(2018) 12 CAT CK 0004

In the Central Administrative Tribunal

Case No : Original Application No. 210, 00471 Of 2016

Ramesh Shankarnarayan Rao — APPELLANT

Vs

Union of India And Ors — RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 60(g)
Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 136, 142

Citation : (2018) 12 CAT CK 0004

Hon'ble Judges : Bhagwan Sahai, J;R. N. Singh, J

Bench : Division Bench

Advocate : R. G. Walia, S. Ravi

Final Decision : Disposed off

Judgement

1. Shri Ramesh Shankarnarayan Rao, who retired as Sr. Motorman under Sr.D.E.E. (Operations), Mumbai Central, Western Railway seeks in this O.A.:

(i) quashing and setting aside of letter dated 10.06.2016 issued by DRM (E), Mumbai Central, Mumbai;

(ii) direction to the respondents to pay interest @ 18% p.a. On the amount of Rs.3,04,000/-withheld from the applicant from 31.12.2013 to 28.06.2014;

(iii) direction to the respondents to refund to him Rs.1,21,000/- along with interest; and

(iv) direction to the respondents to restore his basic pay of Rs.35,860/- at the time of his retirement and accordingly recalculate his

pensionary benefits instead of doing so with basic pay of Rs.34,760/-, to pay arrears to him with interest @ 18%, and amount of accident free award as well as providing cost of this O.A. to him.

2. Summarised facts:

2(a). The applicant joined with the Western Railway as Chargeman 'B' on 01.12.1976 in pay scale of Rs.425-700. He is diploma holder in Electrical Engineering and retired from service on 31.12.2013 as a Motorman. He was promoted as Chargeman Gr.'A' on 20.08.1982 in pay scale of Rs.550-750/. He was further promoted under the direct recruitment quota and underwent one year training after which he came to be absorbed as a Motorman on 08.05.1986 in pay scale of Rs.550-750. That pay scale of the Motorman was replaced by pay scale of Rs.1600-2660 as per the 4th CPC recommendations, by pay scale of Rs.5500-9000 as per the 5th CPC recommendations and further replaced by the pay scale of Rs.9300-34800 + Grade Pay of Rs.4200/- as per the 6th CPC recommendations. He was also given financial upgradation under Modified Assured Career Progression (MACP) in the Pay Band of Rs.9300-34800 + Grade Pay of Rs.4800/-.

2(b). Based on the above, at the time of retirement he claims that his basic pay was Rs.35,860/-. The applicant also claims for grant of Grade Pay of Rs.5400/- which is subject matter of another O.A.375/2016 awaiting decision of the Tribunal. He was informed by the office of DRM (E), Mumbai Central by letter dated 08.05.2014 about deduction of Rs.4,25,000/- from his DCRG for recovery towards incorrect pay fixation, etc based on communication of the pay bill/ accounts section.

2(c). The applicant also claims that he was neither given details of the recovery nor of the reasons and period for which incorrect pay fixation has been claimed by the respondents. Before this action of the respondents, he had submitted a representation on 06.01.2014 itself that his pay fixation had been done correctly as per his calculation in the year 1986 and thereafter, and it cannot be reopened after 28 years and that too without informing the details and issuing show cause notice to him.

2(d). The applicant states that at the time of his retirement a certificate was issued on

31.12.2013 to the effect that an amount of Rs.4,75,399/- had been recovered from his DCRG giving the following breakup:-

"Stationery Charges Rs.5/-

ID Card Rs.10/-

Deposits Rs.5000/-

RELHS Rs.45188/-

Overpayment Rs.4,25,196/-

Total Recovery ________________

Rs.4,75,399/-

(Rupees four lakhs seventy five thousand three hundred and ninety nine)"

2(e). It has claimed that this deduction was made from his DCRG without informing him but except the overpayment of Rs.4,25,196/-, for other recoveries the applicant had no objection. When the applicant objected to the recovery of Rs.4,25,196/-, the respondents realized their mistake and refunded to him an amount of Rs.3,04,000/- but still retained Rs.1,21,000/-. The applicant again submitted a representation to the respondents on 02.03.2015, but he has not received any reply to it.

2(f). The applicant claims that by refixing his basic pay, the respondents have reduced it from Rs.35,860/- to Rs.34,760/- without following the principles of natural justice and that too after his retirement. The applicant again made an application on 20.04.2016 to the Pension Adalat which also has been rejected by the impugned order dated 10.06.2016.

2(g). The applicant further claims that he has not been paid his accident free award which is 3 times of the basic pay.

2(h). As per Railway Board letter dated 06.02.2009 (Annex A-8), verification of correctness of emoluments should not go back to a period beyond 24 months preceding the date of retirement. However, in his case the alleged correction of his emoluments and salary has been done from 1986 i.e. from a time 28 years earlier.

2(i). In view of these reasons, the action of the respondents is illegal and, therefore, there is estoppel against such an action of the respondents. Hence this O.A. for the reliefs listed above.

