

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Original Application No. 202 of 2010

Reserved on 23.2.2015

Pronounced on 4th March, 2015

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Lallan, S/o Sri Chhotey Lal, aged about 61 years, Retired Commercial Supdt. Gr. II, N.E. Railway, Bahraich, R/o Village Imilia Bazar, P.O. Chilwaria, District Bahraich.

.....Applicant

By Advocate : Sri M.A. Siddiqui

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur, U.P..
2. The DRM (P), NER, Ashok Marg, Lucknow.
3. Additional Divisional Manager, NER, Ashok Marg, Lucknow.
4. Senior Commercial Manager, NER, Lucknow.
5. Assistant Commercial Manager, NER, Lucknow.

.....Respondents.

By Advocate : Sri N. Nath

ORDER

By Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (i) to quash the impugned order dated 2.2.2010 as contained in Annexure no. A-1 to the O.A.
- (ii) direction be issued to the respondent no.2 to restore the pay from 13160 to 15360/- and arrears be paid to the applicant.
- (iii) direction be issued to respondent no.2 to recalculate pensionary and other retiral benefits of Rs. 15360/- p.m. and arrears be paid.
- (iv) Any other direction be issued to the respondents as deemed just and proper by this Hon'ble Tribunal.
- (v) to pay cost of the application. "

2. The facts, as narrated in the O.A., are that the applicant was working as Commercial Supdt. Gr.II when he was issued a charge-sheet dated 23.9.2005 (Annexure no.2). He was subsequently

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issued punishment order for withholding of increment temporarily for a period of six months vide order dated 23.10.2005. He was issued second Memorandum dated 18.7.2006 which resulted in punishment order dated 10/11.10.2006 whereby the increment was withheld temporarily for a period of 15 months. Appeal against this order was rejected. Third memorandum of charge-sheet was issued to the applicant on 18.6.2007 (Annexure-5), which resulted in punishment order dated 8.8.2007 by which increment of the applicant was temporarily withheld for six months. Another charge-sheet was issued to the applicant vide memorandum dated 3.1.2006, which resulted in punishment dated 23.5.2006 thereby increment was withheld temporarily for 24 months. As a result of various punishments, the applicant's increment was withheld temporarily for various periods, some of which are overlapping as explained in the chart given below, but final punishment order concluded on 31.12.2008.

Sl. No.	Date of chargesheet	Punishment order	Period of punishment	Expiry period
1.	Chargesheet dated 23.9.2005	23.10.2005	6 months	From Jan. 2005 to 30.6.2006
2.	Chargesheet dated 3.1.2006	23.5.2006	24 months	From 1.7.2006 to 30.6.2008
3.	Chargesheet dated 18.7.06	10/11.10.06	15 months	From 1.7.07 to 30.9.2008
4.	Chargesheet dated 18.6.07	8.8.2007	6 months	From 1.7.2008 to 31.12.2008

The expiry date has been calculated on the 6th CPC recommendations whereby increment is payable on 1st July of every year. After expiry of various punishments, his salary was fixed and he drew basic salary of Rs. 15360/- in the month of October, 2009 as would be evident from the pay slip issued to the applicant for the month of October, 2009 (Annexure -10). However, without any notice being issued to him, the salary of the applicant for the month of November, 2009 was reduced to Rs. 13,160/-. The applicant retired from service on 31.1.2010 and as such he is suffering pecuniary loss as his salary has been unfairly reduced from Rs. 15360/- to Rs. 13160/-. He sought for full details of the deductions. The respondent no.2 vide impugned order dated 2.2.2010 as provided the details hereunder:-

"Pay as on 1.1.2006 = 1360+42=17,360/-

WIT 1.7.2006 = Due to WIT 6 months = 23.3.2006.

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1.7.2007 = Due to WIT 18 months dt. 6/7.2.06
 1.7.2008
 1.7.2010 to 30.9.2010
 $\frac{1.1.06}{1.7.09} = 13160 + 4200$

Increment open 1.12.2010"

The applicant has challenged such deductions on the ground of arbitrariness. More-over the respondents have communicated his next increment date as due on 1.10.2010 when he had already retired on 31.1.2010.

3. The respondents have filed their Counter Reply whereby they have admitted the contents of the O.A. from para 4.1 to 4.10 in which the applicant had given the details of punishment and their currency. However, they have simultaneously stated that the increment of the applicant was stopped from 2006 as per the chart given below:-

"WIT 20 months NIP dated 23.5.2006
 WIT 18 months NIP dated 26.12.2006.
 WIT 15 months NIP dated 11.10.2006"

Thus, the salary of the applicant was stopped for 53 months i.e. 4 years and 5 months. The respondents have further made statement in para 8 of Counter Reply which can best be understood in verbatim, on reproduction below:-

"8. That in regard to the contents of paras 4.13 to para 4.25 it is submitted that in regard to the description and statement which have been mentioned and given by the applicant in any of the para under reply in regard to that the detailed version has already been given by the deponent while giving reply against the para 4.11. It is further submitted that in the year 2006, the punishment of the stoppage of the increment of the salary for four years, 5 months by punishment has been given by the department which is and has been binding per rules and regulations of the Indian Railway Act. When the 6th Pay Commission was instituted in operation under which the increment of the salary was took place from the month of July to all the employees who are the Central Government Employees. Thus, the increment of pay scale from 1.7.2006 which was stopped for the 4 years 5 months remained into operation as given below:-

1.7.2006 to 30.6.2007
 1.7.2007 to 20.6.2008
 1.7.2008 to 30.6.2009
 1.7.2009 to 30.6.2010
 1.7.2010 to 30.11.2010

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During the aforesaid above mentioned period the increment of pay scale was not payable to the applicant and during the above period the applicant was got retired on 31.1.2010.

