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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00962/2016

Wednesday, this the 18th day of July, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

N.Hariharan Pillai,
S/o.Narayana Pillai,
Retd. Jr. Engineer,
Central Railway, Bhusawal.
Residing at Sai Sadan, Puthenthura P.O.,
Neendakara, Kollam – 691 583.

...Applicant

(By Advocate – M/s.Varkey & Martin)

V e r s u s

1. Union of India
represented by General Manager,
Central Railway, Mumbai C.S.T. - 400 001.
2. Financial Advisor & Chief Accounts Officer (Pension),
Central Railway, Mumbai C.S.T – 400 001.
3. Senior Divisional Finance Manager,
Central Railway, Bhusawal Division,
Bhusawal – 425 201.
4. The Manager (CPPC),
State Bank of Travancore,
Chempikalam Buildings,
Vazhuthacad, Trivandrum – 695 014.
5. The Manager,
State Bank of Travancore,
Chavara Main Branch, Kollam.

...Respondents

(By Advocates – Mr.P.R.Sreejith [R1-3] & Mr.P.Ramakrishnan [R4-5])

This Original Application having been heard on 11th July 2018, the
Tribunal on 18th July 2018 delivered the following :

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ORDER

The applicant is aggrieved by the reduction of his pension from Rs.9746/- to Rs.8751/- with retrospective effect from 1.1.2006 as per Annexure A-2(b), revised PPO and consequent recovery of Rs.155040/- from his reduced pension at the rate of Rs.3876/- per month from January 2015 to April 2018 (40 months) as per Annexure A-2(a) Pension Modification Form. The reliefs sought in the O.A are as follows :

1. Declare that the applicant is entitled to retain the pensions granted from time to time in terms of A1, A5 and A6 with consequential benefits and direct the respondents accordingly.
2. Quash A2(a) and A2(b) orders and direct the respondents to refund the recoveries made pursuant to them with 12% interest per annum.
3. Direct the respondents to issue revised PPOs showing pension/family pension w.e.f. 1.5.1996, 1.1.2006 and 1.1.2016 in accordance with law.
4. Award costs of and incidental to this application.
5. Grant such other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant had retired from service on 30.4.1996 from the post of Senior Section Engineer, Bhusaval Division of Central Railway on a pay of Rs.3050 in scale of Rs.2375-3500. His average emolument for pension was estimated at Rs.3043/- and his qualifying service calculated as 30 years and 10 months ie. 31 years. Using pro-rata reduction principle and reducing the two years service required to reach 33 years, his pension was fixed at Rs.1430/- per month with effect from 1.5.1996. P.P.O dated 30.7.1996 is at Annexure A-1.

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3. On the implementation of the 5th Pay Commission with effect from 1.1.1996 his pension would be Rs.4312/- (Annexure A-5) in the corresponding scale of Rs.7450-11500/- for the period 1.1.1996 to 31.12.2005. The above pension was further revised as Rs.9746/- with effect from 1.1.2006 on the implementation of the 6th Pay Commission (Annexure A-6) in the scale Rs.9300-34800/- plus Grade Pay Rs.4600/-.

4. The applicant who is now 78 years old was surprised to see that the 5th respondent Bank had effected reduction in his pension to the sum of Rs.8751/- with retrospective effect from 1.1.2006 and had initiated recovery of Rs.155040/- in 40 instalments. Due to his own efforts he had come across a copy of the OM No.38/37/08-P&PW(A) dated 6.4.2016 (Annexure A-3) delinking revised pension of pre-2006 from the requirement of having 33 years of full qualifying service. He filed a representation before the authorities (Annexure A-4) but has not been favoured with a reply.

