

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No. 295/2018
Ahmedabad, the 18th day of July, 2019.

CORAM :

**Hon'ble Ms. Naini Jayaseelan, Member (Administrative)
Hon'ble Sh. M.C.Verma, Member (Judicial)**

Shri Arjun Kumar S/o Shri Ramnarayan Taneja, Aged 61 years, Retd. SSE (Tele) of the respondents, residing at : House No. 4, Indraprasth Row House, Nr. Prathma Blood Bank, Vasna, Ahmedabad – 380 007. **Applicant**

[By Advocate : Shri M S Trivedi]

V/s.

- 1 Union of India through the General Manager, Western Railway, Churchgate, Mumbai – 400 020.
 - 2 The Divisional Railway Manager, O/o DRM, Western Railway, Ahmedabad Division, Asarwa, Nr. Chamunda Bridge, Ahmedabad – 380 002.
 3. Sr. Divisional Finance Manager, O/o. Sr. DFM (W.Rly.), Divisional Office, ADI Division, Asarwa, Nr. Chamunda Bridge, Ahmedabad – 380 002.
- Respondents**

[By Advocate : Ms. Nisha . M. Parikh]

**O R D E R (ORAL)
[PER : M C Verma, Judicial Member]**

1. Applicant has, in this application filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs: “ *(A)That the Hon'ble Tribunal be pleased to allow this petition. (B)That the Hon'ble Tribunal further be pleased to hold / declare that the impugned Memorandum No. E/SIG/511/3 dated 22.8.2017 issued by the respondent No. 2 (Annex.1) regarding repay fixation of the applicant and reducing the pay of the applicant from Rs. 80200/- to Rs. 77900/- w.e.f. 1.7.2017 at the time of retirement of the applicant, is ex-facie illegal,*

arbitrary and nonest in the eyes of law. (C) That, the Hon'ble Tribunal further be pleased to quash and set aside the impugned ex-facie, illegal, arbitrary, unjust and unconstitutional action/decision and Memorandum No. E/SIG/511/3 dated 22.8.2017 issued by the respondent No. 2 regarding repay fixation of the applicant and reducing the pay of the applicant from Rs. 80,200/- to Rs. 77,900/- w.e.f. 1.7.2017 at the time of retirement of the applicant. (D) That, the Hon'ble Tribunal further be pleased to direct the respondents to calculate / give retirement dues to the applicant on the basis of his last pay i.e., 82,000/- with arrears and 12% interest thereon. (E) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted."

2. The extract of relevant fact, as has been set out in the OA are that applicant, while working as SSE in the scale of Rs. 23020/-, was granted 3rd MACP, w.e.f. 3.8.2015 with Grade Pay Rs. 5400/- and based upon it his pay was reaffixed, w.e.f. 1.1.2016 at Rs. 75,600/-. Further, in sequence, his pay was fixed at Rs. 77900/- w.e.f. 1.7.2016 and Rs. 80,200/- w.e.f. 1.7.2017 by the respondent-department. On attaining the age of superannuation, applicant retired on 31.8.2017. It is pleaded further that just before his retirement respondents issued Memo dated 22.8.2017, at his back and reduced his pay, w.e.f. 1.7.2017 from Rs 80,200/- to Rs.77,900/-. Being aggrieved by this action of the respondents of reducing his pay applicant has approached this Tribunal for quashing of order of reducing of pay and for direction to the respondents to calculate / give him retirement dues the basis of pay which was prior to reducing and the arrears be paid @12% interest.
3. Respondents have filed their reply pleading therein that applicant was working in Signal & Telecom Department as SSE (Tele) Level-7 and he retired on 31.8.2017.

