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CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JA BALPUR

Original Application No. 895 of 2005

Jabalpur, this the 10th day of October, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Abdul Rajjak S/o late Shri Munir Khan, Aged about 75
years, R/o 13/2 Begam Bagc Calloni, Begampura, Ujjain
M.P.

-Applicant

(By Advocate – Shri Arun Kumar Soni)

VERSUS

1. Union of India Through its secretary, Railway C.G.O.
Complex, New Delhi.

2. General Manager, West Central Railway, Jabalpur.

3. Accountant Officer (account Branch) West Central
Railway.

4. Senior Mandal Account Officer, Western Railway,
Ratlam M.P.

5. Branch Manager, State Bank of India, Nai Road
Branch, Ujjain

-Respondents

(By Advocate – Shri M.N.Banerji)

ORDER

By Dr.G.C.Srivastava,VC.-

Through this Original Application, the applicant has
challenged reduction in his pension and recovery of excess amount

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allegedly without any authority and without following mandatory provisions. The applicant has claimed the following main relief :-

“(i)... to direct the respondents to pay the full pension as sanctioned by the departmental order dt.17.11.99 to the petitioner and quash the recovery order issued by the department.

(ii) It is also prayed that this hon'ble court may kindly be directed the respondents to pay the recovered pension along with 18% interest...”

2. The facts as narrated by the applicant are that he retired from the Western Railway from the post of Guard on 31.8.1985 and since then he has been receiving pension at rates revised from time to time. On 17.11.1999 his pension was fixed at Rs.4300/- per month, which he had been getting regularly until January/February, 2003, when he was informed by the Bank that his pension was wrongly fixed at Rs.4300/- and as per the revised PPO his pension has been reduced to Rs.2852/- with effect from 1.1.1996 and that the excess payment made in the past has also to be recovered. The contention of the applicant is that this reduction in pension and recovery of alleged excess payment is arbitrary and has been done without following the statutory provisions.

3. In their reply, the respondents have submitted that the pension had to be reduced, as the earlier fixation had been done wrongly by adding 75% of the running allowance instead of 55%. This recalculation was based on the instructions and clarifications conveyed by the Railway Board on 15.1.1999 and 21.11.2000 respectively (annexures R-1 and R-3).

4. We have heard the arguments advanced by the counsel on behalf of the parties and have also gone through the material on record.

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5. The learned counsel for the applicant has drawn our attention to Rule 90 of Railway Services (Pension) Rules, 1993 which reads as follows:

"90. Revision of pension after sanction

(1) Subject to the provisions of rules 8 and 9 pension once sanctioned after final assessment shall not be revised to the disadvantage of the railway servant unless such revision becomes necessary on account of detection of a clerical error subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Railway Board if the clerical error is detected after a period of two years from the date of sanction of pension.

(2) For the purpose of sub-rule (1), the retired railway servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the railway servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

6. Admittedly, the pension of the applicant before reduction was last fixed on 17.11.1999 and was subsequently reduced in January/ February, 2003. Thus, the pension was revised to the disadvantage of the applicant after more than three years of its fixation. As per sub-rule (1) of Rule 90, quoted above, in such a situation, the revision could be ordered only on account of detection of a clerical error and that too with the concurrence of the Railway Board. The revision in the instant case had been necessitated because of wrong calculation, and thus can be treated as a clerical error. Moreover, since the error was detected because of detailed clarification issued by the Railway Board, the concurrence of the Railway Board to the said reduction is implied. It is, however, pertinent to note that the original circular (annexure R-1) was issued in January, 1999 and the subsequent clarification

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(annexure R-3) in November, 2000, but the order reducing the pension was admittedly issued in February, 2003 i.e. more than two years after the clarification on which the recalculation is based was issued by the Railway Board. However, since rules do not provide for any limitation period for correcting clerical error except that it has to be done with the concurrence of the Railway Board in case the error is detected after a period of two years, the applicant is not entitled to any relief on this account.

7. As per sub-rule (2) of Rule 90, quoted above, before any recovery of excess payment was ordered, the applicant should have been served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him. The submission of the applicant that no such notice was served on him has not been controverted by the respondents. In view of this, recovery without following the mandatory provision is clearly unsustainable in the eyes of law.

8. The learned counsel for the applicant further contended that since the alleged excess payment was not because of any misrepresentation on the part of the applicant, no recovery should be made for the past excess payment as has been laid down in a number of cases by the apex court and others. In this connection the applicant has relied on the following observations made by the apex Court in *Sahib Ram Vs. State of Haryana and others*, 1995 SCC (L&S) 248.

"It is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant can not be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant".

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The above view has been consistently followed by this Tribunal in matters of recovery of excess payment made for reasons other than misrepresentation on the part of the employee concerned. In the instant case, as mentioned above, there is an added reason that the recovery has been made without following the mandatory provisions laid down in the Railway Services (Pension) Rules, 1993. We have, therefore, no hesitation in holding that since excess payment has not been the result of any misrepresentation on the part of the applicant, he is entitled to receive back all the amount that has been recovered from him on account of over payment of pension pertaining to the period before February, 2003. The reduction effected in February, 2003 will accordingly be applicable with prospective effect. We have already expressed our considered opinion in para 6 above that the reduction in pension, having been effected on the basis of the circulars issued by the Railway Board, is justified. Accordingly, the prayer of the applicant that the respondents be directed to pay full pension as sanctioned by the departmental order dated 17.11.1999 is rejected.

9. In the result, we allow this OA partly and direct the respondents to refund the amount, if any, recovered from the applicant on account of excess payment of pension relating to period before February, 2003. This should be done within a period of three months from the date of receipt of a copy of this order. The reduction in the pension, being as per the policy, may be effected from February, 2003 onwards. No costs.

(A.K. Gaur)
(A.K. Gaur)
Judicial Member

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

rkv पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्को पत्र -

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल
- (4) वॉयमाल, के.प्र.अ., जबलपुर एवं अन्य संस्थान एवं आवश्यक कार्रवाई हेतु

Dr. G.C. Srivastava
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