the dealing staff and officers should have been taken up departmentally for acting negligently and for fixing the pay of the applicant wrongly. However, the applicant cannot be penalised by making recovery of this amount which has been paid to him from month to month right from 1984 onwards.

11. In Shyam Babu Verma & Ors. v. UOI & Ors., (1994) 2 SCC 521, Hon'ble the Supreme Court held that the petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him.

12. In State of Haryana v. Om Prakash & Anr., (1998) 8 SCC 733, the Apex Court directed that in case the employee had withdrawn that amount, the same should not be recovered from him.

13. In Sahib Ram v. State of Haryana & Ors., 1995 (Supp) (1) SCC 18, it was held by Hon'ble the Supreme Court that upgraded pay scale was given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, The Government was restrained from recovering the overpayment already made.

14. It is clear from the above that the legal position in this respect is clearly settled and the respondents are not entitled to withhold/recover the amount which was paid to the applicant in excess because of wrong fixation of his

pay. The case of V. Gangaram v. Regional Joint Director & Ors., on which reliance was placed by the learned counsel for the respondents, is clearly distinguishable on facts. In that case also the Apex Court had not permitted recovery of arrears paid prior to the year 1985.

15. However, in so far as the leave encashment is concerned, the same has to be based on the last pay drawn. The PPO clearly establishes that last pay of the applicant had been duly corrected and his settlement dues have been worked out on the correct pay. Leave encashment is also one of the settlement dues which should have been computed on the corrected pay. The respondents are well within their rights to recover this amount of Rs. 13,800/- from the amount of leave encashment already paid.

16. Now we take up OA No. 10/2001, in which the applicant has alleged that his pensionary dues have not been paid to him. When the matter was taken up for hearing, it was stated by the learned counsel for the respondents that all the retiral benefits except DCRG, have already been paid to the applicant. This fact was also accepted by the learned counsel for the applicant. He, further, stated that the DCRG continues to be wrongly withheld by the department, as the department cannot recover the amount of Rs. 1,09,208/-.

17. For the view which we have held in OA No. 109/2001, the respondents cannot recover the excess payment made to

the applicant as pay from the year 1994 onwards. The respondents, consequently, cannot recover the amount of Rs. 95,408/- from the gratuity of the applicant. However, they are very much within their rights to adjust the amount of Rs. 13,800/- because of difference in the leave encashment. By detaining the amount of Rs. 13,800/- the balance amount of gratuity must be released by the respondents forthwith.

18. Learned counsel for the applicant alleges that pensionary benefits have been released late and that the applicant is entitled to receive interest on the delayed payment. Since the dates of actual payments of various dues have not been brought to our notice, we direct the respondents to calculate the amount of interest which becomes due under the rules.

19. In the light of discussion aforesaid in the two OAs, we pass the following order :-

> "The pay of the applicant has been correctly refixed and there is no infirmity in the Pension Pay Order issued in his favour. The respondents are directed to release gratuity of the applicant, withheld by them, by adjusting an amount of Rs. 13,800/-, which was paid in excess as leave encashment. The balance shall be paid to the applicant within one month from the date of receipt of a certified copy of this order. If the payment is made after expiry of one month, the respondents

shall pay to the applicant interest at the rate of 9% per month for the period of delay after one month. In respect of the other retiral dues, the respondents shall calculate the amount of interest on the delayed payments according to rules and pay the same to the applicant within a period of two months from the date of receipt of a certified copy of this order."

Sd/-
(A.P.Nagrath)
Adm. Member

Sd/-
(Justice O.P.Garg)
Honble Vice Chairman

प्रमाणित सही प्रतिलिपि
11/5/2000
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

Part II and III destroyed
in my presence on 10.7.09
under the supervision of
section officer ( ) as per
order dated 14.5.09

Section officer/Record