

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/01114/2014

29.
Reserved on: 01/04/2016
Pronounced on: 6.05.2016

PRESENT:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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Amar Nath Ghosh, son of S.N.Ghosh retired office Supdt.
Chief Operating Manager's Office, S.E.Railway, Garden
Reach, Calcutta, residence; Duplexpotty Road, Aswathotaia,
Po&PS:Chandannagore, Dist. Hooghly, Pin-712136.
.....Applicant

For the Applicant: Mr. S.N.Mitra,
Mr.B.P.Roy,
Counsel

-Versus-

1. Union of India through the General Manager, S.E.Railway,
Garden Reach, Calcutta-43.
2. General Manager, S.E.Railway, Garden Reach, Calcutta-
43.
3. Chief Operating Manager, S.E.Railway, Garden Reach,
Calcutta-43.
4. F.A. & C.A.O, S.E.Railway, Garden Reach, Calcutta-43.
5. Chief Personnel Officer, S.E.Railway, Garden Reach,
Calcutta-43.

.....Respondents

For the Respondents: Mr.M.K.Bandopadhyaya
Counsel

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ORDER

MS. JAYA DAS GUPTA, AM:

This OA has been filed by the applicant, Amar Nath Ghosh, under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) An order setting aside and/or quashing the speaking order dated 16.6.2014 passed by CPO as communicated under SPO (P&T)'s letter No. SER/P-HQ/CC/ANG/2014 dated 17.6.2014.

b) An order setting aside and/or quashing the order of reduction of pay of applicant and the order of recovery of Rs. 200000/- from DCRG dues of applicant as contained in FA & CAO, S.E. Rly's letter No. Pen/P-336/SE-12/(E) BK-63/ B-024/GRC/ ACHINTYAS/ 1612/1385 dated 30.11.12 and letter No. Pen/336/SE-12/1398 dated 30.11.12;

c) An order directing the respondents to restore applicant's last basic pay to Rs. 22580/- and to pay to applicant difference of wages as would become payable minus the amount paid as wages @ 21780/- for the month of November, 2012 together with an interest @ 12% per annum for the period from 1.12.12 till the amount is actually paid;

d) An order directing the respondents to refund to applicant Rs.200000/- already recovered from applicant's DCRG dues and to pay interest @ 12% per annum thereon from 1.12.12 till the amount is actually paid;

e) An order directing the respondents to recomputed pension, DCRG etc of applicant on applicant's last basic pay Rs. 22580/- and to pay to applicant the difference of amount as would become due and payable thereby as pension, commuted value of pension, DCRG, encashment of leave salary to that already paid and to pay interest @ 12% per annum thereon from 1.12.12 till the amount is actually paid;

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f) Any other relief or reliefs as Hon'ble Tribunal may kindly deem fit and proper;

g) Costs."

2. The case of the applicant, in brief, is that he retired from Railway service on 30.11.2012 on attaining the age of superannuation. His pay was reduced to Rs. 21780/- from Rs. 22580/- and an amount of Rs. 2, 00, 000/- was recovered from his DCRG without assigning any reason and without giving him any opportunity in compliance with the natural justice. He filed OA No. 601 of 2013 against the said reduction of pay and recovery from his DCRG. The said OA was disposed of on 17.02.2014 by directing him to file a composite representation to the concerned authorities who shall consider the representation after allowing him an opportunity of hearing and pass a reasoned order. He submitted a composite representation on 4.5.2014. It has been alleged that the CPO without considering all the points raised by him in his representation issued the speaking order dated 16.6.2014 rejecting the claim of the applicant. It has further been alleged that the CPO while considering his representation did not take into account the Rule 79 (b) (iii) of the Railway Services (Pension) Rules, 1993 and this has led to rejection of his representation. The applicant has referred to various decisions of the Hon'ble Apex Court for affirming his case that no over drawal, even if made due to wrong fixation of pay, can be recovered from his retirement dues that too after 23 years. Hence he has filed this second round of litigation seeking the aforesaid reliefs.

