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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
HYDERABAD

O.A.NO.719/96

Between

N.Koteswarulu

...Applicant.

And

1. Undersecretary, Railway Board,
New Delhi.
2. The General Manager,
South Central Railway,
Railnilayam,
Secunderabad.
3. The Divisional Railway Manager, (Personnel),
South Central Railway,
Vijayawada.
4. Senior Divisional Accounts Officer,
South Central Railway,
Vijayawada.

...Respondents.

Counsel for the Applicant : Mr.V.Rama Rao

Counsel for the Respondents : Mr.C.V.Malla Reddy, SC for Railways.

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

contd...

O.A.No.719/94

Date of Order: 30.6.95

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

The applicant in this OA was an MSM Grade-I. He retired on 31.8.89. IIIrd Pay Commission had recommended a formula for fixation of pay in the revised scales as on 1.1.73. Railway Board vide letter No.PC III/77/ROP-2/22 dated 2.6.84 had issued instructions for fixation of pay of Railway employees who opt for revised scales of pay from a day subsequent to 1.1.73. This letter was circulated by ~~.....~~ As per this letter though the option should be exercised on or before 2.9.84 to come over to revised scales of pay from a day subsequent to 1.1.73, the applicant herein gave his option as per Annexure R-II letter (material paper page-7) on 3.9.84. The date of option in the prescribed form signed by the applicant indicates that he signed the option only on 3.9.84. It is stated for the applicant that this date was written by somebody and not by the applicant.
 Lthough he had option to the
 ^ option to the
~~.....~~ that he has opted to come over to the revised scales of pay after 1.1.73 by his option dated 3.9.84 after the expiry of the last date for giving such option, R4 revised his pay fixation in terms of his option to come over to ~~.....~~ and 15 others filed OA.904/91 on the file of this Bench
~~.....~~ terms of letter dated 3.7.84 to come over to the revised scales of pay even though they have not opted or opted much later than 2.9.84 as was done in
~~.....~~ herein as he also opted on 3.9.84 subsequent to the last date of option.

2. After perusing the OA.904/91, R4 detected the error of fixing the pay of the applicant as he has not submitted his option on or before the last date namely 2.9.84. By then the applicant had retired from service and his pension had already been fixed as per his earlier option. However after the detection of the error as stated above it was sought to correct the error by issuing memorandum No.B/P.487/V/Options dated 24.2.92 revising his pension from 1.1.73 and consequent to that his pension on his retirement on 31.8.89 was also revised.

3. The above revision resulted in a recovery of a sum of Rs.7066/-. The break up of Rs.7066/- is as follows:-

1. O/P of leave Encashment	---	Rs. 270.00
2. O/P of D.A.	---	Rs. 150.00
3. O/P of D.C.R.G.	---	Rs. 457.00
4. O/P of Pension & Relief	---	Rs. 818.00
5. O/P of Commutation	---	Rs. 628.00
6. O/P of salary & Allowance for the period from 1.1.73 to 31.8.89	---	Rs. 4743.00
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He was informed by A-5 letter (page-11 of the material paper) dated 6.12.93 that as he opted to come over to the revised scales of pay only on 3.9.84 after the date of last date of option, his fixation of pay done earlier as per his option is revised and as a result of the revision the over payment of Rs.7066/- had to be recovered. He was also informed that his pensionary benefits will also be revised accordingly. The revised pay fixation memorandum was also issued in terms of letter No.B/P407/V/Options dated 24.2.92. The Manager, State Bank of India

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was also advised in terms of letter No. A/PN/BZA/13118 dated 27.1.94 regarding revised pension of the applicant and recovery of amount of Rs.7250/- from the relief on pension.

4. Aggrieved by the above, he has filed this OA praying for a declaration that the proceedings of R 3 dated 6.12.93 confirming the action under the earlier proceedings No. B/904/91, ~~.....~~ consequential proceedings of R4 dated 27.1.94 as arbitrary, illegal and without jurisdiction and for a further direction to the respondents to pay his retirement benefits without giving effect to the impugned proceedings issued by the respondents authorities.

