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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1185/93.

Dt. of Decision : 2.1.1995.

Khaja Mainuddin

.. Applicant.

Vs

1. The Divisional Railway Manager
(Persons) (S&T), Pay Bill Unit 883
B.G.S.C. SC Rly, Sanchalanbhavan,
Secunderabad-500 071.

2. Sr.Divisional Accounts Officer
B.G.S.C. SC Rly, Sanchalanbhavan,
Secunderabad, 500 071.

.. Respondents.

Counsel for the Applicant : Mr. G. Rama Rao

Counsel for the Respondents : Mr. D. Gopala Rao, Addl.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

O.A. 1185/93.

Dt. of Decision : 2.1.1995.

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The applicant who was allowed to retire on his own request with effect from 15-07-1989, was drawing monthly emoluments of Rs. 1440/-. But when his pension was to be fixed, it was fixed on the basis that his average emoluments drawn during the previous 10 months was only Rs. 1380/-. The contention of the applicant was that his average emoluments for the purpose of calculating his pension were Rs. 1428/- and not Rs. 1380/- as fixed by the respondents. Hence this OA with a request that his pension should be correctly fixed by the respondents, ^{by} taking into consideration the average emoluments actually drawn by the applicant during the period of 10 months prior to his retirement.

2. When the applicant approached the Tribunal earlier in OA. No. 441/91, it was disposed of with a direction to the respondents to consider his representation and pass ^{revised} ~~recent~~ order thereon. The respondents vide their order dated 07-06-1993 rejected the ~~the~~ representation of the applicant.

3. The reasons for rejection of the representation of the applicant as stated in the order dated 07-06-1993 have been reiterated in the counter affidavit filed on behalf of the respondents. The case of the respondents, in short is, that on 01-12-1983 the pay of the applicant was Rs. 350/- and consequently, his pay as on 01-01-1986 would be Rs. 380/-, the equivalent of which under the IVth pay commission scale was Rs. 1290/- in the scale of Rs. 1200-1800, but the pay of the applicant was wrongly

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fixed at Rs. 1320/-. This error was ^{detected &} ~~deducted~~ only at the time of retirement of the applicant.

4. Heard learned counsel for both the parties. The first contention raised on behalf of the applicant is that his pay was correctly fixed at each stage of his career and it was subjected to certain refixations also prior to his retirement. At no stage there was any comment from the accounts or audit ~~either~~ that there was any error in the fixation of the pay of the applicant. Even from a careful reading of the order dated 07-06-1993 and the ~~o~~ averments of the respondents, in the counter affidavit, ~~it~~ is not clear as to why and how the pay of the applicant on the implementation of the IVth pay commission scale was initially fixed at Rs. 1420/- and how it was found to be erroneous. Moreover had the respondents promptly acted and brought the error to the notice of the applicant, ^{the} ~~the~~ latter would have had an opportunity to contest the stand taken by the respondents.

5. Admittedly the respondents acted unilaterally in deciding that the average emoluments of the applicant were Rs. 1380/- and not Rs. ~~1428/-~~. There is also no dispute that the respondents decided to revise the pay of the applicant retrospectively from 01-01-1986 to the detriment of the applicant.

6. In Bhagwan Shukla Vs. Union of India and others AIR 1994 Supreme Court 2480, it is clearly held that ^{& reduction} ~~rejection~~ of the basic pay of a government employee with retrospective effect without complying with the principles of natural justice would be bad in law.

7. Relevant portion of the judgement is reproduced below:

"We have heard learned counsel for [redacted] the parties. That the petitioner's basis pay had been fixed since 1970 at Rs.190/-p.m. is not disputed. There is also no dispute that the basis pay of the appellant was reduced to Rs.181/-p.m. from Rs.190/-p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant 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 the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the

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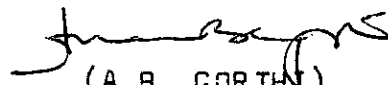
Copy to:-

1. The Divisional Railway Manager(Personal)(S&T), Pay Bill Unit 883 B.G.S.C., South Central Railway, Sanchalan Bhavan, Secunderabad-071.
2. Sr. Divisional Accounts Officer, B.G.S.C., South Central Railway, Sanchalan Bhavan, Secunderabad-071.
3. One copy to Sri. G.Rama Rao, advocate, CAT, Hyd.
4. One copy to Sri. D.Gopala Rao, SC for Railways, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basis pay of the appellant from Rs. 190/- to Rs. 181/- w.e.f. 18-12-1970."

8. In view of what has been so categorically laid down by the Supreme Court and also taking into consideration the facts of the case, I am of the view that the decision of the respondents to refix the average emoluments of the applicant is bad in law. The same is set aside as also order of the Divisional Railway Manager (P) of SC Railway dated 07-06-1993.
9. No order as to costs.


(A.B. GORTH)
MEMBER (ADMN.)

Dated : The 2nd January 1995.
(Dictated in Open Court)

Dy. Registrar (S)

DA 1185/93

TYPED BY
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. A. V. HARIDASAN : MEMBER (C)

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

DATED : 2/1/95

ORDER/JUDGEMENT.

M.A./R.P./C.P. No.

O.A. No.

in

1185/93

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Rejected/Ordered

No order as to costs.

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