3. Respondents have filed their reply in which it has been stated that the applicant was appointed as a Peon in the office of the Chief Operations Manager (COM), South Eastern Railway (Hd Quarters) 11, Garden Reach Road, Kolkata on 12.03.1974 in the scale of pay of RS. 196-232/-(RS). Thereafter, he was promoted to the post of Jr. Clerk in the scale of pay of Rs. 260-400/-(RPS) on 16.4.1980 and again promoted to the post of Senior Clerk in the scale of pay of Rs. 330-560/-(RS) on 21.6.1982. He was put to officiate as Running Room Inspector (a post outside his cadre) in the scale of pay of Rs. 425-600/- (RS) maintaining his lien in the

Ministerial cadre in the office of the Chief Operations Manager with effect from 8.4.1985. Subsequently, he was promoted to the post of Head Clerk in his own cadre, in the pay scale of Rs. 1400-2300/- (RPS). However, on his promotion to the post of Head Clerk, his pay was erroneously fixed at Rs. 1560/- instead of RS. 1400/- w.e.f 08.03.1989. Due to such wrong done while fixing his pay to the post of Head Clerk, his pay consequent upon his next promotion was also wrongly fixed. He retired on reaching the age of superannuation on 30.11.2012. That his pay was wrong fixed came to the notice while preparing his pension papers after his retirement which was corrected and the loss caused to the department due to such wrong fixation of his pay was made good from his DCRG amount. There is no wrong on the recovery and adjustment of government or railway dues from pensionary benefits. The respondents have also placed reliance on Rule 15 of the Railway Services (Pension) Rules, 1993 which reads as under:

"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

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(3) For the purposes of this rule, the expression railway or Government dues includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee) if any; --

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of

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Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant."

Accordingly, the Respondents have prayed for the dismissal of this OA.

4. Heard the learned counsel for both sides and consulted the records.

5. The issues that arise for our consideration is as to whether (i) the over drawal of a large amount of Rs. 2 lacks can be recovered from the DCRG amount of the applicant and (ii) erroneous fixation made about 23 years ago can be rectified belatedly after his retirement.

6. Regarding the point at (i) above viz; as to whether over drawal of large amount of Rs. 2 lakhs can be recovered from the DCRG amount of the applicant is concerned, our attention was drawn by the learned counsel for the applicant to the decision of the Hon'ble Apex Court in the case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc**, Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012 dated 18th December, 2014, wherein the Hon'ble Apex Court taking into consideration various aspects of the matter have made it clear as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery where payments have mistakenly been made by the employer, in excess of their

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entitlement. Be it as it may, based on the decisions referred to herein above, we may as a ready reference, summarize the following few situations wherein recoveries by the employers, would be impermissible in law:

- (i) **Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' Service);**
- (ii) **Recovery from retired employees, or employees who are due to retire within one year of the order of recovery;**
- (iii) **Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued;**
- (iv) **Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly even though he should have rightfully been required to work against an inferior post;**
- (v) **In any other case, where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery."**

7. Going by the findings of the Hon'ble Apex Court, cited above, we find that the Respondents should not have recovered the over payment made towards the salary as a result of wrong fixation of his made after about 23 years ago.

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8. As regards the issue no. (ii), as above, is concerned the learned counsel for the applicant has drawn our attention to Rule 79 (b) (iii) of Railway Services (Pension) Rules, 1993. Rule 78 and 79 of the Railway Pension Rules are quoted hereunder for ready reference:

"78. Preparation of Pension Papers:

Every Head of Office shall undertake the work of preparation of pension papers in Form 7, two years before the date on which a railway servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, which is earlier.

79. Stages for the completion of Pension papers

(1) The Head of Office shall divide the period of preparatory work of two years referred to in rule 78 in the following three stages, namely: -

(a) First Stage - Verification of Service:

(i) The Head of Office shall go through the service book of the railway servant and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.

(ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, acquaintance, rolls or other relevant records and record necessary Certificates in the service book.

(iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the railway servant in another Office or Department, a reference shall be made to the Head of Office in which the railway servant is shown to have served during that period for the purpose of verification.

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(iv) If any portion of service rendered by a railway servant is not capable of being verified in the manner specified in sub-clause (i), or sub-clause (ii), or sub-clause (iii), the railway servant shall be asked to file a written statement on plain paper stating that he had in fact rendered that period of service and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish.

