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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 350/01667/2014

Date of Order: 08.09.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Biswanath Sanpui, son of Late Satish Chandra Sanpui, aged about 67 years, last worked as Superintendent (Sorting), Kolkata Airport (Sorting) residing at B-9/139, Kendriya Vihar, Po. Kolkata Airport, Kolkata-700052.

.....Applicant

For the Applicant: Mr. S. Bhattacharya, Counsel

-Versus-

1. The Union of India service through the Secretary, Ministry of Communications of Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, Kolkata-700012.
3. General Manager (PA & F), P-36, C.R. Avenue, Yogayog Bhawan, Kolkata-700012.
4. Senior Superintendent Kolkata Airport Sorting Division, Kolkata-700028.

.....Respondents

For the Respondents : Mr. P. Mukherjee, Counsel.

ORDER

JUSTICE G. RAJASURIA, JM:

Heard both at this admission stage itself.

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This OA has been filed seeking the following reliefs:

"(a) Declaration that the applicant is entitled to his pension of Rs. 11525 + DR w.e.f. 1.3.2007 calculated on the basis of his last pay of Rs. 23,050/- as sanctioned by Sr. Superintendent's order dated 19.09.2012 (Annexure-A/7) and that the purported downward revision of the applicant's pension to Rs. 11,190/- + DR retrospectively from 1.3.2007; by Order of the Sr. Accounts Officer, Pension-1 dated 20.09.2013 (Annexure-A/8) as also the purported order of Postmaster, Cossipore H.O. for recovery of Rs. 21,132/- dated 27.12.2013 read with order dated 12.11.2013 (collectively Annexure-A/11) and the Memo dated 16.06.2014 (Annexure-A/14) issued arbitrarily out of time and without considering the points raised by the applicant are arbitrary, unlawful and liable to be quashed and set aside.

b) Consequential order directing the respondents more particularly the respondent NO.2 and No. 3 to pay pension of Rs. 11, 525/- + DR per month w.e.f. 1.3.2007 with arrears of difference and interest at 12% as due and to give no effect or further effect to the S.r Accounts Officer, Pension-1's order dated 20.09.2013 (Annexure-A/9) as also orders of postmaster, Cossipore HO dated 12.11.2013 and 27.12.2013 (Collectively Annexure-A/11) as also Memo dated 16.06.2014 (Annexure-A/14).

(c) Any other order as deemed fit and proper."

3. The Learned Counsel for the Applicant placing reliance on the averments in the OA and the annexures, appended to it would develop his argument to the effect that his client retired on 28.2.2007 on superannuation, while 5th CPC was in vogue. However, 6th CPC which was declared in the year 2008, was given retrospective effect so to say w.e.f. 1.1.2006. Wherefore, the pension of the applicant was revised on par with the 6th CPC's recommendation. Annexure-A/3 dated 2.7.2009 would reveal that his pension from Rs. 7110/- was



enhanced to Rs. 11330/-. However, all of a sudden after a lapse of nearly four years vide Annexure-A/8, the order dated 20.9.2013, the Senior Accounts Officer reduced the pension from Rs. 11330/- to Rs. 11190/-. Whereupon, this OA has been filed seeking the aforesaid reliefs.

4. The Learned Counsel for the applicant inviting our attention to rule 70 of the CCS (Pension) Rules, 1972 which is extracted hereunder:

70. Revision of pension after authorization

(1) Subject to the provisions of Rules 8 and 9 pension once authorized after final assessment shall not be revised to the disadvantage of the Government 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 Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

[(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government 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 Government 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.

Inserted vide GSR 628(E), dated 1st September, 2014, Government of India, Department of Pension & Pensioners' Welfare Notification No.1/19/2014-P&PW(E), dated 29th August, 2014.

would further develop his argument that after fixation of pension "the question of revising it to the disadvantage of the pension would not



-4-

arise and accordingly, he would pray for quashing the order including the order of recovery has to be quashed.

Per contra, the Learned Counsel for the Respondents placing reliance on the averments in the reply, would submit that the applicant was given ad hoc promotion as per order in Annexure-A/1 and as per which he was not entitled to exercise any option for re fixation of his pay with one increment. Subsequently after fixation of pension under the 6th CPC this mistake came to the knowledge of the authority and hence the pension was reduced from Rs. 11330/- to Rs. 11190/- which cannot be found fault with. Accordingly, he would pray for the dismissal of this OA.

5. The point for consideration is as to whether the reduction of pension from Rs. 11330/- to Rs. 11190/- tracing out the mistake committed earlier is tenable in view of Rule 70 of the CCS (Pension) Rules, 1972.

On point, at the outset we would like to point out that the applicant has not chosen to contest the matter by contending that on his ad hoc promotion as per the order under Annexure-A/1 he was entitled to such increment. However, the entire argument is centred on the application of Rule 70 of the CCS (Pension) Rules. The Learned Counsel for the applicant would submit that even though four years lapsed from the date of fixation of his pension at Rs. 11330/-, there was no action taken by the authority concerned, but only as per Annexure-A/8 so to say after the lapse of four years such an order was passed to his disadvantage. He would also point out that the question of revision of pension to the disadvantage of the applicant would not

15/9/

arise except to correct clerical error, and absolutely there was no clerical error in this matter.

Whereas, the Learned Counsel for the Respondents would submit that the said increment given on the ad hoc promotion, was nothing but due to clerical mistake and that could be corrected and accordingly it was corrected.

6. We are now enjoined to interpret Rule 70 of the CCS (Pension) Rules. It is clear from the Rule 70 of the CCS (Pension) Rules, 1972 that the after expiry of two years from the date of fixation of pension, if any, reduction to the disadvantage of the pensioner should be effected, it could only be done with the concurrence of the DoP&T. The RTI reply as per Annexure-A/15 would indicate and convey that no such concurrence from DoP&T was obtained. Wherefore, it is crystal clear that such reduction of pension as contained in Annexure-A/8, is not in accordance with the law and it has to be set aside, and accordingly we are having no hesitation in setting aside it. However, while doing so we make it clear that it is open for the appropriate authority to take steps to reduce the pension of the applicant with the concurrence of the DoP&T, if they so desire, as per Law.

7. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G. Rajasuria)
Judicial Member

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