5. The relevant facts relating to his service, emoluments drawn and pension granted have been submitted through the O.A as also his original PPO issued at the time of retirement (Annexure A-1). The revision that he is entitled to on account of the two pay revisions which were implemented with effect from 1.1.1996 and 1.1.2006 are at Annexure A-5 and Annexure A-6 respectively. As can be seen from these facts the action of the authorities has been arbitrary and discriminatory. The recovery effected from his pension is impermissible as per the orders of the Apex Court in

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State of Punjab v. Rafiq Masih (White Washer) reported in (2015) 2 SCC (L&S) 33 and followed in several orders of this Tribunal. The applicant prays for immediate refund of the recovered pension amount as well as restoration of pension to the original sum of Rs.9746/- per month.

6. Respondent Nos.1-3 and Respondent Nos.4-5 representing the Railways and Pension Disbursing Bank respectively have filed separate reply statements. In the reply filed on behalf of Respondent Nos.1-3 it is stated thus :

4. It is submitted that applicant's case as per instructions contained in para 4.1 of Office Memorandum dated 1.9.2008, basic pension ought to have been fixed to Rs.8751/- instead of Rs.9746/-. It is admitted by Respondent No.4 and 5 in their reply that the mistake of overpayment was committed inadvertently by bank authorities. It is submitted that after retirement of the applicant on 30.4.1996 relation of employer and employee between Respondent No.1 to 3 and applicant have been (sic) ceased.

7. Thus, no reason other than “mistake” by the disbursing bank has been attributed for the reduction in pension. It is further stated in para 7 of the reply statement as follows :

7. The contention submitted in these paras 4(f) and (g) of the OA are matter of record. However, it is submitted that as per latest Railway Board's L.No.F(E)III/2008/PN/1/12 dated 13.4.2016, the applicant is eligible for getting benefit of 33 years qualifying service even though he has rendered only 30 years qualifying service. ***“The Hon'ble Tribunal will appreciate that the revised PPO for enhancement of pension in favour of applicant is under process and the same will be intimated to the concerned bank authorities in due course of time”.***

(emphasis supplied)

8. In the additional reply statement filed by the same respondents a calculation is provided for having fixed basic pension at Rs.3872/- with effect from 1.1.1996 and Rs.8751/- with effect from 1.1.2006. It is further

contended that no instruction has been issued to the bank authorities to enhance the basic pension to Rs.9746/- in pursuance to the 6th Pay Commission Revision.

9. Respondent Nos.4-5 representing the Disbursing Bank has a different interpretation for the action taken in the case. They see no error in having calculated the pension at Rs.9746/- per month with effect from 1.1.2006 and take shelter behind the undertaking provided by the applicant at the time of his retirement that he agrees to any recovery from pension resulting from any overpayment (Annexure R-4[a]).

10. Shri.Martin G Thottan on behalf of M/s.Varkey & Martin appearing for the applicant argued at length about the difficulties that the aged pensioner is being put to for no fault of his. He maintains that the pension that the applicant has been drawing with effect from 1.1.2006 is Rs.9746/- and this has been calculated correctly as evidenced in the copy of P.P.O at Annexure A-2(a). The Pension Sanctioning Authority, if their written statement is to be taken into account, blames only the bank for having made the so called over payment. He also draws the attention of the Tribunal to the document at Annexure A-10 which is a copy of DoP&T OM F.No.45/86/97-P&PW(A) Part I dated 27.10.1997. Shri.P.R.Sreejith appearing for Respondent Nos.1-3 and Shri.P.Ramakrishnan appearing for Respondent Nos.4-5 countered this argument by stating that the respondents were fully empowered to correct the genuine mistake and the undertaking

obtained from the applicant at Annexure R-4(a) vest them with sufficient authority for doing so. I have gone through the pleadings and the documents on offer and carefully considered the facts of the case.