(v) The Head of Office shall, after taking into consideration the facts in the written statement and the evidence produced and the information furnished by that railway servant in support of the said period of service, admit that portion of service as having been rendered for the purpose of calculating the pension of that railway servant.

(b) Second Stage - Making good omission in the service book ;

(i) The Head of Office while scrutinising the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension.

(ii) Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause and any omissions, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

(iii) For the purpose of calculation of average emoluments, the Head of Office shall

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verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service and in order to ensure that the emoluments during the last ten months of service book, the Head of Office may verify the correctness of emoluments for the period of twenty four months only preceding the date of retirement of a railway servant, and not for any period prior to that date.

(c) **Third Stage** - As soon as the second stage is completed and in any case not later than ten months prior to the date of retirement of the railway servant, the Head of office shall take the following action:-

(i) He shall furnish to the retiring railway servant a certificate regarding the length of qualifying service proposed to be admitted for purpose of pension and gratuity as also the emoluments and the average emoluments proposed to be reckoned with for retirement gratuity and pension. In case the certified service and emoluments as indicated by the Head of office are not acceptable to him he shall furnish to the Head of office the reasons for non-acceptance inter alia supported by the relevant documents in support of his claim.

(ii) In case of any difficulty in determining the length of qualifying service on account of non-availability of service records, the retiring railway servant shall be asked to file a written statement of service as provided in clause (ii) of sub-rule (1) and sub-rule (2) of rule 91.

(iii) Forward to the retiring railway servant form 8 advising him to submit the same duly completed in all respects so as to reach the Head of office not later than eight months prior to his date of retirement.

(2) Action under clause (a) (b) and (c) of sub-rule (1) shall be completed eight months prior to the date of retirement of the railway servant."

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9. A mere reading of Rule 79 in its entirety would show that as per sub para (1) (b) (i), the Head of Office while scrutinising the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying the pension. Similarly in para 79 (1) (b) (ii) it has been provided that every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub clause (i) of this clause and any omissions, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

10. From the above, it is abundantly clear that the whole service record of an employee has to be taken into account and scrutinized for identifying if there are any other omissions, imperfections, or deficiencies which have a direct bearing on the determination of emoluments and the qualifying service for pension. Verification of service record includes verification of pay scale and rectification if there is any wrong on the same. After such exercise, Rule 79 (1)(b)(iii) will come into effect i.e. after such correction, the average emoluments drawn during the

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last ten months of service shall be calculated and on such calculation pension will be finalized.

Rule 79 (1) (b) (iii) only ensures that for calculation of average emoluments only the emoluments drawn during last ten months of service will be taken into account and not for any period prior to that date.

11. Obviously for calculation of last ten months average emolument, as per that matter for the period of twenty four months only preceding the date of retirement, the whole service records have to be scrutinized. Therefore, we feel that the Respondents have every right to correct the wrong fixation of pay of an employee which has been made before the date of retirement and arrive at a correct figure of his last pay in order to calculate pension and other retiral dues. When mistake in fixation of pay was noticed, the authorities were within their domain to rectify the same. **The applicant cannot have any right to claim the pay which was not in accordance with law.**

12. In this regard, it is profitable to note the decision of the Hon'ble Apex Court rendered in the case of **State of West Bengal v. Subhas Kumar Chatterjee and others** reported in (2010) 11 SCC 694 in which it has been held as under:

"14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in

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duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. [See: Union of India V. Arun Jyoti Kundu¹ and State of (2007) 7 SCC 472 Haryana & Anr. V. Haryana Civil Secretariat Personal Staff Assn.²]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post."

13. In view of what has been discussed above, we hold good the pension and other pensionary benefits paid on the basis of the corrected pay fixation to the applicant but declare the recovery of the differential amount already paid to the applicant due to wrong fixation of pay, from his DCRG amount as bad in law. Accordingly, the Respondents are hereby directed to refund the amount recovered from the DCRG of the applicant within a period of two months from the date of receipt of a copy of this order; failing which the applicant shall be entitled to interest on the said amount @ 6% simple interest per annum from the date was deducted from the DCRG till the date of payment to the Applicant.

14. In the result, this OA stands partly allowed to the extent stated above. There shall be no order as to costs.

(Ms. Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member