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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 620/1998

S.K. Mukherjee, S/o. Late B.D. Mukherjee, aged 62 years, Upper Division Clerk in the Saving Bank Control Organisation, Department of Posts, Bilaspur, resident Behind Jabbal and Sons, Nehru Nagar, Bilaspur, (M.P.).

... Applicant

V e r s u s

1. Union of India, represented through the Secretary, Ministry of Communication, Govt. of India, New Delhi.

2. Chief Post Master General, M.P. Circle, Bhopal.

3. Superintendent of Post Office, Bilaspur, (M.P.).

... Respondents

Counsel :

Shri S. Paul for the applicant.
Shri B. Dasilva for the respondents.

Coram :

Hon'ble Shri Justice N.N. Singh - Vice Chairman.

O R D E R

(Passed on this the 3rd day of February 2003)

By Hon'ble Shri Justice N.N. Singh - Vice Chairman :-

The applicant has filed this Original Application for quashing Annexure A/10, dated 15/01/1998, by which the pension of the applicant was reduced from Rs. 950/- to Rs. 830/- per month with effect from 01/05/1994. The applicant also claimed 12% interest on the held up amount till date of actual payment.

2. The case of the applicant is that he was appointed as a Clerk in the Department of Post on 20/06/57 and he opted to go as UDC in the Saving Bank Control

Organisation (in short SBCO) where he joined as UDC on being selected on 24/12/1975 in the pay scale of Rs. 330-560/- (Rs. 1200-2040/-(RSP)). The case of the applicant is that he continued as UDC in the pay scale of Rs. 1200-2040/- up to the date of his retirement on 30/04/1994 and that his pension was ^{fixed} at Rs. 950/- per month with effect from 01/05/1994 as per calculation sheet (Annexure A/1). It was also claimed that as per calculation, vide memo dated 31/05/1994 authority for payment of pension at the rate of Rs. 950/- per month from 01/05/1994 (Annexure A/2) was issued and subsequently vide memo dated 31/05/1994 (Annexure A/4), without asserting any reason for reduction ^{of} the pension of the applicant ^{it} was reduced from Rs. 950/- to Rs. 830/-. The applicant claimed to have filed OA No. 432/1994 for cancelling the order of reduction which was decided on 31/7/96 according to which of pension ^{on} the respondents should have restored the pension of the applicant at Rs. 950/- but the same was not restored and he is still being paid Rs. 830/- per month. The applicant claimed to have filed representations Annexure A/8 and Annexure A/9 claiming that he drew pay in the scale of Rs. 1200-2040/- from 24/12/1975 to 30/04/1994 and that he never drew pay in the scale of Rs. 975-1660/- and as such there could have been no clerical error in computing the pension of the applicant. It was claimed that by the impugned order dated 15/01/1998 (Annexure A/10) the prayer of the applicant was rejected and hence this application.

3. The respondents contested the claim of the applicant by filing reply admitting therein that the applicant was appointed as Postal Clerk with effect from 20/06/1957 ^{that} and after opting and passing qualifying examination for UDC, as per his willingness, he was posted as UDC in Savings Bank Control Organisation, where he continued to

work till his retirement. According to the respondents one time bound promotion scheme for Group-C and Group-D were extended to the employees of SBCO with effect from 01/08/1991. That scheme has been annexed as Annexure R-1. According to which all LDC's and UDC's were required to furnish within one month their option under FR 23, to retain their old and existing pay scale and the officials were called for on account of the fact that the post of LDC (Rs. 950-1500/-) and UDC (Rs. 1200-2040/-) were to be abolished according to the scheme and equal number of time scale postal assistants (Rs. 975-1600/-) were to be created. It was claimed that the applicant, who was working in SBCO failed to exercise his option for retaining the old pay scale. According to the respondents, the applicant was drawing Rs. 1800/- with effect from 01/06/1991 in the scale of Rs. 1200-2040/- and as the applicant did not exercise his option he was brought in the grade of Postal Assistants with his pay fixed at Rs. 1660/- plus PP of Rs. 140/- in the pay scale of Rs. 975-25-1150-EB-30-1660/- with effect from 01/08/1991. According to the respondents the provisional pension on retirement of the applicant on 30/04/1994 was fixed at Rs. 950/- per month with effect from 01/05/1994 due to inadvertent error by taking and calculating the average emolument in the pay scale of Rs. 1200-2040/-, though the applicant would have been entitled to the pay scale of Rs. 975-1660/- only and his monthly pension should have been calculated at Rs. 830/- only. That error was claimed to have been rectified and against which the applicant preferred OA No. 432/1994 and this Tribunal by order dated 31/07/1996 (Annexure A/5) directed the respondents to re-fix the Gratuity and Pension of the applicant after affording an opportunity to him as per rules. However the right to recover the excess gratuity^{paid} was

closed. The respondents claimed to have issued notice on 22/09/1997 (Annexure R-2) against which the applicant filed his representation Annexure R-3 and considering the same, the impugned order Annexure R-4 was passed fixing his pension at Rs. 830/- per month with effect from 01/05/1994.