When the 6th Pay scale came into operation that at once at random the pay scale of the employees came into operation and of it the declaration letter to all the employees of it was also taken to accept the same to the extent that the pay scale which has now been fixed of increment of the pay is being operated then infact, the pay scale which has been fixed then the extra amount which has to be paid shall be deducted. And to it all the employees accepted. The applicant pay scale lastly was to the extent 9300-34800 on this Grade -Later on the total pay to the applicant was to the extent of Rs. 13560 + Grade pay 4200 was fixed. Thus, at the last stage of his employment was to the extent as detailed above which is absolutely correct and nothing has been concealed or deducted by the respondents. Initially the pay scale of the applicant was Rs. 5500-9000 in the year 2005 and the pay payable by the department to the applicant was to be extended of Rs. 7075 and when the 6th Pay Commission was implemented then from year 1.1.2006, the pay scale of the applicant was to the extended of Rs. $7075 \times 1.86 = 13159 = 13160 + \text{Grade pay } 4200$. And all the amount of the increment of the the pay scale from 1.7.2006, 1-7-2006, 1-7-2007, 1-7-2008, 1-7-2009, 1-7-2010 to 30-11-2010 till then due to the stoppage of the payment of pay scale of the applicant was in accordance with the rules and regulations of the Railway Act and the same is binding. The applicant was ultimately on 31.1.2010 was retired from the Railway services of the respondent."

4. The applicant has filed Rejoinder Reply refuting the contentions made by the respondents in their Counter Reply and reiterating the averments made in the Original Application.

5. During the course of hearing, learned counsel for the applicant has placed reliance on the following case law:-

Bhagwan Shukla Vs. Union of India & Others reported in 1994 SCC (L&S) 1320

On the other hand, learned counsel for the respondents has placed reliance on the Serial No. 4737-Circular no. 52-E/O/26 IIIE (D/A) dated 22.7.1969 issued under the authority of Railway Board's letter dated 29.4.1969.

6. We have heard the learned counsel for the parties and have also seen the pleadings on record.

7. It is seen from the rival submissions of both the parties that the applicant has given details of all chargesheets and

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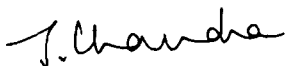
punishments awarded to him and has also produced copies of the same. It is also seen that some of the penalties have been given during the currency of earlier penalty, but there is nothing on record to show that these two orders are to be implemented one after another. Rather on perusal of orders, it would show that the punishments are to run concurrently thereby the chart produced by the applicant in para 2 above is appears to be correct in so far as expiry of the penalties are concerned. Further, the applicant has been paid salary @ Rs. 15360/- for the month of October, 2009 and without issuing any show cause, the salary of the applicant for the month of November, 2009 has been reduced to the extent of Rs. 13,160/-. On the other hand, the respondents have given a totally confusing and misleading reply with no documentary evidence to support their contention. Infact in 1st para of their Counter Reply, they have stated that the details of punishment awarded to the applicant are matter of record and nothing further needs to be said. The respondents in a very casual manner said that the applicant's 'salary' was stopped for 53 months. This appears to be a typing error as only increment were stopped. The figure of 53 months is arrived at by simply adding the penalty periods when there is nothing to show that in the event of one penalty being imposed during the currency of another penalty, they were to run one after the other.

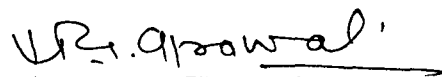
8. The respondents have not denied that the applicant was paid a basic salary of Rs. 15360/- in the month of October, 2009. But in the month of November, 2009, the pay of the applicant has been reduced without issuing any show cause or notice of any kind whatsoever. In the case of Bhagwan Shukla (supra) the Hon'ble Supreme Court has held as under:-

"The applicant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Therefore, the impugned order by which the pay of the appellant fixed on his promotion as Guard-C from the post of Trains Clerk was sought to be reduced is not sustainable."

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9. In view of the discussions made above and also on the basis of law laid down by the Hon'ble Supreme Court, referred to hereinabove, the O.A. succeeds. The impugned order dated 2.2.2010 is quashed. The respondents are directed to restore the pay of the applicant as Rs. 15360/- from Rs. 13160/- and pay the arrears thereof. The pensionary benefits including pension be also calculated treating the pay of the applicant as 15360/- and pay the arrears thereof. The aforesaid exercise shall be completed within a period of four months from the date of receipt of copy of this order. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Girish/-