

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1126 of 1995

DATE OF ORDER:18.6.96

BETWEEN:

T.VENKATESWARLU .. Applicant

and

Union of India represented by:

1. The Chief Post Master General,
Andhra Pradesh Circle, Hyderabad,
2. The Senior Superintendent of Post Offices,
Prakasam Division, Ongole,
3. The Post Master,
Ongole HO, Ongole. .. Respondents

COUNSEL FOR THE APPLICANTS: Shri KSR ANJANEYULU

COUNSEL FOR THE RESPONDENTS: SHRI K.RAMULU, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE))

Heard Shri Subrahmanyam for Shri KSR Anjaneyulu, learned counsel for the applicant and Ms.Shama for Shri K.Ramulu, learned standing counsel for the respondents.

2. The applicant in this OA retired as Mail Overseer on 30.6.94. Initially his pension was fixed at the rate of Rs.679/- per month and the provisional gratuity of Rs.22,225/- was paid to him. However, it is stated that



10
28
13

during the course of final checking the pay, pension, DCRG etc, Director of Accounts (Postal) found that the pay is to be revised as on 1.1.78 instead of 8.4.75. Hence his last pay drawn on that basis was refixed as Rs.1300/- instead of Rs.1375/- as fixed earlier and the pay was drawn on that basis. Therefore, the final pension and final retirement gratuity admissible to the applicant are fixed as Rs.645/- per month and Rs.25,740/- respectively. The excess payment of increment, DCRG was recovered as per Annexure I at page 8. The applicant filed a representation dated 24.7.95 addressed to R-2 objecting against this recovery as no prior notice was given to him before making such recovery. Though it is stated that the applicant himself had paid excess and got the receipt, the learned counsel for the applicant submitted that he has not deposited the same and the authorities themselves recovered the amount and deposited in the post office. This is not the main point for consideration in this OA. Hence this point need not be further examined.

3. The applicant was informed by the letter No.C/Pen/TV dated 1.8.85 (Annexure 2) that "the revised scale has been applied from 1.1.78 only and the over-payment from 8.4.75 to the date of retirement was ordered for recovery to the tune of Rs.12,943=40. This reply is in response to his representation dated 24.7.95.

4. This OA is filed praying for declaration that the recovery of Rs.12,943=40 from the commuted value of pension of the applicant on 28.12.94 (Annexure 4) and the order of R-2 as per letter dated 1.8.95 (Annexure 2) treating the amount of over-payment due to the wrong fixation from 8.4.75 is arbitrary, illegal and unconstitutional and for further direction to refund the amount of Rs.12,943=40 with interest @ 12% per annum from 28.12.94 and for further direction to refix the pension based on the emoluments actually drawn by the applicant during the 10 months immediately preceding his retirement.

5. ~~A reply~~ has been filed resisting the prayer in this OA. The only reason given by the respondents in reducing the pension and making recovery of excess payment made is due to the fact that his pay as on 8.4.75 was wrongly fixed and that revised pay had to be actually fixed from 1.1.78 as can be seen from Annexure 2 letter enclosed to the OA. The letter does not indicate how the wrong fixation was made on 8.4.75. This letter also does not talk about the rules for fixation of pay on that date or any other reason available on record at that time for fixing his pay at this stage on 8.4.75.

6. The respondents rely on the Rule 70 of CCS (Pension) Rules to state that the clerical error in this case was detected by DA(P) and hence the refund can be done in accordance with that provision. But there is no

D

32 15 12

material brought on record that the fixation of pay on 8.4.75 was a clerical error and if it is against the rule, that rule should have been quoted which is not available in the reply. The learned standing counsel further submits that Rule 59(1) of CCS (Pension) Rules does not preclude the authorities to go into fixation from an earlier period. Even if this contention is accepted, such revision can be done if there is a valid reason. When I asked for valid reason by the order dated 10.6.96, the learned standing counsel for the respondents submitted that she will check up the position and submit. But today it was submitted by her that she could not lay hand on any rule. In other words, the reason for reduction of the pay fixed on 8.4.75 is not based on any valid rule but on some instructions received from the Director of Accounts (Postal). Such an arbitrary reduction after 20 years without giving proper notice to the affected employee is not only irregular but highly arbitrary.

