

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No.050/00031/2016

Reserved on 11.01.2018
Pronounced on 19.01.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

1. Sukh Ram s/o Late Gopal Prasad R/o Vill- Musharwa, P.S.- Sati Distt- West Champaran.

.....Applicants

By Advocate : Shri Dhananjay Kumar

VERSUS

1. The Union of India through the General Manager, Indian Railway North Railway at Hajipur.
2. The officer of the Sr. Manager Divisional, Finance Manager, East Central Railway, Samastipur at Samastipur.
3. The D.R. M, Eastern Railway Samastipur at Samastipur.

....Respondents

By Advocate : Shri B.K. Choudhary
Smt. P.R.Laxmi

O R D E R

Per Jayesh V. Bhairavia, Member (J):

In the present OA the applicant has sought direction upon the respondents to pay all the retiral dues to the tune of Rs. 1,57,531/- which were pending and to fix his pension on his last paid Grade Pay scale Rs. 2400/- and make payment of arrears of pension from the date of pension [as prayed in para 8 of the OA].

2. The learned counsel for the applicant had submitted that the applicant was appointed as Trolley Man on 18.5.1976 at Narkatiaganj in Engineering Department of E.C. Railway. The applicant was subsequently appointed to the post of Senior Trolley Man and was granted Grade Pay Rs. 2400/-. The applicant has produced monthly salary slip to substantiate his submission with regard to grant of Grade Pay of Rs. 2400/- [Annexure A/2 series].

3. That the applicant retired on superannuation on 30.11.2013 from service. His total retiral dues was Rs. 7,57,552/- . However, the applicant had been paid only Rs. 6,00,021/- by the respondents and Rs. 1,57,531/- has been deducted

from the retiral dues. The respondents have not provided any reason for deducting the said amount [Annexure A/1].

4. It is further submitted that the applicant is entitled for pension on the basis of his Grade Pay i.e. Rs. 2400/-. However, due to mistake, the respondents have fixed his pension on Grade Pay scale of Rs. 2000/-. Therefore, the applicant's pension has to be fixed according to his last Grade Pay and arrears thereon along with refund of deducted amount i.e. Rs. 1,57,531/-. The applicant had approached the office of the respondents and also submitted his representation dated 30.4.2015 for consideration of his legitimate claim [Annexure A/3 refer]. However, his request did not elicit any response from the respondents. Hence, the applicant was left with no other remedy but to approach this Tribunal for redressal of his grievance and sought the reliefs as made in para 8 of this OA.

5. The respondents have filed their written statement and denied the claim of the applicant. The learned counsel for the respondents submitted that the applicant was appointed on 18.05.1976 as a Trolley Man. He was granted Grade Pay of Rs. 1800 with effect from 01.01.2006 as per the recommendations of the 6th CPC. As per the service book of the applicant, in his service career, the applicant has been on leave without pay for 3400 days i.e. for 09 years 3 months and 25 days. The applicant has rendered service only for 29 years and 23 days which does not fulfill the requirement of 30 years of service under the provisions of 3rd MACP [Modified Assured Career Progression Scheme],. Hence, as per the provision of 3rd MACP, the applicant found not qualified to avail benefit of 3rd MACP.[Annexure R/2 refers]. The learned counsel for the respondents submits that as per the recommendations of 6th CPC- Modified Assured Career Progression Scheme [MACPS] for Railway employees dated 10.6.2009 for the benefits of financial up-gradation under the 3rd MACP, one has to complete 30 years of continuous service.

6. It is further submitted by the respondents that in the case of the applicant, at the time of preparation and calculation of the retirement benefits, it was surfaced on record that the applicant did not qualify for the 3rd MACP and as such, inadvertently, the office of the respondents had fixed the Grade Pay of Rs. 2400/- which can be only granted if the applicant has completed 30 years of

continuous service. But it was found that the said pay scale was granted erroneously. As per the service record, the applicant became entitled only for the benefit of 2nd MACP Grade Pay i.e.s. 2000/-. Therefore, the Assistant Divisional Engineer passed an order dated 10.10.2013 directing to revise the Grade Pay of applicant. Accordingly, respondents had revised the Grade Pay of the applicant to Rs. 2000/- and consequently, the last paid salary of the applicant comes to Rs. (9860/- + 2000/-) = Rs. 11860/-. In view of this calculation, Rs. 1,57,531/- was ordered to be deducted from the DCRG of the applicant. The said decision dated 18.11.2013 was informed to the applicant. [Annexure R/1 series refer]. The said decision has not been challenged by the applicant.