5. By an interim order dated 29.6.94 the recovery as per proceedings dated 6.12.93 was suspended until further orders.

6. The respondents in their reply have stated that as the applicant had submitted his option form to come over to the revised scales of pay after the last date of such option, it became necessary to correct the pay fixation done earlier erroneously taking his option as if it is received within the last date fixed to come over to the revised scales of pay. When an error is detected the ~~.....~~ fixation which was done erroneously. When some other employees who have not opted to come over to the revised scales of pay within the due date also claimed fixation of their pay as per the letter and also filed OA 904/91 in this Tribunal for the revision of the pay scales as had been done in the case of the applicant herein the error was detected and action ^{was} taken to refix the pay of the applicant



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herein suitably. Hence the respondents in no way acted irregularly or illegally in refixation of his pay after the error is detected and his pension was revised accordingly. Hence they prayed for dismissal of the OA on that count.

7. I have heard Shri V.Rama Rao, learned counsel for the applicant and Shri C.V.Malla Reddy, learned ~~counsel~~.

8. The main contention of the applicant is that his pay has been refixed in terms of his option way back in 1984 and it is sought to be revised in 1992 ~~on the~~ ^{been} alleged reason of his option form having submitted after the due date, ~~i.e. after a lapse of over 8 years.~~ Relying on the judgement of Bombay Bench of this Tribunal reported in ATR 1989 (2) CAT 65 (Vithal Dagdoo Marathe v. General Manager, Central Railway and Others) and the judgement of Calcutta Bench reported in 1991 (2) SLR 169 (Bhagirath Das v. Union of India) the applicant submitted that the revision of pay scales after a ~~lapse~~ of over 8 years on the ground that the earlier fixation was on account of administrative error cannot be done as the settled position cannot be unsettled after a long period of 8 years.

Leave a lapse of over 8 years.

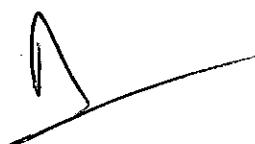
9. The second submission of the applicant is that as per Rule 90 of the Railway Services Pension Rules 1993 the Zonal Railway Authorities have no powers to refix the pension without concurrence of the Railway Board if the clerical error is detected after 2 years from the date of sanction. As the pensioner had retired on 31.8.89 and the revision done by the zonal authorities is dated 24.2.92, the revision is not in accordance with the Rule 90 and the zonal authority should not have done this revision without getting the prior concurrence of the Railway Board.

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10. The ~~initial~~ pay fixation of the applicant as per revised scale was in the year 1984 on the basis of his option letter dated 3.9.84 to come over to the revised scales of pay. This fact is not disputed. It is also a fact that his pay fixation in 1984 ^{was} ~~is~~ done as if he had opted to come over to the revised scales of pay in terms of Railway Board letter dated 2.6.84, treating his option as if it is within the last date of submission for option. When it was detected that he has not opted to come over to the revised scales of pay within the last date for submission for such option, his pay was revised from 1.1.73 in terms of memorandum dated 24.2.92 i.e. after a lapse of 8 years. I am of the opinion that the revision of pay fixation from 1.1.73 in the year 1992 revising the earlier fixation done in 1984 after a lapse of 8 years on the pretext of correcting an error will definitely settle the ~~unsettled~~ position which was informed to him 8 years back. The submission of the applicant relying on the above referred judgements of the ~~Bombay~~ Bench and Calcutta Bench of this Tribunal has to be upheld as the revision had taken place after 8 years and recovery of the enhanced pay paid to him from 1.1.73 cannot be recovered because of the undue delay in the refixation.

