

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.236/1995

Date of order: 20/4/2001

Roop Kishore Gupta, S/o Sh.Bansilal, R/o Meemli Walon  
ka Makan, Rajgarh, Alwar, Chief Booking Clerk (Retd).

...Applicant.

Vs.

1. Union of India through General Manager (Settlement) W.Rly, Churchgate, Bombay.
2. D.R.M, Western Railway, Ajmer.
3. Divisional Personnel Officer (Settlement) W.Rly, Ajmer.

...Respondents.

Mr.Akhil Similote - Counsel for applicant

Mr.S.S.Hasan - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned orders at Annx.A1 & Annx.A2 and to direct the respondents to revise the pension and gratuity of the applicant treating the pay of the applicant at Rs.2150/- per month on the date of his retirement.

2. In brief facts of the case as stated by the applicant are that he sought Voluntary Retirement w.e.f. 31.8.79 and at that time his basic pay was Rs.2150 per month but when the applicant received the memorandum of payment dated 18.11.89 he noticed that Rs.3965/- has been deducted from his DCRG and his pension, has also been reduced. It is stated that no opportunity of hearing/show cause was given to the applicant before reducing his basic pay. The applicant filed representation on 18.12.89 and another representation in April 1990 and he received reply by which it was informed that the

applicant was on leave without pay in the year 1979, therefore, increment should have been deferred for the period of leave without pay and this way, excess payment made to the applicant has to be recovered. Thereafter, the applicant made another representation on 4.12.90 which was replied vide letter dated 18.1.91 stating that recovery has been made due to adjustment of increments. The applicant made another representation on 30.6.92 stating that increment had already deferred and even if it is not deferred, it cannot be after 10 years. The applicant also filed representation dated 30.9.92 which was replied on 15.2.93 but with no result. It is stated that the reasons of rejecting the claim of the applicant are arbitrary and unwarranted. Therefore, the applicant filed the O.A for the relief as above.

3. Reply was filed. In the reply, it is stated that the applicant has challenged the impugned order in 1995, therefore, the O.A is barred by limitation. It is also stated that the applicant remained on leave without pay for 189 days, therefore, his annual increment should have been deferred for the period he remained on leave without pay, hence his pay was fixed at Rs.2100/- and recovery was made from his DCRG. It is stated that the applicant was wrongly drawn Rs.2150/- per month instead of Rs.2100/- and this irregularity was rectified by the impugned order and representations filed by the applicant were replied. It is stated that due to 189 days leave without pay, the recovery was made from the DCRG and his pension was fixed treating his last pay drawn at Rs.2100/- and the respondents were fully justified in correcting the error and to recover the excess payment made to the applicant. Therefore, it is stated that the applicant has no case and the O.A is liable to be dismissed.

4. Rejoinder has also been filed, reiterating the facts

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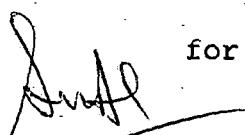
stated in the O.A, which is on record.

5. Heard the counsel for the parties and also perused the whole record.

6. The counsel for the applicant has argued that the applicant was not given any opportunity of hearing/show cause before passing the impugned order. It is further submitted that there was no misrepresentation on the part of the applicant at any stage; therefore, after 10 years, if any recovery has been made, the same is not sustainable in law. In support of his contention, he has referred to Bhagwan Shukla Vs. UOI & Ors., JT 1994(5) SC 253. The counsel for the applicant further argued that pension is a recurring cause, therefore, this O.A cannot be said as barred by limitation. In support of his contention he has referred to Niranjan Singh Vs. State of Haryana & Ors, 1986(2) SLJ 203. On the other hand, the counsel for the respondents has argued that the applicant was wrongly paid increment without deferring the period of leave without pay, therefore, at the time of his retirement, the impugned order was passed and excess payment was recovered from his DCRG, which was perfectly legal and justified.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. Admittedly, the matter pertains to the year 1979 when the applicant alleged to have been remained on leave without pay and undisputedly there was no misrepresentation on the part of the applicant in getting the annual increment. The department, suo motu allowed the increment. It is also an undisputed fact that after more than 10 years, when the applicant was retired, Rs.3965/- was deducted from his DCRG for which no opportunity of hearing/show cause was given.



9. In Shyam Babu Verma & Ors Vs. UOI & Ors (1994) 2 SCC 521, it was held by the Supreme Court that the petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him.

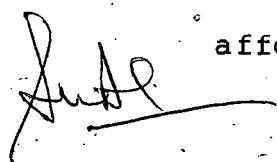
10. In Sahib Ram Vs. State of Haryana & Ors 1995(Supp(1) SCC 18, it was held by the Supreme Court that upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt was restrained from recovering the overpayment already made.

11. In UOI & Ors Vs. M.Bhaskar & Ors, (1996) 4 SCC 416, the Hon'ble Supreme Court set aside the judgments of various Tribunals in regard to scale of pay of pre-1997 Traffic/ Commercial Apprentice making them entitled to the pay scale of Rs.1600-2660, it was held that the recovery of the amount already paid because of the judgment of various Tribunals would cause hardship to the respondents/appellants concerned and, therefore, the respondents (UOI) were directed not to recover the amount already paid.

12. In Menaka Gandhi Vs. UOI, (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

13. In Delhi Transport Corpn. Vs. DTC Mazdoor Congress, 1991(Supp(1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.

14. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, if order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order



cannot be passed without complying with audi alteram partem, party should be given an opportunity to meet his case before an adverse decision is taken.

15. In Bhaawan Shukla Vs. UOI & Ors, JT 1994(5) SC 253, it was held that reduction in payment of employee without his being given opportunity of being heard - Violation of principle of natural justice.

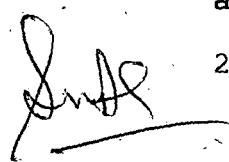
16. On the basis of the above settled legal position and facts and circumstances of this case, we are of the opinion that the amount already paid to the applicant, no deduction can be made from the DCRG payable to the applicant after lapse of 10 years. Therefore, the applicant is entitled to refund of Rs.3965/-

17. As regards contention of the counsel for the respondents regarding limitation, it is suffice to say that one of the claim of the applicant is his pension has been reduced. As pension being a recurring cause and the applicant is pursuing the matter from the very beginning, therefore, we are of the opinion that in the facts and circumstances of this case, the claim of the applicant is not barred by limitation.

18. As regards revision of pensionary benefits are concerned, it is an admitted fact that no opportunity of hearing/show cause was provided to the applicant before passing the impugned order dated 18.1.91.

19. The applicant in his O.A made an averment that his period of leave for 189 days has been taken into consideration. In view of the facts and circumstances and the settled legal position as above, we are of the considered opinion that the department must refix the pension of the applicant, after giving him an opportunity to show cause hearing and thereafter if any revision in pension take place action must be taken accordingly.

20. We, therefore, allow the O.A and direct the respond



(i) to refund Rs.3965/- to the applicant;

(ii) to refix the pension and gratuity payable to the applicant after giving an opportunity of hearing/show cause to the applicant;

(iii) the whole exercise must be completed within 3 months from the date of receipt of a copy of this order.

(iv) No order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).