11. The applicant is an aged pensioner, who after several years of his retirement, is caught in a quagmire not of his creation. The respondents have suddenly woken up and acted to recover a substantial amount of money from the pension already disbursed as well as make a reduction in his monthly pension. This has been done with no prior notice whatsoever. The reply put forward by the official respondents that it is the bank which is to blame shows their tendency to distance themselves from the action taken. They further affirm that *“after retirement of the applicant on 30.4.1996, relation of employer and employee between Respondent Nos.1-3 and the applicant have been (sic) ceased”*. Such an averment shows a worrisome lack of consideration on the part of an employer towards an employee who had spent decades in their service. The initial P.P.O shows the applicant's eligible pension as Rs.1430/-. As per approved slabs this has to be enhanced to Rs.4312/- and Rs.9746/- per month in consequence to 5th and 6th Pay Commissions respectively. The disbursing bank has been paying these amounts until the impugned orders were issued. The Respondent Nos.4-5 indicate in the reply statement that the pension after 6th Pay Commission ought to have been only Rs.8751/-. If this was the case it is not known what prevented them from raising this issue with Respondent Nos.1-3 instead of continuing with the alleged over payment. Thus, I am

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not convinced that there has been any careful consideration of this case and at this point in time the respondents are estopped from undertaking *suo moto* revision. Further Annexure A-10 document submitted by the applicant along with his rejoinder clearly would make the action taken by the respondents impermissible. Para 3.2 of the Government Instructions, Department of Pension & Pensioners Welfare, O.M.F.No.45/86/97-P & PW (A) Part I dated 27.10.1997 reads as follows :

3.2 Where pension/family pension/DCRG/commutation of pension has already been sanctioned in cases occurring on or after 1.1.1996, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioners in view of the Rule 70 of the CCS(Pension) Rules, 1972.

12. This case is squarely covered under the above clause. The O.A succeeds. The reliefs sought in the O.A are granted in full subject only to the stipulation that the amount recovered will be refunded to the applicant with interest at the applicable GPF rates of interest. These directions shall be complied with within a period of 60 days from the date of receipt of a copy of this order. No costs.

(Dated this the 18th day of July 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00962/2016

- 1. Annexure A-1** – A true copy of the P.P.O No.CR/10323/117230 dated 3.7.1996.
 - 2. Annexure A-2(a)** – A true copy of the Pension Modification Form No.KLM-1-70055-414 dated 10.1.2015 issued by 4th respondent.
 - 3. Annexure A-2(b)** – A true copy of the revised PPO No.CR No.323117230 dated 27.1.2014 issued by the 3rd respondent and enclosed of A2(a).
 - 4. Annexure A-3** – A true copy of the DoP & PW's OM No.38/37/08-P&PW(A) dated 6.4.2016.
 - 5. Annexure A-4** – A true copy of the representation dated 11.5.2016.
 - 6. Annexure A-5** – A true copy of the extract of Table showing and revised pension w.e.f 1.1.1996.
 - 7. Annexure A-6** – A true copy of the extract of the Table showing existing pension and revised pension w.e.f 1.1.2006.
 - 8. Annexure A-7** – A true extract of paras 2,4,5 and concordance Table of DoP&PW's OM No.38/37/08-P & PW(A) dated 28.1.2013.
 - 9. Annexure A-8** – A true copy of the OM F.No.38/37/08-P & PW(A) dated 1.9.2008.
 - 10. Annexure A-9** – A true copy of the OM F.No.45/86/97-P & OW(A) part – I dated 27.10.1997.
 - 11. Annexure A-10** – A true copy of the DoP&PW OM F.No.45/86/97-P & PW(A) – Part I dated 27.10.1997.
 - 12. Annexure R-1** – A true copy of the revised PPO No.CR10323117230 dated 7.2.2018.
 - 13. Annexure R-2(a)** – True copy of the relevant page of the OM No.38/37/08 P&PW(A) dated 1.9.2008.
 - 14. Annexure R-4(a)** – True copy of undertaking dated Nil of the applicant.
 - 15. Annexure R-4(b)** – True copy of the Calculation Statement from January 2006 to April 2012 with respect to the pension account of the applicant maintained in the 5th respondent Bank.
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