7. The learned counsel for the applicant further urges that in view of the judgment of this Tribunal in OA No.1300/94 reported in ATJ 1995(2) 637 (P.J.Naidu v. CPMG) that the Rule 59(1)(b)(iii) of CCS (Pension) Rules do prohibit calculation by going back beyond two years period from the date of retirement. But as I held that no rule has been brought to my notice for reduction in pay from 8.4.75 and the mere statement that fixation was done due to the clerical error cannot be upheld unless the reason for such an error is brought on record, I am satisfied

A

that the respondents have no cause to reduce the pay of the applicant with effect from 8.4.75 and refix his pay from 1.1.78. The pay fixed as on 8.4.75 has to be retained without reduction and on that basis payment at the time of his retirement has to be fixed ~~xxxxxxxxxxxx~~ and the pension and other pensionary benefits have to be calculated. If any recovery has already been made in view of the fixation of pay with effect from 1.1.78, the amount recovered should be paid back to the applicant within a period of two months from the date of receipt of copy of this order.

7. The learned counsel for the applicant submits that the recovery of Rs.12943=40 should be paid back to him with interest. I do not consider that payment of interest is necessary in this case as bonafide of the respondents is not doubted. Probably calculation has been done under some mistaken notion. Respondents cannot be penalised for the genuine mistake committed under mistaken notion.

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

The pay of the applicant as on 8.4.75 should not be reduced and refixed at that stage from 1.1.78. The pay as fixed initially as on 8.4.75 should hold good. On that basis his last pay drawn at the time of his retirement on 30.6.94 should be calculated. The Pension and other pensionary benefits on the basis of the direction given



above should be calculated and paid to him. The recovery of Rs.12,943=40 recovered from out of the commuted amount of the applicant has to be repaid to him without interest within a period of two months from the date of receipt of copy of this order.

9. The OA is ordered accordingly. No costs.

10. Before I part with this OA, I wants to express my concern in regard to the inability on the part of the respondents to supply necessary material. By the order dated 10.6.96, the learned standing counsel for the respondents was asked to produce the rules based on which the pay of the applicant as on 8.4.75 was reduced. But she submitted that the concerned official was not available and hence necessary information could not be obtained. This is not a valid reason for not supplying necessary material. The concerned official is not a party in this OA. She could have obtained necessary material from the official higher than one concerned or from the respondents in this OA. It looks that no serious attempt has been made to procure necessary material. Further, I would also like to add that whenever a query has been asked by the Bench, it is the responsibility of the respondents to supply them in time without fail and if there is going to be some delay in supplying such a material, valid reason has to be indicated. The reason in



this case for not giving details as asked for in the order dated 10.6.96 is sketchy and shows the inability of the respondents to redress the grievances of their staff promptly.

one

(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 18th June, 1996
Open court dictation.

vsn

M. L. M.
25/6/96
Dy. Registrar (T)

contd.

36

19

..8..

O.A.NO.1126/95

Copy to:

1. The Chief Postmaster General,
Andhra Pradesh Circle,
Hyderabad.
2. The Senior Superintendent of Post Offices,
Prakasam Division,
Ongole.
3. The Post Master,
Ongole H.O.,
Ongole.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate,
CAT, Hyderabad.
5. One copy to Mr.K.Ramulu, Addl.CGSC,
CAT, Hyderabad.
6. ~~One copy to Library, CAT, Hyderabad.~~
7. ~~One copy to Library, CAT, Hyderabad.~~
8. ~~One copy to Library, CAT, Hyderabad.~~
9. One duplicate copy.

YLRK

20 8/7/96
TYPED BY
COMPARED BY

8/11/26/96
checked
checked
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 18/6/96

ORDER/JUDGEMENT
O.A.NO./R.A/C.P. No.

in

O.A.NO. 1126/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLR

II COURT

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
DESPATCH

4 JUL 1996

हैदराबाद न्यायालय
HYDERABAD BENCH