

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 186/2001

Date of Decision : 17/4/2003

V.K. Kokash

Applicant

Shri G.S. Walia^t

Advocate for the
applicant

versus

Union of India and Anr.

Respondents

Shri V.D.Vadhavkar

Advocate for the
Respondents

CORAM:

Hon'ble Smt. Shanta Shastry, Member (A)

Hon'ble Shri K.V. Sachidanandan, Member (J)

- (i) To be referred to the report or not? X
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal? ✓
- (iii) Library ✓



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. NO. 186/2001

17/4/2003

C O R A M

HON'BLE SMT. SHANTA SHASTRY, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

V.K. Kokash
(Virendra Kundanlal Kokash)
Retired Motorman formerly working
under Motorman Inspector
Western Railway, Churchgate
Mumbai-400 020
residing at Flat No. 101
First Floor, B wing,
Silver Dunes Apartments
Hatishkar Marg, Prabhadevi
Mumbai-400 025.

Applicant

By Advocate Mr. G. S. Walia¹

Vs.

1. Union of India through
General Manager, Western Railway
Headquarter office,
Churchgate,
Mumbai-400 020
2. Divisional Railway Manager
Mumbai Division
Western Railway
Mumbai Central
Mumbai-400 008'

Respondents

By Advocate Mr.V.D. Vadhavkar

O R D E R


HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined the Railway service on 8.5.1965, promoted as Motorman in Western Railway, Churchgate, Mumbai. He sought voluntary retirement under his application dated 1.9.98 which was accepted by respondents on 17.11.98 vide Annexure A1 order and he retired voluntarily w.e.f. 30.11.98. At the time of retirement the applicant was working in the scale of Rs. 6000-9800 revised pay -Vth Pay Commission). The pay of the applicant w.e.f. 1.1.96 was Rs. 9800 as basic pay. He also got a stagnation increment and he

was drawing his pay at Rs. 9900 p.m. w.e.f. 1.1.1996. In Annexure A2 Identity-Cum-Service-Certificate issued to the applicant at the time of his retirement the applicant's basic pay was Rs. 9990/-. According to the applicant he has completed 33 years of qualifying service and he was entitled to full benefits of pension in accordance with the rules. He got the official information regarding payment of pension by respondents letter dated 7.4.99 (Annexure A3). Subsequently he came to know that his basic pay has been revised vide letter dated 7.2.97 by one stage at the stage of Rs. 2825/- in the pay scale of Rs. 1640-2900 for a period of two years without the effect of postponing of his previous service. Applicant was drawing his basic pay for the last 10 months at Rs. 9990/- before his retirement. He had not received any information regarding the reduction in basic pay due to the said alleged punishment in the revised pay scale of Rs. 6000-9800/-. By letter dated 1.2.2000 the applicant brought to the notice of the respondents that his basic pay has been revised arbitrarily without notice to him. His basic pay has been reduced to Rs. 9610/- which was wrong and illegal and without a show cause notice. No reply was received to his representation. The applicant submitted that he is entitled to have his pay fixed at Rs. 9800/- which was his basic pay on 1.1.1996. Aggrieved by the said reduction the applicant has filed this O.A. under Section 19 of the administrative Tribunals Act seeking the following reliefs.

(i) This Hon'ble Tribunal be pleased to hold and declare that the Applicant is entitled to have his pay and pension fixed at Rs. 9990/- basic pay per month and all consequential benefits of pension, commuted pension are to be calculated, considering Applicant's basic pay at Rs. 9990/-.

(b) This Hon'ble Tribunal be pleased to order and direct the respondents to pay difference in pension and commuted pension as a consequence and result of grant of prayer clause "a" above.



(c) Any other and further order as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case.


(d) Cost of this Original Application be provided for.

