

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.2 of 2005

Jabalpur, this the 28th day of April, 2006.

**Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mrs. Meera Chhibber, Judicial Member**

Sunder Lal Shrivastava aged about 60 years,
S/o late Shri Chhote Lal Shrivastava, retired
Senior Asstt.Guard, Central Railway Jabalpur
Resident of Vidya Nagar, Khitola, Sihora
Road (M.P.)

-Applicant

(By Advocate – Shri L.S.Rajput)

V E R S U S

Union of India, through

1. General Manager, West Central Railway, "Indira Market",
Near Rilway Station, Jabalpur (M.P.) 482001.
2. Divisional Railway Manager, West Central Railway,
Jabalpur (M.P.)

- Respondents

(By Advocate – Shri H.B.Shrivastava)

O R D E R(Oral)

By Dr.G.C.Srivastava, Vice Chairman.-

By this Original Application, the applicant has sought the following main relief :-

"(b) Direct the respondents to refix the pay of the applicant under Vth C.P.C. scales as per policy notified by the Railway Board under their letter dated 7.11.1997 (Ann.A-6) & make payment of arrears if due.

© Further direct the respondents to recalculate all retrial benefits of the applicant on the revised pay & refix the pension on the revised pay.

B G

2

(d) Direct the respondents to pay interest & costs with any other relief as deemed just & proper in the interest of justice".

2. It is clear from the above that the claim of the applicant for revised ^{retiral G} benefits is based on allegedly wrong fixation of pay done in the wake of the recommendations of the 5th Central Pay Commission (for short '5th CPC').

3. The applicant has filed an application for condonation of delay wherein he has submitted as follows:

"2. That, although, any claim regarding ^{retiral G} benefits & correct pension is not his (sic - hit) by the bar of limitation, being a continuous wrong, but as an abundant caution, the applicant still prays for condonation of delay, as the delay is bonafide & not intentional".

He has not given any reason for delay except that it is "bonafide & not intentional". He has also submitted that any claim regarding ^{retiral G} benefits and correct pension is not barred by limitation as it is a continuing wrong.

4. We have heard the learned counsel for the applicant and the respondents on the limitation issue as well as on merits.

5. The learned counsel for the applicant has admitted that the applicant's claim for increased ^{retiral G} benefits is based solely on the fact that his pay, in the wake of the recommendations of the 5th CPC, was not fixed properly. It is an admitted fact that his pay was fixed in July, 1997 at Rs.5200/- per month but it was later on reduced to Rs.4700/- per month. The applicant represented against this reduction by his representation dated 9.2.1998 followed by another representation dated 28.9.1998. But, he did not receive any reply and on his taking voluntary retirement on 30.6.2001 he was paid ^{retiral G} benefits calculated on the basis of wrong fixation of pay in 1997.

G

6. The learned counsel for the respondents pointed out that the fixation of pay was reduced at the advice of the Accounts Branch as by the original fixation, the basic pay of the applicant exceeded the maximum of the scale in which he was placed and as per the guidelines issued in this regard pay fixation could have been done only up to the maximum of the scale. He also submitted that the applicant took his dispute to the Regional Labour Commissioner in 1998 and on the reply submitted by the respondents to the Regional Labour Commissioner the case was closed. He, therefore, submitted that since the applicant had earlier approached the Regional Labour Commissioner for redressal, this application^{is} is barred by res judicata. We, however, find that there is nothing on record to show that any final verdict was announced by the Regional Labour Commissioner in this matter. The learned counsel for the respondents has further submitted that if the applicant was still feeling aggrieved, he could have approached this Tribunal at that point of time instead of coming now after six years.

7. As is mentioned above, the applicant has not given any reason for the delay of six years in approaching this Tribunal for getting allegedly his wrong fixation of pay rectified. His contention is that it is a case of pension, which is a continuous cause and is not barred by limitation. Since his claim for enhanced pension is based solely on the allegedly wrong fixation of pay in 1997, he cannot ~~get~~ ^{take} shelter behind the plea of continuous loss when the cause of action arose in 1997 and can in no way be considered as a continuing cause of action. We are, therefore, not inclined to accept the plea of the applicant that his claim is not barred by limitation. At the same time, since he has not given any valid reasons for delay while praying for condonation of delay, his prayer for condonation of delay is also rejected.

8. The OA is thus clearly barred by limitation. But, even on merits, the applicant does not have any case as the pay has rightly been fixed in accordance with the instructions and guidelines issued in this regard by the competent authority. It has clearly been said in the Railway Services (Revised Pay)Rules,1997 vide Anexure-A-1 that if the pay as calculated in the revised scale is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale [vide proviso to Rule 7(1)]. This has further been confirmed by RBE No.163/98 vide Annexure-R-6. The learned counsel for the applicant drew our attention to Note-5 of the Railway Services (Revised Pay)Rules,1997 which reads as follows:-

“Note: 5 Where the existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, exceed the revised emoluments in the case of any Railway servant, the difference shall be allowed as personal pay to be absorbed in future increases in pay”.

He further argued that instead of reducing his salary, he should have been allowed to get the additional amount as personal pay. The learned counsel for the respondents submits that the above note is not relevant to the instant case, as this is applicable wherever the revised emoluments are less than the existing emoluments as per the old scale. It is not the case of the applicant that by revision of his scale, he was being given less than what he was drawing under the old scale. The claim of the applicant that his pay was wrongly fixed in 1997 is, therefore, not tenable.

On

(S)

9. In the result, the Original Application is dismissed. No costs.

Mrs. Meera Chhibber
Judicial Member

General
(Dr. G. C. Srivastava)
Vice Chairman

rkv

पूछांकन सं. ओ/न्या..... जवलपुर, दि.....
प्रतिविवादी अवृद्धिलाला:-

- (1) सरकारी उच्च वकायालय वार कोरियालेन, जवलपुर
- (2) आदेश विवादित विवादित विवादित
- (3) प्रदानी विवादित विवादित विवादित
- (4) विवादित विवादित विवादित विवादित

L.S. Rajpal 022
H. D. Srivastava 021

लाल

लाल

45-06