7. The learned counsel for the respondents placed reliance on the judgment passed by Hon'ble Patna High Court in the case of Ram Lakhan singh vs. State of Bihar [CWJC No. 1288 of 2001] decided on 7.8.2010, and submitted that the applicant remained absent from duty for a period of more than 9 years and the said period of his absence was treated as leave without pay. Therefore, he was not eligible for benefit of 3rd MACP. The decision revising his pay from Rs. 2400 to Rs. 2000 and fixation of pension is just and proper. The said decision was taken before the applicant retired. Therefore, the applicant is not entitled for any relief.

8. The learned counsel for the applicant has rejoinder and contended that the documents produced by the respondents is manipulated and same has been filed with a view to depriving the applicant of his legitimate retiral dues. The copy of the abstracts of service produced by the respondents contains a lot of corrections and overwriting and that too without any initial thereon. The applicant was never informed about the revisions and corrections so made by the respondents in his service book. It is further submitted that the applicant had received full salary per month during his entire service period and his salary was never stopped by the respondents. Therefore, there is no question of leave without pay in the case of the applicant. The applicant has never misrepresented or submitted any incorrect information. The respondents had erroneously revised his pay and also incorrectly fixed the pension. The recovery made by the respondents from the total retiral dues is also erroneous and without assigning any cogent reason. Therefore, the action of the respondents is arbitrary and in violation of principles of natural justice as also

the law laid down by the Hon'ble Apex Court on the issue of recovery of retiral dues of class III- IV employee.

9. Heard the parties and perused the records. I have carefully considered the rival submissions of both the parties.

10. In the present case, it is noted that the respondents have downgraded the Grade Pay of the applicant from Rs. 2400/- to Rs. 2000 on the ground that the applicant's 3rd MACP had been wrongly granted to the applicant. Since the applicant had remained absent from duty for more than 9 years and the said period of his absence was treated as leave without pay, as a result of this, the applicant is not completing 30 years of regular service to be eligible to get 3rd MACP. It is also surprising that the respondents have taken this decision dated 18.11.2013 to downgrade the Grade pay of the applicant at the fag end of his service. It is noted that the applicant retired on 30.11.2013.

The applicant has categorically stated that he has been regularly receiving his full salary, and it was never stopped due to his so called absence from duty. To this, the respondents have not made any specific denial or produced any document which could have substantiated their stand.

11. Secondly, the abstract of service book which was produced by the respondents suffers from many infirmities. There are discrepancies with regard to total number of leave without pay. According to the respondents, it should be 3400 days whereas on actual calculation, it will be definitely less than what the respondents are claiming on the basis of photo copy of internal page 9 of service book. It appears that the entries dated 8.10.2013 with regard to date of salary increment have not been made properly in the service book of the applicant. On one hand, there are corrections / overwriting on the entries so made in the service book, which creates doubt and on the other hand, it seems to have been done only on 8.10.2013. In view of this fact, the decision of revision of pay and fixation of pension on that basis needs a proper verification which can only be done by the respondents themselves.

12. It is also important to note here that in the case of recovery of amount from the DCRG of Class IV employee, the principle of law has already been settled in the case of State of Punjab vs. Rafiq Maish reported in 2014 (8) SCC 883. In that decision, the Hon'ble Supreme Court observed that if the employee did not have any role in the wrong fixation, then the employees who are the beneficiary of wrongful amount at the hand of the employer, may not be compelled to refund the same. In the present case, admittedly, the applicant did not furnish any wrong information to the respondents based upon which the excess payment was made to him. There was no misrepresentation of facts on the part of the applicant. Moreover, recovery is also impermissible in the case of a retired employee or employee who are due to retire within one year of order of recovery. In the present case, the decision of recovery of so called excess payment has been made just before 12 days of applicant's retirement. Therefore, the judgment relied upon by the respondents as cited here-in-above is not applicable to the facts of this case.

13. In the facts and circumstances of this case and the law laid down by the Hon'ble Apex Court [supra], this Tribunal is of the considered view that the decision of the respondents to recover so called excess payment of Rs. 1,57,531/- is not sustainable and accordingly the respondents are directed to refund the same to the applicant. So far as the decision of the respondents with regard to downgrading of the Grade Pay of the applicant from Rs. 2400/- to 2000/- is concerned, the respondents are directed to verify the entries so made in his service book with regard to leave without pay and then to take a fresh decision regarding Grade Pay only for 3rd MACPS and thereafter to fix the pension accordingly. The respondents are also directed to give personal hearing to the applicant. The respondents will be under obligation to provide all such the relevant documents to the applicant which had bearing with the entries so made in his service book. The whole exercise must be completed within three months from the date of communication / receipt of this order. No order as to costs.

[Jayesh V. Bhairavia]

Member(J)

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