

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 1102 of 97

Date of order : 3.8.04

Present : Hon'ble Mr.S.K.Hajra, Administrative Member
Hon'ble Mr.K.V.Sachidanandan, Judicial Member

M. N. SIKDAR

VS

UNION OF INDIA & ORS.

For the applicant : Mr.B.C.Sinha, counsel

For the respondents: Mr.A.K.Dutta, counsel

O R D E R

K.V.Sachidanandan, J.M.

The applicant is a retired Sr.Clerk of the S.E.Rly. who was appointed in 1971 and subsequently promoted to various cadres and finally to the post of Sr.Clerk in the scale of Rs.1200-2040/- and his pay was fixed as on 1.2.91 as Rs.1500/- instead of Rs.1470/-.The applicant was issued the order dated 28.10.91 reducing the pay from Rs.1500/- to Rs.1470/- on the ground that there was some error in fixation of pay under FR 22C on his posting from the post of Jr.Field Worker in scale of Rs.260-350/- (RP) to the post of Jr.Clerk in scale of Rs.260-400/- (RP) on 15.9.79 i.e. 11 years ago. As a result of this review his pay was illegally reduced to Rs.1440/- per month. The specific ground taken in this OA is that this was done without issuing a show-cause notice to the applicant. Being aggrieved by the said action of the respondents the applicant has filed the present OA seeking the following reliefs :

- a) it may be declared that the refixation/reduction in pay to the disadvantage of the applicant is bad in law, arbitrary and has no legal consequences and to be quashed and set aside;
- b) it may be declared that the order of reduction in pay and consequent reduction in the retiral benefits are void and not binding on the applicant;
- c) it may be declared that the applicant continues to draw and in receipt of pay of Rs.1500/- per month on the date of retirement and Retiral benefits to be calculated on this pay and paid accordingly;
- d) that the respondents be directed to refund the amount already deducted from DCRG amount;
- e) that the respondents be directed to pay interest @ Rs.18 per cent per annum on the entire amount.

2. The respondents have filed a reply contending that the claim is barred by limitation and his fixation of pay under FR 22C on his posting from the post of Jr.Field Worker in scale of Rs.260-350/- to


Jr.Clerk in scale of Rs.260-400/- was found to be erroneous. They also averred that this was fixed under Rule 2017(ii) [FR 22A(ii)] with actual benefit from 15.9.79 the date on which the applicant was posted as Jr.Clerk. The order of refixation was served on the applicant who received personally on 10.1.92 and he has received the settlement dues without any objection. After a lapse of nearly 4 years the applicant is now trying to agitate apart. The entire refixation was necessitated on verification of service sheet at the time of retirement and it was found that over-payment was made for wrong fixation from 15.9.79 and accordingly Rs.8408/- was deducted from his DCRG.

3. Mr.B.C.Sinha, ld.counsel appears for the applicant and Mr.A.K.Dutta, ld.counsel appears for the respondents.

4. The ld.counsel for the applicant submitted that the rule position and the decisions of the Apex Court is to the effect that any erroneous fixation cannot be reasoned for any recovery that too without issuing any show-cause notice after a lapse of time. Ld.counsel for the respondents on the other hand argued that the claim is hopelessly barred by limitation and the erroneous fixation was found when the retirement papers were being scrutinised and since it was a Govt. dues the respondents are entitled to refix the pay despite the fact that the applicant has already retired.

5. We have heard the ld.counsel for both sides and perused the documents produced before us.

6. Ld.counsel for the applicant has placed reliance on the decisions of the Apex Court reported in (1994) 28 ATC 258 in Bhagwan Shukla -vs- Union of India & Ors. and also the decision of the Bombay Bench of this Tribunal in OA 395/91 in Chamel Singh -vs- Union of India & Ors. wherein the Tribunal has quoted the decisions of the Hon'ble Supreme Court in the case of K.S.Shiridharan & Ors. -vs- Union of India & Ors. reported in 1991(2) SLJ page 230 and the case of Divisional Superintendent, E.Rly. Dinapur & Ors. -vs- L.N.Kashri & Ors. reported in AIR (1974) SC 1889 and has contended that in such a




situation the Supreme Court has categorically held that the pay cannot be reduced and if any such refixation is to be made that too y should be made after giving an opportunity to the Govt. servant to show cause why such refixation should not be made.

7. We have given due consideration to the arguments advanced by the ld.counsel for both sides. The order dated 28.10.91, Annexure A/4 to the OA which is also Annexure R/1 to the reply, reads as under :

"At the time of review of the S/Sheet on the eve of his retirement, it was found that such fixation under FR 22C on his posting from the post of Jr.Field Worker in scale of Rs.260-350/- to Jr.Clerk in scale Rs.260-400/- was erroneous."

The contention of the ld.counsel for the respondents that the claim is barred by limitation cannot be accepted by us because Hon'ble Supreme Court has held that pensionary benefits, fixation of pay are all continuing cause of action and question of limitation does not apply in such situation. He has made a reference to the Bahri's Railway Pension and Retirement Benefits, wherein he has argued that any deduction with regard to Govt. dues is possible as per their publication. But however, we make it clear that when there is a Supreme Court ruling and if any such rules are available as per Railway Rules, a Supreme Court judgment will prevail over other rules because any decision of the Supreme Court is binding over all other rules under Article 14 of the Constitution of India. Therefore first of all we do not agree with the fact that it is a Govt. dues and on the other hand we are of the view that the amount due to the applicant is other than Govt. dues. Now coming to the legal position the dictum laid down by the Hon'ble Supreme Court in the case of K.S.Shiridharan & Ors. -vs- Union of India & Ors. and in the case of the Divisional Superintendent, E.Rly. Dinapur & Ors. -vs- L.N.Kashri & Ors. canvass that the impugned order is liable to be quashed and the applicant should get all the retiral benefits on the fixed pay.

8. We have gone through the decisions of the case of Bhagwan Shukla -vs- Union of India & Ors, wherein it has been held that the order of the Central Administrative Tribunal in not granting similar relief is set aside. The other decisions also follow the same



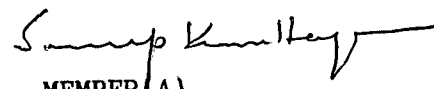
principal.

9. Therefore the Hon'ble Supreme Court has laid down the dictum that reduction of pay long years after retirement is violation of principles of natural justice and Article 14 of Constitution of India. Therefore we have no hesitation to set aside the order of reduction of pay. The applicant is entitled to get all consequential benefits such as revision of pay and refund of the amount already recovered, if not refunded.

10. The OA is accordingly disposed of. No order as to costs.



MEMBER (J)


MEMBER (A)

in