That applicant was promoted from JE-I Scale Rs. 5500-9000 to SE Scale Rs. 6500-10500 (RSRP) w.e.f. 1.11.2003 against cadre restructuring and his pay was fixed at Rs. 7300/- w.e.f. 1.11.2003. That the pay in scale Rs. 6500-10500 had to be fixed as Rs. 7100/-. But by mistake it was fixed as Rs. 7300/- and consequently his pay fixation after 2nd and 3rd MACPs in Grade Pay 4800 and 5400 also went wrongly. That applicant since 1.11.2003 was drawing higher but before retirement when his case was examined the mistake was detected that he was drawing higher pay and thus his pay, as per was revised and reaffixed Rs. 7100/- as on 1.11.2003, in scale of Rs. 6500-10500 and consequential effect in pay till his retirement was done. Respondents therefore have prayed that O.A. deserves to be dismissed. Rejoinder to reply has also been filed reiterating the facts pleaded in the O.A.

4. Heard learned counsel for both sides and perused the paper book carefully. Ld. counsel, appearing for applicant contended that fixing of pay at Rs. 7300/- w.e.f. 1.11.2003 was absolutely correct and based on that, applicant was allowed both MACP w.e.f. 2011 and another MACP w.e.f. 2015. He explained that pay of the applicant was fixed at the stage of Rs. 7300/- w.e.f. 1.11.2003 and thereafter due to VI CPC scale of Rs. 6600-9000 / 6500-10500 were merged in to one scale i.e. of Rs. 7450-15000 and at that time pay of the applicant was rightly fixed which was verified by the audit team of respondents. That hereafter also pay of the applicant was fixed / revised according to VII CPC w.e.f. 1.1.2016, and it is incorrect to say that at the time of retirement pay fixation of the applicant, w.e.f. 1.1.2003 was erroneous. Learned counsel vehemently argued as well that for any re-fixation of pay, a notice is a must and the re-fixation was done without giving any notice and therefore also the order impugn is illegal and void.

5. Ld. Counsel , Ms. Nisha Pareekh Advocate, appearing for the respondent urged that before retirement of an employee everything has to be checked and during said checking It emerges that that the basic pay of Rs.7300/- of the applicant was wrongly fixed as Rs 7300 on 1/11/03. She draw the attention of undersigned to Annexure A/1 of OA, placed on record by the applicant and contended that applicant On 1/12/02 was in scale of Rs 5500-9000 and his basic pay was Rs. 7075/-. He on 1/11/03 was promoted to the post of SE in scale of 6500- 10500 and his basic pay has to fixed at Rs.7100/- but Annexure A/1 shows that treating him in same scale of 6500- 10500, prior to promotion his pay was wrongly fixed as Rs.7100/-. That at the time of settlement of retiral dues the mistake was rectified and his pay was reduced w.e.f. 2003. She admitted that for reducing the pay no notice was given to the applicant.
6. Considered the submissions advanced. Indisputably the pay of the applicant was reduced at the time of settlement of retiral dues and it was reduced w.e.f. 01/11/2003. Applicant was getting Rs.7300/- per month as basic pay on 01/11/2003 and it was reduced to Rs.7100/-. It can be said without hesitation that the same had led to re-fixation of pay and admittedly it has been done without giving any notice to the applicant. Learned counsel for respondents has confirmed that no notice was given.
7. Having taken note of entirety, the impugned order dated 22.08.2017 (Annex. A/1) is quashed and set aside. However, liberty is granted to respondents that if according to them, any error has erupted in the pay fixation done they would sent a notice to the applicant, pointing out the error and their intention to re-fix the pay of applicant giving details. Said notice, if intended has to be issued to the applicant within ten days of receipt of this order and the applicant, in case notice is

given to him may reply to same within 15 days. After expiry of said period of 15 days or after receiving of reply of the applicant, whichever is earlier, the respondents shall pass final order qua pay of the applicant. All this exercise has to be completed by the respondent within three months and if the aforesaid exercise is not completed within three months, applicant shall be paid his retiral dues as per his present pay.

8. OA stands disposed of with above directions. Pending MA, if any also stand disposed of.

(M C Verma)
Member(J)

(Naini Jayaseelan)
Member(A)

Finalised