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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.186/96

Date of order: 29.4.1997

Arjun Dass : Applicant

Vs.

1. Union of India through General Manager, Western Railway, Mumbai.
2. The Divisional Railway Manager, Western Railway, Ajmer.
3. The Divisional Accounts Officer, Western Railway, Ajmer.
4. The Sr.Divisional Personnel Officer, Western Railway, Ajmer.

...Respondents.

Mr.W.Wales : Counsel for the applicant

Mr.K.S.Sharma : Counsel for the respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHAFMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Arjun Dass has sought a direction to respondent No.4, The Sr.Divisional Personnel Officer, Ajmer, to revise the retirement benefits of the applicant taking into consideration the last pay drawn, as per the monthly pay slip, at Rs.1530/- and pay him gratuity, commuted value of revised pension and monthly pension w.e.f. 1.7.1995, as per the extant instructions on the basis of last pay drawn at Rs.1530/- per month. The applicant has sought a further direction to the respondents to refund the amount of Rs.20,000/- erroneously retained as miscellaneous deduction and a further amount of Rs.2271/- deducted from the applicant's pay for the month of June 1995 without giving any supporting details or any prior notice. He has also sought a further direction to the respondents that the amount of gratuity payable to him should be worked out after treating 97% of the Dearness Allowance as

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pay in accordance with the instructions contained in Anxx.A8. He has also sought payment of interest at the rate of 18% on the amount not paid/with-held by the respondents.

2. As per the factual position stated by the applicant in his O.A, he retired on 30.6.1995 on basic pay of Rs.1530/- . He was drawing basic pay of Rs.1500/- w.e.f. 1.9.94 to 31.12.94 and thereafter Rs.1530/- from 1.1.95 to 30.6.95. The average basic pay for the 10 months period works out Rs.1518/- but the pensionary benefits have been calculated by taking his average basic pay of the last 10 months at Rs.1458/- thereby creating a shortfall of Rs.60/- for which no reasonable explanation has been offered by the respondents. The applicant has also cited an instruction to the effect that the emoluments drawn for the period of 24 months prior to the date of retirement should be verified for the purpose of calculating pensionary benefits and the department should not go beyond a period of 24 months for this purpose. However, the respondents have actually gone back to a period of 23 years for the purpose of reverifying the amounts drawn by the applicant and have thereby reduced the pensionary benefits payable to the applicants. The last pay drawn by the applicant has been treated as Rs.1470/- instead of Rs.1530/- as stated by the applicant. Thereby a total short payment of Rs.44,399/- has been made to the applicant on account of short payment of Gratuity (Rs.20625), Commuted Value of Pension (Rs.1502), Miscellaneous deduction (Rs.20000) and deduction out of salary for June 95 (Rs.2271). In addition the applicant has been subjected to recurring loss on account of short payment of monthly pension, gross amount payable being Rs.765/- against Rs.729/- determined as payable and net amount payable after commutation being Rs.510 as against the amount actually being paid at Rs.486/-.

3. The respondents in their reply have taken some preliminary objections regarding the proper parties have not

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been impleaded, etc. They have further stated that the fixation of the pay of the applicant was wrongly made and therefore, the applicant had drawn excess pay. Such wrong fixation was rectified by order dated 27.6.95 (Annex.F1). They have stated that there was wrong fixation of the pay of the applicant in earlier periods of his service which has been set right by the respondents. They have defended their action in making whatever payments they have made to the applicant as per the applicant's averments, by taking his basic pay at Rs.1470/- and by taking the average of last 10 months' basic pay at Rs.1518/-. According to them, any overpayment made to a Railway servant can be recovered from the final dues payable to a Railway servant at the time of his retirement, in accordance with para 1019 of the Indian Railway Establishment Manual. According to them, there is no provision for issuing any show cause notice before revising or refixing the pay of a Railway servant.

4. The applicant, alongwith his rejoinder to the reply filed by the respondents, has filed Annex.A8, which is the Govt. of India's instruction regarding treatment of Dearness Allowance as Dearness Pay for the purpose of death gratuity and retirement gratuity and raising the maximum amount of gratuity from Rs.1 lakh to Rs.2.5 lakhs. These instructions are applicable to those railway employees who retired or died on or after 1st April 1995. The applicant's case is that since he retired from service on 30.6.95, these instructions are applicable to him. These provide that in addition to basic pay, D.A to the extent of 97% of the pay is to be added for the purpose of working out the amount of gratuity payable where the basic pay is upto 3500/- per month. The applicant's basic pay was below Rs.3500/- and therefore, he was entitled to the benefit of these instructions.

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5. We have heard the learned counsel for the parties and have perused the material on record.

6. As regards the preliminary objection taken by the respondents, it has been stated that the applicant has impleaded the Union of India through the General Manager, Western Railway, Bombay, the Divisional Railway Manager, Western Railway, Ajmer, the Divisional Accounts Officer, Western Railway, Ajmer and the Sr.Divisional Personnel Officer, Western Railway, Ajmer, as respondents. We do not think that any respondent who is effectively incharge of making payment of retirement dues to the applicant or who revised the applicant's pay has been left out. Therefore, this preliminary objection is rejected.

7. It is the admitted position that no show cause notices were issued to the applicant before revising his basic pay vide Annx.E1 dated 27.6.95, just 3 days before the date of his superannuation. The least that was expected from the respondents was that they should have issued a show cause notice to the applicant pointing out any errors in his pay fixation and giving him adequate opportunity to present his case before they proceeded to revise his pay vide Annx.E1. This elementary principle of natural justice was required to be observed by the respondents. The defence of the respondents in this regard that there is no provision in the rule for granting such opportunity is wholly untenable. In the circumstances of the present case, we direct ~~as~~ the respondents to issue a show cause notice to the respondents within a period of two months from the date of the receipt of a copy of this order, giving details of the errors committed in his earlier pay fixation and asking him why the pay should not be suitably revised. The applicant should be given one month's time to furnish his reply to the show cause notice to be issued by the respondents.

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Thereafter on receipt of the applicant's reply, the respondents shall take a decision in the matter as to the correct fixation of the pay of the applicant and payment of the retirement dues to him within a period of one month.

8. As regards, however, the commutation of the gratuity payable to the applicant the respondents should keep in view the instructions issued by the Govt. of India vide Anxx.A8 dated 8.8.95 and revise the applicant's gratuity upwards suitably while making final payment to him after receipt of the applicant's reply to the show cause notice and calculation of the final retirement dues payable to him.

9. The O.A stands disposed accordingly. If the applicant is aggrieved by any decision taken by the respondents, he is free to approach the Tribunal again. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P.Sharma)

Administrative Member.