

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 511 OF 2011

Tuesday, this the 9th day of October, 2011

CORAM:

HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

P.C Siddic
Son of Cherumitheen
Retd. Technician I, S.C Railway
Residing at Panangaden House
Kariyakunnu, Puthucode Post
Palakkad Dist., Kerala

- Applicant

(By Advocate Mr.M.P Varkey)

Versus

1 Union of India represented by
General Manager
South Central Railway
Rail Nilayam, Secunderabad – 500 371

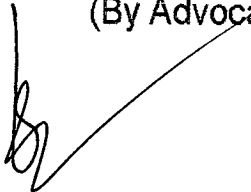
2. Workshop Accounts Officer
Carriage Repair Shop
South Central Railway
Tirupati (A.P.) - 517 520

3. Workshop Personnel Officer
Carriage Repair Shop
South Central Railway
Tirupati (A.P) – 517 520

4. The Manager
Indian Overseas Bank Ltd.
Puthucode, Palakkad Dist. - 678 687

- Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)



The application having been heard on 20.09.2011, the Tribunal on 4.10.11 delivered the following:

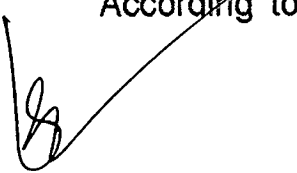
ORDER

HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

1. The applicant retired as Technician Grade I in the pre-revised scale of Rs.4500-7000 on 31.05.2007. Since in the PPO issued on 29.03.2009 vide Annexure A-2 there was certain deficiency in respect of qualifying service, he had moved this Tribunal through O.A. 405/09 which was disposed of by Annexure A-3 order dated 04.06.2010 as having become infructuous in view of certain clarifications issued by the Railways vide O.M dated 10.12.2009. In the said PPO dated 29.03.2009, the pay of the applicant is indicated as 13,670/-.

2. Subsequently, in the revised PPO vide Annexure A-4A while the respondents had taken into account the latest Pension Rules relating to qualifying service and removed the deficiency in the earlier PPO dated 29.03.2009, the revised pay of the applicant was however, modified from Rs.13670/- to Rs.13420/- and thus the pension was reflected as half of 13,420/- viz; Rs.6710/-. The claim of the applicant is that the respondents cannot revise the pay of the applicant from Rs.13670/- and thus he should be paid half the said amount viz; Rs.6835/-.

3. The respondents have contested the Original Application. According to them the applicant's pay as on 03.05.2007 came only to be



Rs.13420/- and not Rs.13670/-. The pay of Rs.13670/- indicated in the earlier PPO was by an inadvertent mistake. Thus the applicant is eligible only for 50% of the actual revised pay of Rs.13,420/-.

4. Counsel for the applicant argued that earlier in matter of qualifying service by virtue of clarification by the respondents, the deficiency was removed in the PPO issued on 29.03.2009. The respondents should have strictly followed the relevant rules, which have reduction of pension amount. He has relied upon Rule 90 of the Railway Pension Rules and also a decision by the Apex Court in Union of India Vs Shri P.N Natarajan 2010 in 12 SCC 405.

5. Counsel for the respondents on the other hand submitted that the respondents are well within their powers in correcting any clerical error that has inadvertently crept-in, in the PPO. Hence by showing Rs.13420/- as correct pay in the revised PPO, the respondents have acted rightly.

6. Arguments were heard and documents perused. The applicant superannuated from 31-05-2007. At that time the revised pay Rules 2008 did not come into existence, though subsequently, the rules had retrospective effect from 01-01-2006. Initially the applicant's last pay drawn was reflected in the P.P.O at Rs. 5625 plus DP Rs 2813 totalling Rs 8438. His pension of Rs 4190 (before commutation) fixed was on the basis of the above mentioned last pay drawn. Annexure A-1 refers.

