

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1101/97

DATE OF DECISION: 18/4/2000

Dr.H.A.Nagpal Applicant.

Shri C.S.Natarajan

-----Advocate for
Applicant.

Versus

Union of India & 3 Ors.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri S.L.JAIN, MEMBER(J)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *yes*

S.L.Jain
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 1101/97
DATED THE 18th DAY OF APRIL, 2000.

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)

Dr.H.A.Nagpal,
579, Ramanagar Society,
5th Road, Khar(W),
Mumbai -400 052

... Applicant.

By Advocate Shri C.S.Natarajan

v/s.

1. Union of India through
Chairman, Railway Board,
Rail Bhavan, New Delhi-110 001.

2. The General Manager,
Western Railway,
Churchgate, Mumbai - 400 020.

3. The Financial Advisor &
Chief Accounts Officer(Pension),
Western Railway, Churchgate,
Mumbai - 400 020.

4. The Senior Manager,
Canara Bank, Khar(West),
Mumbai - 400 052.

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Shri S.L.Jain, Member(J)

This is an application under section 19 of the Administrative Tribunals Act 1985 seeking to quash and set aside the letter dated 17/11/97 and revised Pension order dated 19/11/97 with a declaration that respondents are not entitled to make downward revision of pension of the applicant and are not entitled to recover amount of Rs.53,261/- (Rs.35,538/- in respect of over payment of pension and Rs.17,723/- in respect of over payment of commuted value of pension) alongwith costs.

[Signature]

...2.

The applicant who was originally appointed to a railway service as A.M.O. w.e.f. 13/11/65, was promoted as Divisional Medical Officer in or about 1974 and thereafter as Deputy Chief Medical Officer in or about 1992, voluntarily retired from service w.e.f. 1/10/1993, seven months before the date of superannuation, was issued P.P.O, was paid pension and gratuity calculated by addition of qualifying service of Four years and six months. By a letter dated 23/7/97 bearing No.E (S)789/3/36(93) from the Assistant Personal Officer (Bills), he was given added years of service of Four and half years under Railway Board's letter No.E(P&A)IRT148 dated 9/11/97, which is not correct and the calculation of the Gratuity is also wrong which shall be recovered soon. The matter was represented by the applicant vide letter dated 4/8/97 which was replied vide letter No.E/8/789/3/36/93 dated 28/8/97 rejecting his representation. The applicant served an Advocate's letter dated 4/10/97 which was replied vide impugned order dated 17/11/97 with a revise copy of P.P.O dated 19/11/97.

The applicant claims that the benefit of added years service was accorded to him in view of rule 2423-A of the IREC Part-II, there was no clerical error in the P.P.O. The respondents were not entitled to revise the P.P.O in view of Rule 90 of Railway Services (Pension) Rule 1993. Hence, this OA for the above said reliefs.

The respondents have resisted the claim of the applicant on the ground that the applicant sought voluntary retirement, which is not a retirement on superannuation, the rule relied by

the applicant 2423A IREC Part-II is not applicable. The error was detected by the Railway Board inspecting team during inspection in the office of the Respondent No.3 which was an 'Administrative Mistake' can be corrected at any time.

By an additional written statement, it is further stated that it was in view of letter Ex-R-2 (letter No.EG/135/4488) dated 18/10/1993 which was received in response to letter dated 8/10/93 Headquarter Western Railway letter, the benefit available was in respect of service qualifying for superannuation pension but not for other than of pension and the mistake was a clerical mistake. Thus the respondents have changed their standd from Administrative error to clerical mistake.

The learned counsel for the applicant relied on Rule 90 of Railway Service (Pension) Rules 1993 which is as under:-

"90.Revision of pension after sanction.

- (1) Subject to the provisions 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.

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by Head of Office without the concurrence of the Railway Board if the clerical error is detected after a period of two years from the date of sanction of pension.

- (2) For the purpose of sub-rule (I), the retired railway servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

- (3) In case the railway servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct."

On the basis of the same he argued that only clerical error can be corrected after following the prescribed procedure as mentioned therein. He relied on (1992)20 ATC 576 GBK Jain vs. Union of India and others decided by Central Administrative Tribunal, New Delhi which lays down the proposition as under:-

"It is abundantly clear that a pension once sanctioned cannot be unilaterally revised except for correction of any clerical error. In the instant case the applicant's pension had been finally determined in February, 1987. It was not proper for the respondents to reopen and redetermine the period of qualifying service of the applicant at the time of revision of pension arising in the light of unambiguous provision of the rules and also in the interest of justice, we quash the revised pension order dated 22/6/1987 insofar as it relates to the period of qualifying service."

The learned counsel for the applicant argued that as the provisions-i.e Rule 90 of Railway Service (Pension) Rule 1993 and Rule 90 of CCS Pension Rules, 1972 are similar, the said authority applies with full force and deserves to be followed.

At this stage I refrain myself from recording any opinion on that point as the case can be disposed off on other questions of law, leaving this matter to be decided at the appropriate occasion.

The Pension was sanctioned to the applicant on 19/11/93 vide P.P.O.No.WR/20105/151253. This pension is proposed to be revised by the respondents General Manager vide letter dated 23/7/97 (Annexure-5) against which the applicant represented vide letter dated 4/8/97 (Annexure-6) and the respondent's General Manager vide letter dated 28/8/97 (Annexure-7) decided the representation rejecting the same.

Whether the mistake is clerical error or Administrative mistake, as is the defence of the respondents, after a lapse of more than two years it can not be done by the Head of Office without the concurrence of the Railway Board in view of proviso to Rule 90(1) of the Railway Services Pension Rules 1993, the Railway Board before giving the concurrence has to examine

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the representation rejecting the same.

Whether the mistake is clerical error or Administrative mistake, as is the defence of the respondents, after a lapse of more than two years it can not be done by the Head of Office without the concurrence of the Railway Board in view of proviso to Rule 90(1) of the Railway Services Pension Rules 1993, the Railway Board before giving the concurrence has to examine whether the mistake is clerical error or Administrative mistake and if it comes to a conclusion, that it is the clerical error, it can accord the concurrence. Till the said time revision of pension and recovery in consequence to the same can not take effect. As there is no concurrence so far, only the relief which can be provided to the applicant is that the respondents are not entitled to effect recoveries in view of letter dated 17/11/97 (Annexure-1) and the revised pension order dated 19/11/97 is not to be acted upon till the concurrence of the Railway Board in this respect. Rest of the reliefs regarding "declaration that the respondents are not entitled to make downward revision of pension of the applicant" is rejected at this stage, as the matter is still premature in this respect.

In the result, the OA deserves to be partly allowed and is partly allowed with a direction to the respondents that they are not entitled to effect recoveries in view of letter dated 17/11/97 (Annexure-1) and the revised pension order dated 19/11/97 is not to be acted upon, till the concurrence of the Railway Board in this respect.

No order as to costs.

P.S.M.
(S.L.JAIN)
MEMBER (J)

abp