

In the Central Administrative Tribunal

Calcutta Bench.

O.A. No. 350/1228/2014

Nirmal Kumar Banerjee,

Son of late Panchanan Banerjee,

Retd. Chief Law Asstt., G.M's Law Office,

S.E.Rly., Garden Reach, Calcutta,

Residence : 57, Banamali Ghosal Lane,

Calcutta-700034.

... Applicant.

- VS -

1. Union of India through General Manager,
S.E.Railway, Garden Reach, Calcutta-700043.

2. General Manager,
S.E.Railway, Garden Reach, Calcutta-700043.

3. Chief Personnel Officer,
S.E.Railway, Garden Reach, Calcutta-700043.

4. F A & C A O,
S.E.Railway, Garden Reach, Calcutta-700043.

... Respondents.

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

ORIGINAL APPLICATION NO.350/01228/2014

Present : HON'BLE SHRI A.K.PATTNAIK, MEMBER (JUDICIAL)

Nirmal Kumar Banerjee, Son of Late Panchanan Banerjee, Retd.
Chief Law Assistant, G.M's Law Office, S.E.Rly, Garden Reach,
Calcutta, Residence 57, Banamali Ghosal Lane, Calcutta-700034.

..... Applicant

Versus

1. Union of India, Through General Manager, S.E.Railway,
Garden Reach, Calcutta-700043;

2. General Manager, S.E.Railway, Garden Reach,
Calcutta-700043;

3. The Chief Personnel Officer, S.E.Railway, Garden Reach,
Calcutta-700043;

4. FA & CAO, S.E.Railway, Garden Reach, Calcutta-700043

..... Respondents

For the Applicant : Mr. S.M Ahia, counsel
Mr. S.N. Mitra, counsel

For the Respondents : Ms. G. Roy, counsel

Date of hearing : 15.02.2018

Date of order: 13/4/2018

O R D E R

A.K.PATTNAIK, MEMBER (J)

The relief sought by the Applicant in Col. 8 of the

Original Application is as under:

" a) An order setting aside and/or quashing FA & CAO (Settlement) S.E.Railway's letter NO. Pen/P-443/SE-92/BK-16/P-197/KB/SRdated -04-2012 and FA & CAO, S.E.Railway's letter



No. Pen/P-443/SE-92/Spl/2142 dated 26-05-2014;

- b) An order directing respondents to pay to the applicant pension @ Rs. 8420/- for the period from 1-1-2012 onwards and to pay to applicant difference of arrear dues of pension together with interest @ 12% per annum thereon;
- c) Any other relief or reliefs as Hon'ble Tribunal may kindly consider fit and proper;
- d) Costs."

2. Respondents filed their counter contesting the case of the Applicant and the Applicant has also filed rejoinder.

3. Heard ld. counsel Mr. S.M. Ahia leading Mr. S.N. Mitra, ld. counsel for the applicant. Ld. counsel for the respondents Ms. G. Roy was also present and heard. Perused the records.

4. The grievance of the applicant as against the downward revision of his pension by way of rectifying the wrong committed while issuing the original PPO.

5. The downward revision of pension of the applicant, according to the Respondents, was for the reason that the applicant, on attaining the age of superannuation, retired from service on 31/10/1992 in scale of pay of Rs. 2000-3200/- (4th CPC) and the corresponding scale of pay for revision of pension, as per the recommendation of the 5th CPC, was Rs. 6500-10500/- (vide SER Estt.Srl.No.145/97). The said scale of Rs. 6500-10500/- was subsequently revised by Railway Board to the higher replacement of scale of pay of Rs. 7450-11500/- (vide SER Estt. Srl.No.25/98) and accordingly, the pension of the applicant was revised vide PPA No. Pen/B-443/SE-92/SC/BK-16/P-197/1456 dated 19/02/2000. But in the year 2001, the higher



replacement scale of pay of Rs. 7450-11500/- was withdrawn by Railway Board and it was replaced by the earlier fixed corresponding scale of pay of Rs. 6500-10500/- (vide Srl.No.104/2001 and 129/2001). The corresponding scale of pay of Rs. 6500-10500/- (5th CPC) was Rs. 9300-34800/-, GPRs.4200/- (vide SER Srl.No.196/2008). Accordingly, the pension of the applicant was revised to Rs. 7518/- pm w.e.f. 01/01/2006 vide PPA No. Pen/B-443/SE-92/BK-16/P-197/KB/SR/3120 dated 05/04/2012. Thus, the pension of the applicant should have been fixed at Rs. 3250/- corresponding to the scale of Rs. 6500-10500/- (as per 5th CPC) w.e.f. 01/01/1996 instead of Rs. 7450-11500/- which was fixed as per scale of Rs.7450-11500/- which was later withdrawn by the Railway Board. The Disbursing Authority (i.e. Bank) revised the pension from Rs. 3725/- (5th CPC) to Rs. 8420/- (6th CPC) without any specific order of the pension sanctioning authority. Further it has been stated that the original pension was sanctioned @ Rs.1099/- w.e.f. 01/11/1999 (4th CPC). This pension was never reduced for the purpose of subsequent revision. In the 5th CPC however, pension was revised twice due to change in policy communicated by the Ministry of Railway. Since the original pension sanctioned was not reduced Rule 90 was not violated and subsequent revision of pension does not attract the provision of Rule 90 of the Railway Services (Pension) Rules, 1993.

6. The contention of the applicant is that his pension was revised detriment to his interest without complying with the principles of natural justice and that as per the provision made in 3.2 of the Estt. Srl.No. 130/2008 (RBE No. 112/2008) revision of pension was not permissible being the same was made prior to 01/01/2006.

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7. It is seen that the whole controversy arose due to revision of pay to Rs. Rs.7450-11500/- which was subsequently withdrawn and revised to Rs. 6500-10500/-. No material has been placed by the applicant showing upward revision/fixation of pension at Rs. 8420/- yet the Bank has revised and paid the same to the applicant. Law is well settled in a plethora of judicial pronouncements that mistake committed in fixation of pay or pension is reviewable at any point of time. When mistake in fixation of pension was noticed, the authorities were within their domain to rectify the same. The applicant cannot have any right to claim the pension which was not in accordance with law. In so far as violation of natural justice is concerned I find that though the applicant was allowed opportunity of being heard he did not avail the same as evident from the impugned order under Annexure-3. In the above view of above, we do not see ground to the above effect to hold that downward revision of pension of the applicant was in any manner illegal or injustice.

8. At the same time it is seen that the Respondents failed to examine the provision made in para 3.2 of the Estt. Srl.No.130/2008 (RBE No. 112/2008 in its true value/sense nor the reason adduced in the counter to the above effect is found convincing. Therefore, for the present while upholding the orders impugned in this OA, Respondents are directed to examine the case of the applicant afresh as to how far the downward revision by way of correction of mistake of the pension was justified and intimate the result of such consideration in a reasoned order to the applicant within a period of sixty days from the date of receipt of a copy of this order.



9. In so far as recovery is concerned, it is ordered that as the applicant is a pensioner and he has ~~not~~ contribution with regard to payment of pension at a higher rate, there shall be no recovery towards excess payment, if any made, to him. In the result this OA stands disposed of. No costs.



(A.K.Patnaik)
Member (Judicial)