7. On 29-03-2009 the respondents had issued another order in which the

last pay under the Revised Pay Rules was reflected as Rs 13,670/-. And the amount of basic pension arrived at was Rs 5,178/-. It appears that the above amount of pension not being 50% of the pay drawn by the applicant, the quantum of pension was restricted on pro rata basis, treating 33 years of service as qualifying period for full pension. The applicant had moved OA No. 405 of 2009 in respect of qualifying service for pension purposes, as the Rules had undergone changes in that the earlier qualifying services of 33 years was no longer relevant. This OA was however rendered infructuous in view of the fact that there had been a clarification in respect of those who had superannuated during the period from 01-01-2006 to 02-09-2008. Order dated 04-06-2010 at Annexure A-3 to the OA refers. Thus, the respondents had acceded to the fact that the extent of pension in the case of the applicant also should be 50% of the last pay. This meant that the applicant was to be paid pension of Rs 6,835/- being 50% of Rs 13,670/- the last pay indicated in the aforementioned order dated 29-03-2009. However, by a subsequent order dated 05-10-2010, the revised pay was modified as Rs 13,420/- and the amount of pension was reflected as Rs 6,710/-.

8. The applicant has challenged the above modification in the last pay and claims that he should be paid half of Rs 13,670/- as his revised pay as per order dated 29-03-2009 was Rs 13,670/- and not Rs 13,420/-.

9. Counsel for the applicant relied upon a rule in the Pension Rules which prohibit any revision in the pension to the disadvantage of the pensioner after two years of superannuation. Rule 90 of the Railway Servants' Pension Rules reads as under:-

"Subject to the provision of rules 8 and 9 pension once sanctioned after final assessment shall not be revised to the disadvantage of the railway servant unless such revision becomes necessary on account of detection



of a clerical error subsequently"

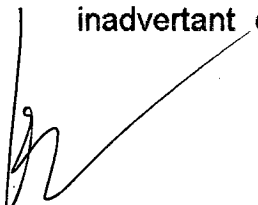
10. The counsel has also relied upon the decision of the Apex Court in the case of **Union of India vs P.N. Natarajan (2010) 12 SCC 405**. In this the case the vital point was that when a statutory option had been exercised by a pensioner under a bipartite agreement and the same resulted in some monetary benefits, the same cannot be deprived of without giving action oriented notice and opportunity of being heard. In the case before us, the revision of pension was due to erroneous fixation of revised pay on the basis of which pension was worked out.

11. Again in so far as the pension rule cited, the same too is not applicable since the applicant in the instant case was never paid the amount of Pension of Rs 6835/-. All along it was either Rs 4,190/- or at best Rs 5,718/-. This is sought to be revised on the basis of the correct revised pay of the applicant.

12. Thus, the only question is whether the respondents are well within their right to right the wrong at the earliest opportunity. The applicant's revised pay is stated to be only Rs 13,420/- and it has been wrongly reflected as Rs 13,670/-. In the case of **Union of India vs S.R. Dhingra (2008) 2 SCC 229**, the question came up about correction of error in calculation. The Apex Court has inter alia held as under:-

"It appears that due to a clerical error the notional benefits of the respondents w.e.f. 1-1-1986 were wrongly fixed and such retired employees are getting excess pension. It is well settled that a mistake does not confer any right to any party and can be corrected".

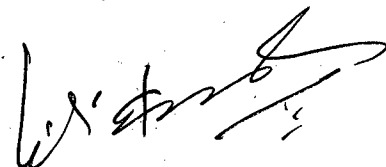
13. The applicant cannot be permitted to take undue advantage of an inadvertant error committed by the respondents and claim that perpetually his



pension should be based on the erroneous revised pay. Such a claim or situation is not contemplated in the pension rules relied upon by the applicant. In fact, clerical errors could be corrected even as per the rule relied upon by the applicant's counsel.

14. In view of the above, the OA fails and is dismissed. Liberty is however granted to agitate against the fixation of pay of Rs 13420/- in case the applicant is entitled to higher revised pay.

15. No cost.



DR.K.B.S RAJAN
JUDICIAL MEMBER

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