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CENTRAL ADMINISTRATIVE TRIBUNAL

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ORIGINAL APPLICATION NO. 516 of 1992

K.N. Shukla

Applicant

versus

Central Board of Trustees, through its
Secretary, The Central Provident Fund
Commissioner, New Delhi and another

Respondents.

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 for quashing of the impugned order dated 6.8.92, ordering the recovery from the gratuity of the applicant; and for further direction to the respondents to release the full and final pension with effect from 1.5.90 alongwith arrears, full amount of gratuity, leave encashment as well as amount of T.A. bills.

2. Briefly stated the facts of ^{~ this ~} case, interalia are that the applicant was lastly employed as Provident Fund Inspector Grade I in the office of Regional Provident Fund Commissioner, U.P., Meerut and from that post he retired with effect from 30.4.90. During the year 1981 when the applicant was posted as Provident Fund Inspector grade I at Lucknow, a disciplinary enquiry ^{was} initiated against him for certain lapses including the charge that he was found to be in possession of the assets to the extent of Rs 32, 199.28 which were alleged to be disproportionate to his known sources of income ; and thereby it was alleged that the applicant has contravened the provisions of Rule 3(1) of the C.C.S.(Conduct)Rules, 1964. Vide order of punishment dated 13th January, 1987 the applicant's pay was reduced by two stages from Rs 1000 to Rs 920.00 in the

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pay scale of Rs 650-30-740-35-810-E.B.-35-880-40-1000-E.B.-40-1200 for a period of two years and as a consequence of the impugned order dated 13th January, 1987, annual increments of the applicant which fell due on 1.10.1980, 1.10.1981, 1.10.1982, 1.10.1983, 1.10.1984, 1.10.1985, 1.10.1986, ~~1.10.1987~~ and 1.10.1987 and 1.10.1988 were not added in the monthly pay of the petitioner due to pendency of the disciplinary proceedings. The Annual increment which fell due on 1.10.1989 was though added in the monthly pay of the applicant but this amount of increment is said to have been paid to the applicant in excess on account of the impugned order of punishment dated 13.1.1987. It has further been stated that a perusal of the impugned order of punishment dated 13.1.1987 would show that the reduction to a lower stage of pay from Rs 1000.00 to Rs 920.00 at the stage of Rs 1000.00 was made operative only for a period of two years; and as such the effect of the impugned order was that after a period of two years, the pay of the applicant was liable to be restored in the prescribed pay scale and consequently, the respondents were bound to re-fix the pay of the applicant after adding ^{all} annual increments which had fallen due to him on 1.10.80.

1.10.81, 1.10.82, 1.10.83, 1.10.84, 1.10.85, 1.10.86 which were not added in the pay of the applicant due to pendency of the aforesaid disciplinary proceedings and in respect of which no order withholding annual increment was passed. It has further been stated that

the annual increments which fell due on 1.10.89 also to be was added in the pay of the applicant but the said amount is said to have been paid to the applicant in excess which is illegal and incorrect and the same would not be wanted and the impact and effect of the aforesaid order dated 13.1.1987 was only

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to the effect that on the expiry of the period of two years of the reduction to a lower stage of pay, the applicant would not be entitled to those two increments which fell due to him on 1.10.87 and 1.10.88 from the aforesaid period of two years; but this cannot be interpreted in any manner that the applicant would also not be entitled to all future increments which fell due to him after expiry of aforesaid period of two years. It has further been stated that the aforesaid order of punishment dated 13.1.1987 was not implemented till the applicant was retired from service with effect from 30.4.92; but after a lapse of about five years from the date of the order of punishment, the impugned order is sought to be implemented from the retiral benefits of the applicant which is altogether illegal and arbitrary and as such the impugned order should be quashed and the relief sought for be granted. The applicant has approached this Tribunal for the reliefs sought for because of the fact that despite many representations to authorities concerned, nothing could materialise.

3. This is noteworthy that despite issue of notices to the respondents and despite ample opportunity having been afforded to the respondents, no C.A. has been filed and as such the case has proceeded ex parte against the respondents.

