

(2006) 05 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (C) No. 1472 of 2003

G.M., Northern Railway and Others

APPELLANT

Vs

Tara Chand

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 SLJ 505

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : H.K. Gangwani and Kumar Rajesh Singh, for the Appellant; M.L. Sharma and H.P. Chakravorty, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the parties, the writ petition is taken up for final hearing.

2. This writ petition, filed by Union of India through General Manager, Northern Railway, challenges the order/judgment dated 24th October, 2002 in O.A. No. 3188/2001 whereby the respondent's G.A. was allowed and the petitioners were directed to fix the pay of the respondent in the grade of Rs. 7450-11500 i.e., at Rs. 10,375/- w.e.f. 4th July, 2000 with all consequential benefits.

3. The case of the petitioner is that the respondent who retired as Assistant Engineer from the Northern Railway on 30th June, 2001 before the CAT was that his pay was refined and reduced from his existing pay of Rs. 10,100/- to Rs. 8,100/- with consequent reduction in fixation of pay in higher grades, reduction of his pension as well as recovery from the gratuity paid to him by letters dated 20.3.2001, 4.6.2001, 23.5.20Q1 and 1.8.2001. The principle grievance of the respondent is that this reduction was done without any notice to him and was thus in complete violation of principles of natural justice. The respondent made this averment in Paragraph 1 of the O.A. preferred by him in the Tribunal. The

relevant averment in the O.A. is as follows:

Vide impugned order dated 20.3.2001 (A-1), applicant's pay has been reduced behind his back unilaterally and without putting a notice on him before refining/reducing his basic pay from Rs. 10100/- to Rs. 8100/- p.m.

Consequently his pay in higher grades Rs. 7450-11500 and 7500-12000 have been fixed less and the applicant has been paid less pension, commutation, leave encasement and gratuity, etc., on his retirement.

Further a recovery of huge unknown amount has also been recovered from his gratuity already paid less. [Kindly less endorsement No. 3 in letter dated 4.6.2001 (A-2).

4. In response to the averments as extracted above, the relevant portion of the reply to the O.A. filed in the CAT is as follows:

This para is matter of record. The recovery was sought to be made in view of the extra amount paid to the applicant.

5. Thus before the Tribunal there was no denial of the averment that the reduction in pay was done without issuing any show-cause notice to the petitioner. In this view of the matter and the non-denial of this crucial averment the Tribunal was fully justified in setting aside the order of reduction impugned in the writ petition and thus there is no merit in this writ petition.

6. In any case on 27th January, 2004 the following order was passed by this Court:

Petitioner's Counsel requests for time to enable him to show that an identical case in Darshan Kumar Sahni v. UOI in C.W.P. No. 2057/99, the issue of non-giving of show-cause notice was also involved and yet the Supreme Court had stayed the order passed by this Court.

List on 11th March, 2004.

7. Consequent to the above statement, notice in this writ petition was issued on 11th March, 2004 and by an order dated 12th July, 2004, the respondents were directed not to press the contempt petition filed before the CAT. This order continues up to date. We have perused the order dated 19th January, 2001 in Darshan Kumar Sahni 's case passed in WP (C) 2057/99. Perusal of the entire order dated 19th January, 2001 in Darshan Kumar Sahni 's case shows that the basis for the statement recorded in the order of 27th January, 2004 was not present in Darshan Kumar Sahni's case (supra). The issue of not giving show-cause notice had not even been referred to let alone dealt with in Darshan Kumar Sahni's case (supra). Accordingly, it is apparent that this Court was persuaded to issue notice on a non-existent premise. We have already noted from the pleadings that the impugned order was set aside for violation of natural justice which is evident from the pleadings and the material plea was not denied. Thus even on merits the petitioners were not entitled to the indulgence of this Court

under Article 226 of the Constitution.

8. We are also satisfied that since this Court was persuaded to issue notice on an incorrect premise about the same issue being involved in the writ petition, the writ petition deserves to be dismissed on this count also. The writ petition is dismissed and stands disposed of with costs quantified at Rs. 5,000/- payable to the respondent not later than 30th June, 2006.