2. Respondents have filed a detailed reply statement disputing the averments in the O.A. and contesting the claim. The respondents has contested that the reduction; of pay was necessitated consequent upon the punishment under Railway Servants Discipline and Appeal Rules. The same has been imposed on the applicant after following due procedure prescribed under the rules. The punishment was imposed vide order No. E/E1/308/20/22/2(96) dated 7.2.97 and the action impugned in this Application being pursuant to the imposition of the said punishment the O.A. cannot be entertained. The applicant volunteered to retire from service w.e.f. 12.10.96. He was working in scale Rs. 6000-9800 (RPS), the old scale being Rs. 1640-2900. Though the Vth Pay Commission scale was effective from 1.1.96 the actual implementation took place in 1997-98. The applicant's pay was fixed on the maximum of Rs. 9800/- with effect from 1.1.96. He was due for the first stagnation increment w.e.f. 1.1.98 but not granted. Due to the penalty imposed on him under the Disciplinary and Appeal Rules his pay has been reduced from one stage for two years without the effect of postponing future increments by Annexure R1 order. Against the punishment the applicant preferred appeal on 17.4.97 which was rejected on 29.5.97 by Annexure R2 which was cancelled by the applicant. On knowing fully well that reduction of pay was in operation for two years, the applicant has taken voluntary retirement on 30.11.98 which a date under the period of punishment and the same is not arbitrary or without his knowledge. Corresponding to the reduction in pay the pensionary benefits have been recalculated on the basic pay of Rs. 9610/-. The punishment

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was imposed on 7.2.97. The applicant was working under Motorman Inspector, Churchgate. His pay slip was also prepared by the Unit. The said unit erroneously did not implement the penalty. Applicant chose to keep quiet and preferred to take voluntary retirement with full knowledge of punishment. The error also did not reflect in the Identity Card. Even at the time of retirement the employee did not speak about the Disciplinary case against him. The normal procedure prevailing under the respondents in respect of penalty imposed is necessary entry made in the Service Sheet. The error of non effecting of penalty was noticed by Settlement Section of the office of Respondents and error was rectified. Over payments are being worked out and recoveries are being made suitably. The contention that the respondents had denied the pay of the applicant and reduced the same arbitrarily is not correct. The fact that the applicant took voluntary retirement during the currency of the punishment has been suppressed inadvertently not by the respondents and since the punishment was imposed after following due procedure the respondents cannot be blamed for the same. Therefore the O.A. is liable to be dismissed.


3. We have heard Shri G.S. Walia for the applicant and Shri V.D. Vadhavkar for the respondents. The learned counsel taken us to the facts, pleadings, submissions and materials placed on record. The learned counsel for the applicant argued that the applicant has not suppressed any material fact and also was under the impression that the penalty would have been waived since it was imposed in 1997. even after the imposition of the so-called penalty nothing transpired in the records. Hence the applicant was under the impression that the alleged penalty has not taken effective. Therefore the action on the part of the respondents in




reducing the pensionary benefits is against the procedure and that too when it is without a show cause notice, has prejudicially affected the interest of the applicant and therefore to be faulted and the impugned action of the respondents in reducing the pensionary benefits should be set aside and quashed.

4. The learned counsel for the respondents submitted that the applicant is not entitled to take advantage of the mistake or erroneous action of the respondents in not proceeding with the penalty. One's mistake should not be advantageous for another. The learned counsel also argued that the Railway is a public sector establishment and inadvertent lapse on the part of the concerned Section in not recording the penalty order on the Service Records of the applicant cannot be found to be the fault of the respondents and therefore a subsequent action of the respondents in refixing the pensionary benefits and recovering the amount is fully justified.

We have heard the learned counsel and have given due consideration to the arguments advanced by them, pleadings and materials placed before us. It is a fact that the disciplinary proceedings were in existence prior to the submission of application for voluntary retirement by the applicant. The contention that the penalty proceedings have not found a place in the Service Register/Records of the applicant is a mistake cannot be accepted for the reason that railway is an establishment having large number of employees to man the concerned departments including the Personnel department. The disciplinary proceeding was in the offing for a period of two to 3 years wherein the appeal was also filed which was rejected and the punishment was imposed to



the tune of reduction of the stage of pay for two years without effect of postponing the future increments. The alleged penalty order was passed as far as back in 1997 and that was the reason that is being now putforth by the respondents in not giving effect to the penalty and not making the records upto date even at the time of retirement of the employee cannot be justified. Therefore argument of the applicant that he was under the impression that the penalty would have been waived has got good reason and further it cannot be said that he has taken voluntary retirement only to get rid of the punishment will not stand good. The argument of the counsel for the applicant that had this penalty being imposed/implimented at the appropriate time he would not have sought for voluntary retirement because he has got some more years to complete for super annuation and he would have continued in service and obtained full pension. This argument has got great force. Therefore we are of the view that the applicant has deliberately sought the retirement in order to get over the punishment cannot be accepted. It is not the case of the respondents also that the applicant has suppressed material facts from the respondents in getting this benefit. After required years of completion of service the applicant bonafidely believed that he will be eligible for full pension applied for the same. Respondents scrutinised the application and granted the voluntary retirement and pensionary benefits has been calculated and his retirement date was fixed on 30.11.98, a subsequent date and the applicant thereby retired. It is very clear that there is transparency in the proceedings on the applicant's side. Therefore we cannot attribute any suspicion on the part of the applicant in suppressing material facts from the respondents.