4. I have heard the learned counsel for the applicant and have perused the papers annexed thereto.

5. The learned counsel for the applicant while drawing my attention to the contents of application and papers annexed thereto has argued that a perusal

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of order dated 13.1.87 shows that the pay of the applicant was ordered to be reduced by two stages from Rs 1000/- to Rs 920/- in the pay scale of Rs 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 for a period of two years; and it was further ordered that the applicant Shri K.N. Shukla shall not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction shall have effect of postponing of his future increments of pay; and as such after expiry of aforesaid period of two years, the applicant should have been allowed his annual increments, but the respondents have not released annual increments of the applicant and have deducted the amount of annual increment which fell due on 1.10.1989 from the amount of gratuity of the applicant by the impugned order dated 6.8.92(Annexure A-1) which is against the principles of natural justice also in as much as no opportunity was afforded to the applicant to place his view points before passing the impugned order and as such the application of the applicant should be allowed and in support of his arguments he has placed reliance on the following rulings:

1. U.P. Local Bodies and Educational Cases, 1986, Dipak Gulati and another(petitioners) vs. Allahabad Development Authority (Respondents) ^{at page 734} wherein it has been enunciated:

"Principles of natural justice-No order should be passed or action should be taken adverse to the interest of any person behind his back and without affording him a reasonable opportunity of being heard."

2. A.I.R. 1978, Supreme Court, "Smt. Maneka Gandhi (petitioner) v. Union of India and another (Respondents), at page 597 and 598, wherein it has been enunciated:

"Natural justice is a great humanising principle intended to invest law, with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected."

3. Lucknow Civil Decisions, 1991, Volume-9, Om Prakash Gupta ~~Prakash Gupta~~ vs. State of U.P. at page No. 458 and 459 wherein it has been enunciated:

"Natural justice, principles of-Giving of reason is also an essential ingredient of the whole process of natural justice-Order which is non-speaking cannot be sustained."

6. I have perused the above rulings.

the period of such reduction and on the expiry of such period, the reduction shall have the effect of postponing of his future increments of pay.

8. This is important to point out that a perusal of the impugned order dated 6.8.92 (Annexure No. 1) shows that out of the total amount of Rs 39875/-, only a sum of Rs 26,102 by way of provisional gratuity was ordered to be paid to the applicant and ~~gratuity was ordered to be paid to the applicant and after adjusting just Rs 100/- be paid for unassessed dues, and after adjusting Rs 1000/- for unassessed dues, Rs 6627/- being pay drawn in excess for the period from 13.1.87 to 30.9.88 in R.O. Kanpur and Rs 6146 being pay drawn in excess w.e.f. 1.10.88 to 30.4.90 in sub-Regional office, Meerut.~~

8. This is also noteworthy that from the scrutiny of entire material on record it appears that the above impugned order dated 6.8.92 (Annexure -1) was passed by the respondent No. 2 without giving any opportunity to the applicant to explain his view points; and as refusal of the impugned order further reveals that no reason was assigned for deducting the above amount, as specified in impugned order, amounting to Rs 13,773.00 as detailed in the impugned order dated 6.8.92 (Annexure No. 1); and thus, this being so, and keeping in view the principles of law as enunciated in the above rulings, I find that the impugned order dated 6.8.92 (Annexure A-1) is against the principles of natural justice and is liable to be quashed.

9. Consequently, the application of the applicant is allowed and the impugned order dated 6.8.92 (Annexure No. 1) is set aside and the

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respondents are directed to re-consider the matter afresh after affording the reasonable opportunity to the applicant by reasoned and speaking order as per extant rules and regulations and keeping in view the provisions contained under Rule 25(5) of Fundamental Rules and to redress the grievances of the applicant accordingly, and to pay the amount for which the applicant is found entitled after adjusting the amounts already paid to him, within a period of three months from the date of receipt of the copy of this judgment.

10. The application of the applicant is disposed of as above. No order as to costs.



JUDICIAL MEMBER.

27.5.93

LUCKNOW DATED: 27.5.93

Shakeel/