4. I have heard learned advocates for the parties and have gone through the record. Admitted case is that the applicant was appointed as ^aPostal Clerk on 20/06/1957 and on his option, he was posted as UDC in the Savings Bank Control Organisation on 24/12/1975 in the pay scale of Rs. 330-560/- which was revised subsequently as Rs. 1200-2040/- with effect from 01/01/1986. This is also admitted case that the applicant superannuated on 30/04/1994. As is done in every case, till final fixation of pension, he was granted provisional pension with effect from 01/05/1994 at the rate of Rs. 950/- per month. The case of the applicant is that at the time of his retirement he drew pay at the rate of Rs. 1920/- per month in the pay scale of Rs. 1200-2040/- and as per calculation made in Annexure A/3 his average pay drawn during last 10 months would be Rs. 1900/- per month and on that basis his pension was fixed at Rs. 950/- ^{amounting} ~~to~~ 50% of the average emoluments. Annexure A/1 also indicates calculation of pension on the same basis. There cannot be any dispute that this calculation was provisionally sanctioned at the time of retirement and a final fixation was required to be made as per rules. Admittedly when the pension of the applicant was reduced to Rs. 830/- by Annexure A/4, he challenged that deduction of pension by filing OA No. 432/1994 which was disposed of by oral order dated 31/07/1996 (Annexure A/5) directing the respondents to fix the correct pension of the applicant after affording

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him an opportunity. The applicant claimed to have filed representation, which after consideration by the respondents has been rejected by Annexure R-4, dated 15/01/1998.

4.1. There is no dispute that a scheme extending ^{one} time bound/promotion scheme was introduced for Group-C and Group-D staff working in SBCO of the Department of Posts. That scheme is Annexure R-1 = Annexure A/11. Admittedly the applicant did not exercise any option. According to the terms of the scheme the cadre of LDC and UDC was to be abolished and equal number of posts of Postal Assistants in the grade of Rs. 975-1660/- was to be created and all the existing LDC's/UDC's were required to furnish within one month, their option under FR-23 according to which they may, if so like retain their old pay in the existing scale of pay which would be personal to such officials. Since the applicant did not exercise his option to retain the old pay scale within the stipulated period, as per condition in the scheme, he will be deemed to be in the merged pay scale of Rs. 975-1660/-. But this is also admitted case that the applicant continued to draw his pay in the old scale till his retirement and on that basis he has put in his claim for calculation of his pension on the basis of pay last drawn. This is untenable stand, as he had not exercised his option to remain in the old pay scale. The respondents are right when they say that ^{even} if he drew pay in old scale by mistake, it should be corrected now and his pay should be fixed in the pay scale of Rs. 975-1660/- on 01/08/1991 from which date the scheme came into effect.

4.2. In Annexure A/10 while rejecting the representation of the applicant it was rightly held that as the applicant was drawing Rs. 1800/- on 01/08/1991, as per

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FR-22 his pay would be fixed at Rs. 1660/-, but the pension of the applicant was calculated on that pay, though the applicant superannuated on 30/04/1994. While calculating his pension the respondents rightly held that having not exercised the option to retain the old scale of pay, the applicant would be deemed to be in the pay scale of Rs. 975-1660/-, but the respondents failed to consider giving one time bound promotion scheme to the applicant with effect from 01/08/1991 for which the aforesaid scheme Annexure A/11 was issued. Condition (vi) clearly describes that the existing official who do not opt for old scales would be considered for grant of first promotion in the next higher scale of Rs. 1400-2300/- if they ^{have} completed 16 years of service as LDC or as LDC and UDC or as Postal Assistant and UDC taken together. It was also directed that their pay on grant of promotion, will be fixed under FR-22(C) with reference to the pay fixed in the time scale. The respondents should have considered granting one time bound promotion to the applicant who was working as UDC since 24/12/1975 and was also Postal Clerk from 20/06/1957 and must have completed 16 years of service when this new scheme for ~~giving~~ one time bound promotion was introduced with effect from 01/08/1991.

5. On the basis of discussion made above, it is directed that pension of the applicant should be refixed after considering his case for giving one time bound promotion on completion of 16 years of service in the pay scale of Rs. 1400-2300/-.

6. With the direction given in the preceding paragraph this Original Application is disposed of, but

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without any order as to cost.

N.N. Singh
(N.N. SINGH)
VICE CHAIRMAN

पूठकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्जो धित:-

- (1) सचिव, उच्च न्यायालय वर एसोसिएशन, जबलपुर
- (2) ओ/न्या श्री/श्रीमती/कु.....के काउंसल *S. Paul, D. 4*
- (3) प्रत्यक्ष श्री/श्रीमती/कु.....के काउंसल *B. Klasika - A. H.*
- (4) वर्य, डा. डी. वर्य, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Th. S. S. S.
उप-निर्देश 4/2/03

"SA"

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on 4-2-03
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