

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.492/2005

This the 26th day of September 2006

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

Raj Karan aged about 63 years son of Late Jagdeo, Ex. Welder under Section Engineer (P.Way), Northern Railway, Faizabad under the Respondents and Resident of Own House Kausal Puri City and district, Faizabad.

...Applicant.

By Advocate: Shri A.C. Misra.

Versus.

1. Union of India through the General Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Divisional Office, Lucknow.

By Advocate: Shri S.M.S. Saxena.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant, retired employee of the respondents has filed this O.A. aggrieved by the deduction of his pay Rs. 4,270/= to Rs.4190/- on the date of his retirement which lead to deduction of pension amount on the ground that no notice was served and no opportunity was provided to him and thus sought for restoration of original pay on the date of his retirement and fixing of his pension accordingly.


2. The respondents have filed Counter-Affidavit opposing the claim of the applicant stated that at the time of his promotion as Thermit Welder, the applicant basic was fixed at Rs.1070 in the Grade

Rs.950-1500 w.e.f. 15.4.1988 but he was entitled for Rs. 1050/= as per rules which they noticed at the time of final settlement after superannuation of the applicant and thus corrected the same which they are entitled as per Rule -15 of the Railway Services (Pension) Rules 1993 and no notice are required for correction of such mistake and thus, affirmed their action.

3. Heard both sides.

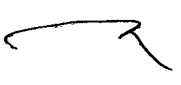
4. The point for consideration is whether the applicant is entitled for the relief's as prayed for.

5. The Admitted facts of the case are that the applicant got promotion as Thermit Welder in the Pay-scale of Rs.950-1500 w.e.f. 15.4.1988 and his pay was fixed at Rs. 1070/= and thus getting pay of Rs.4190/= w.e.f. 1.4.2001 and thus, he was in the same pay scale as on the date of his retirement dated 30.6.2001. It is also not in dispute that basing on such scale the department has fixed the pension of the applicant at Rs.2107/= tentatively. It is an undisputed fact that at the time of final settlement, the respondent have noticed the mistake in the pay fixation of the applicant at the time of promotion as Thermit Welder in the scale of Rs.950-1500 w.e.f. 15.4.1988 and corrected it as Rs.1050/= in place of Rs.1070/= and basing on such pay-scale they have fixed the pay-scale of the applicant at Rs.4190 w.e.f. 1.4.2001 in the place of Rs.4270 and consequently, the pension amount has been fixed from Rs. 2107 to Rs.2067. When the applicant made an application in O.A.No.355/2003 for consideration of his representation for reduction of pay-scale from Rs.4270 to Rs.4190, the Tribunal has given the direction to the respondents to consider the representation of the applicant by



reasoned and speaking order within the stipulated period and Annexure-5 is the said order of the Tribunal dated 1.8.2003. Thereafter, the respondent have considered the representation of the applicant and passed reasoned and speaking order covered under Annexure-7 dated 21.11.2003 stating that on scrutiny of Service - Book at the time of final settlement, they noticed that the pay of the applicant was wrongly fixed at the time of promotion as Thermit Welder n the pay -scale of Rs.950-1500 at Rs.1070/= w.e.f. 15.4.1988, though, he was only entitled for Rs. 1050/= as he was drawing Rs.1010/= in the grade of Rs.800-1500. The contents of order covered under Annesure-7 also reveals that the department has rectified the above error, and no reduction in the pay or settlement dues has been done as alleged by the applicant and furnished details of fixation of the pay of the applicant right from beginning till 1.4.2001.

6. The controversy in this application is very short and limited. The main grievance of the applicant is that neither any notice has bee issued nor called for any explanation and thus reduced his basic pay behind his back is arbitrary and illegal. The learned counsel for the respondents stated that there was a mistake, while fixing the pay of the applicant at the time of his promotion as Thermit Welder, which they noticed at the time of final settlement and thus corrected the same. They further contended that rectification of such mistake or corrections are permissible and no notice is required and in support of it, he relied on Rule-15 of Railway Service (Pension) Rules , 1993 and also relied on the following decisions.



1. 2006 (1) ATJ in the case of Santhakumari P.J. Vs. State of Kerala and Others page-321.
2. 2000 SCC (L&S) in the case of Union of India & Others Vs. Sujatha Vedachalam (Smt) and Others Pare-882.
3. 2005 (3) ATJ in the case of Shri Laxman Khandoo Thakre Vs. Union of India & Others Pare 500.
4. 2005 (2) S.C. Services Law Judgments in the case of Secretary, O.N.G.S. Ltd. & Others. Vs. V.U. Warier Page-70.
7. The Rule-15 of the Railway Services (Pension) Rules, 1993 says as follows:-

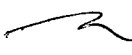
15 RECOVERY AND ADJUSTMENT OF GOVERNMENT OF RAILWAY DUES FROM PENSIONARY BENEFITS:-

(1) a claim against the Railway Servant may be on account of all or any of the following:-

(a). losses (including short collection in freight charges, shortages in stores) caused to the Government or the Railway as a result of negligence or fraud on the part of the Railway servant while he was in service.

(b). other Government dues such as over payment on account of pay and allowances or other dues such as house rent, post office, or life Insurance Premium, or outstanding advance.

(ii). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased Railway Servant."

8. From the reading of the above provisions of Railway Services (Pension) Rules, it is clear that the department has got right to correct such mistakes as a result of negligence or fraud on the part of the employee and for such correction or recovery no consent is required from the employee.
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9. Similarly, the above citations relied by the learned counsel also supporting that the department is justified to correct the mistake and the judgment of the Hon'ble Apex Court given in the case of Secretary, O.N.G.S. Ltd. & Others. Vs. V.U. Warier also reveals that non-obtaining consent of the pensioner is neither arbitrary nor unlawful.

10. In view of the above discussions more particularly, Ruels-15 of the Railway Services (Pension) Rules, 1993 and also the decision relied by the learned counsel for the respondents, it is clear that the respondents department got right to correct the mistakes if any committed at the time of final settlement of an employee and non issuance of notice or explanation to the affected employee is neither arbitrary nor illegal and as such, there is no justification in the claim of the applicant for finding fault with the action of the respondents in correcting the mistake. Thus, there are no merit in the claim of the applicant for allowing his prayer either for restoration of his pay at Rs.4270/= at the time of superannuation on 30.6.2001 or for fixation of pension at Rs.2107/=:, which the department fixed tentatively.

11. In view of the above, OA is dismissed without any order as to costs.


(M. KANTHAIYAH)
MEMBER (J)

26-9-06

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