6. The Hon'ble Supreme Court in their celebrated decision reported in - Subrata Sen and Others Vs. Union of India and Others 2002(1) AISLJ- Vol. 79 Part-I 111 has declared that (1) pension is not a bounty or a grace or an ex gratia payment (2) Pension is duty of Govt. to pay pension (3) Pension is payment for past services (4) Right to get pension is different from right to get annuity and (5) Pensioner does not sever relations with the employer. Therefore the pensionary benefits is not in the corpus of the respondents but separate proceedings to be followed. We find that such proceedings are not being followed in the case. Therefore the recovery from the pensionary benefits of the applicant is not justified and therefore any action taken by the respondents in this regard is to be faulted and set aside. In this respect, the learned counsel for the applicant has taken to our attention the following decision in Mahaveer Singh Vs. Union of India and Others (1996 (33) ATC 683) wherein the Jodhpur Bench of this Tribunal has held:

"Pension- reduction of, on the ground that it was determined on the basis of wrong fixation of pay-Held on facts, not permissible after four years--Applicant's pension sought to be revised on the ground that it was determined on the basis of pay which was erroneously fixed-Held, the applicant was in receipt of particular level of pay though due to administrative mistake but such mistake could not be rectified after his retirement and his pension was determined on the basis of average pay drawn by him during last ten months- Hence, his pension could also not be reduced."

7. In the same decision which also derivative from a railway case, this Tribunal has observed:


"10. The respondents have failed to bring out any departmental instructions or rules under which overpayments to long after the actual disbursement can be effected from the pensionary benefits of the applicant. They have themselves admitted that the overpayments were made due to the mistake and error on



the part of the administration which was due to conscious and properly processed order. No show cause notice was ever served on the applicant while he was still in service why the overpayments intended to be recovered and a unilateral decision was served on him only after his retirement. I am, therefore, persuaded to accept that the overpayments made to the applicant without his fault cannot be recovered now after he has been allowed to obtain the benefits of the same for so many years uninterruptedly till he retired. The mistake was entirely of the administration and the administration must therefore share the burden of this over^{pay}ment.¹...."

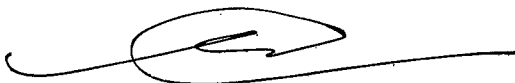
It is also an admitted fact that no show cause notice has been issued to the applicant. The justification on the part of the respondents is that the penalty aspect is within the knowledge of the applicant and therefore, the show cause notice need not be issued is not in tune with the procedure. The natural justice demand that for every impugned action wherein one employee is put on disadvantageous position of reduction of payment should be given at least a show cause notice. This dictum is laid down in Bhagwan Shukla S/o Sarabjit Shukla Vs. Union of India and Others (1994 SCC (L&S) 1320).

8. Therefore we are also of the view that the non-issuance of a notice to explain the position on the side of the applicant is very much faulted and therefore the recovery proceedings initiated is not justified. Yet another decision cited by the learned counsel for the applicant reported in Writ Petition 3283/99 in the N.B. Shaikh VS. Union of India by the Hon^{ble} High Court of Bombay, which has held that on the ground of mistake the increment which are likely^{to be} drawn by an employee cannot be curtailed for that reason and granted the pensionary benefits to the applicant therein.



9. Considering the fact that the applicant has not made any misrepresentation to get the benefit and having no notice issued to the applicant before such an impugned action and pensionary benefit had finally settled and concluded, the pensionary benefits cannot be reduced unilaterally without following the correct procedure, considering the balance of convenience and the necessary prejudice that will be caused to the applicant in this case we are of the view that the reduction of the applicant's pensionary benefits is arbitrary and without any basis. Therefore the action on the part of the respondents in revising the same is faulted and therefore ~~set~~ set aside and we declare that the applicant is entitled to have the pensionary benefits calculated as per the letter dated 7.4.99 and grant the benefit to the applicant considering Rs. 9990 as basic pay and restore his retirement benefit on that basis as that has been done earlier. We also direct the respondents to refund any recovery made till now and restore the benefit as declared above and all other consequential benefits flowing out of the order.

10. We allow the O.A. and in the circumstance allow the parties to bear their respective costs.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



SMT. SHANTA SHASTRY
ADMINISTRATIVE MEMBER

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