11. In view of the above the recovery indicated under items 1, 2 and 6 namely over payment of leave encashment amounting to Rs.270/-, over payment of D.A. amounting to Rs.150/-, and over payment of salary and allowances for the period from 1.1.73 to 31.8.89 i.e. the date of his retirement amounting to 4,743/- cannot be recovered from his pensionary benefits. The recovery



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of these 3 items is not permissible in view of long delay and a ~~long~~

not recover the same from the pensionary benefits of the applicant.

12. The refixation of pension was done as on 31.8.89 i.e. the date of ~~retirement~~ of the applicant on 1.9.89 or later i.e. the date after the date of his retirement and it is refixed in terms of the memorandum dated 24.2.92 i.e. after the lapse of over 2 years. Rule 90 of the Railway Services Pension (Pension Rules) 1993 states that "no revision of pension to the disadvantage of the pensioner can be made by the authority without concurrence of the Railway Board if the clerical error is detected after a period of 2 years from the date of sanction of pension". It is not the case of the respondents that concurrence of the Railway Board has been taken in this connection even though the revision of pension has been done 2 years after the date of his retirement. Hence the refixation of pension done in terms of letter dated 24.2.92 has to be held as irregular. When a request was made by the applicants in OA.904/91 to refix their pay on the revised scales as if they had applied within the stipulated time a direction was given by this Tribunal by its judgement dated 21.11.94 that the Railway Board has to take a suitable decision in this connection. As the applicant herein has also submitted his option ^{similar} form later than the last date namely 2.9.84, a direction as given in OA.904/91 to decide his case regarding revision of his pension (in terms of Rule 90 of the Railway ~~Pension~~ Rules 1993) by Railway Board (R-1) has to be given.



R-2 should forward his case to the Railway Board (R-1) for refixation of his pension in accordance with the rules. If R-1 decides to refix his pension on the basis of other instructions he can order for the recovery as envisaged under items 3, 4 and 5 of Annexure A-2 namely overpayment of DCRG, overpayment of pension on relief and overpayment of commutation.

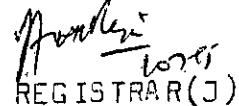
13. In the result, the following direction is given:-

The recovery of overpayment of DA and overpayment of salary and allowances for the period from 1-1-1973 to 31-8-1989 as indicated in Annexure-2 letter should not be recovered even if the Railway Board decides to refix his pension. R-1 is directed to take a decision in regard to refixation of his pension and relief following the rules and regulations. Till such time a decision in regard to refixation of pension is taken by Railway Board the alleged overpayment of pension and relief, DCRG and commutation as mentioned in Annexure A-2 shall be affected.

14. The OA is ordered accordingly. No order as to costs.


(R. Rangarajan)
Member(Admn.)

Dated 30th June, 1995.
Dictated in open court.


DEPUTY REGISTRAR(J)

Grh.

DEPUTY REGISTRAR(J)

To

1. The Chairman, Railway Board, New Delhi.
2. The General Manager, South Central Railway, Railnilayam, Secunderabad.
3. The Divisional Railway Manager(Personnel), South Central Railway, Vijayawada.
4. Senior Divisional Accounts Officer, South Central Railway, Vijayawada.
5. One copy to Mr. V. Rama Rao, Advocate, CAT, Hyderabad.
6. One copy to ~~Mr. V. Rama Rao, Advocate, CAT, Hyderabad.~~ for Rlys,

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

HYDERABAD BENCH

THE HON'BLE SIR A.V.HARIBASAN: MEMBER (J)

AND

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

DATED 30.6.95

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

in

D.A.NO. 719/94,

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

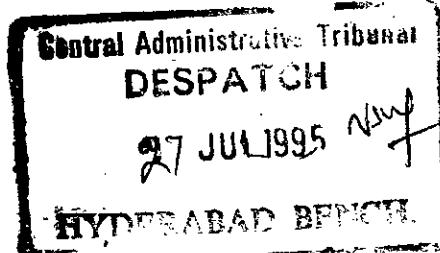
Dismissed for default

Rejected/Ordered. Accordingly.

No order as to costs.

YLKR

No spare copy



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