3. Contention of the parties:

In the O.A. memo and rejoinder, the applicant and his counsel have contended that -

3(a). since the respondents first deducted an amount Rs.4,25,196/- from his DCRG and then refunded Rs.3,04,000/-, he is entitled for payment of interest on this amount from 31.12.2013 till 28.06.2014 when this amount was paid to him;

3(b). out of the total recovery made, the remaining amount of Rs.1,21,000/- has not been paid by the respondents and it has been withheld from him illegally and, therefore, this amount along with interest @18% p.a. be paid to him till it is refunded to him;

3(c). for the illegal recovery, even show cause notice has not been issued to the applicant and, therefore, this action is against the principles of natural justice, thereby setting aside of the order of recovery is justified;

3(d). even if there was a mistake in the fixation of his pay such a mistake cannot be corrected after 28 years when the applicant has already retired. According to Supreme Court decision, recovery cannot be made from a retired employee belonging to Group 'C', and gratuity being exempted from attachment or sale and is protected under section 60(g) of the Civil Procedure Code;

3(e). also the amount alleged to have been wrongly paid to the applicant because of wrong pay fixation was already spent by the applicant before his retirement. Therefore, he is not liable to pay it after the retirement. However, the action of the respondents is covered by the law of estoppel;

3(f). the action of the respondents is not only arbitrary and illegal but is a result of unnecessary harassment, non application of mind and grossly delayed action with respect to the alleged recovery after a period of 28 years;

3(g). while opting for application of 4th CPC pay scales, the applicant had opted for its implementation from the date of his next increment i.e. 01.08.1986 and thus there was no question of fixing his pay with effect from 01.01.1986; and

3(h). the applicant can be given a benefit of C.A.T., Jabalpur Bench decision in the case of Smt.Pushpa Bhide Vs. Union of India & Ors. In T.A.A.164/1986 decided on 12.12.1988, in which refund was ordered of the recoveries made based on the mistake detected after several years.

In the reply, sur-rejoinder and arguments during hearing, the respondents and their counsel have contended that-

3(i). pay fixation of the applicant was revised as per the directions of the Accounts Section as soon as possible and the present O.A. is in fact against the letter dated 08.05.2014, which is beyond the prescribed period of limitation of one year under Section 21 of the Administrative Tribunals Act, 1985. The recovery of Rs.4,75,393/-had been made from the DCRG of the applicant, and its breakup as given to the applicant are mentioned in Para 4.6 of the O.A. and the certificate to that effect was issued at the time of retirement of the applicant on 31.12.2013. Therefore, disputing the pay fixation after 2 and half years by filing this O.A. on 22.06.2016 is barred by limitation;

3(j). as per the option submitted by the applicant for fixation of his revised pay as on 01.08.1987 (Annex-R-1, page 43) instead of 01.07.1986, his pay was revised from 01.01.1986 as per 4th CPC recommendations in the pay scale of Rs.1600-2660 at Rs.2100/- which was applicable to running category of staff and it continued thereafter with subsequent increments. In fact it ought to have fixed as Rs.1800/- only instead of Rs.2100/-. But this case of overpayment was later noticed by the Accounts Office when his service sheet for grant of settlement dues was verified before his retirement and, therefore, his pay had to be revised as per Memo on 27.12.2013 and an amount of Rs.4,25,196/- was recovered as of detected past overpayment. When the applicant realised his mistake of seeking fixation in 4th CPC payable from 01.08.1987 (instead of 01.08.1986), he sought its correction. Based on his representation and with the approval of the competent authority, he was given the benefit of pay fixation from the date of joining as Motorman on 08.05.1986 by revising the pay as per order dated 02.06.2014. As a result of this his pay came to be increased to Rs.35,860/- and the resultant difference of recovery amounting to Rs.3,04,000/- was refunded to him;

3(k). as per Railway Board's letter dated 04.09.2008, the pay fixation of the applicant was revised vide Memorandum of 27.01.2015 by granting one additional increment which was objected to by the Accounts Section in view of the applicant's exercise of option from 01.08.1987 for the 4th CPC pay scales;

3(l). the earlier calculation of the overpayment was because as per the Railway Board's letter of 31.12.1987 (para 6), the option once exercised by the employee for pay fixation is to be treated as final and no change can be allowed subsequently. However, based on the clarification in Railway Board letter dated 20.11.1987, his pay was finally further revised to Rs.36,330/- as on 01.07.2013 based on his option from 01.08.1987 vide Memorandum of 27.01.2015; and

3(m). the Railway Board's letter dated 06.02.2009 relied upon by the applicant is not applicable in his case because it deals of calculation of emoluments of last 10 months to decide the amount of last pay drawn by the employee. However, this practice is not followed any more as the last pay drawn by the employee is taken for calculation of his/her settlement dues. In view of this, the O.A. needs to be dismissed with cost.

4. Analysis and conclusions:

We have perused the application memo, rejoinder filed by the applicant, reply and sur-rejoinder of the respondents, and the arguments advanced by the counsel on both the sides during hearing. Based on these considerations, we conclude as follows:-

4(a). The present O.A.471/2016 has been filed in effect against the reply of the respondents dated 08.05.2014 with reference to his online grievance, in which after examining his grievance the applicant was informed that credit of Pension in the Bank is being done on the basis of Pension Payment Order issued by Sr.DFM-Mumbai Central which is addressed to the concerned Bank and deduction from DCRG was based on the intimation received from Pay bill Section duly vetted by associate accounts for recovery towards incorrect pay fixation In this reply, thus he was informed about the deduction of Rs.4,25,000/- from DCRG. But in the relief sought, he has requested for quashing and setting aside of the letter dated 10.06.2016 which was a communication that the case of the applicant had been examined with reference to fixation of his pay explaining that in terms of the Railway Board letter dated 12.11.1990, the request in future after expiry of the prescribed time limit, on grounds of ignorance should not be entertained and option once exercised shall be final. In view of this the present application filed on 26.06.2016 against the reply of 08.0502014 i.e. after more than 2 years is time-barred. In this regard the contention of the respondents is justified.

4(b). This reply of the respondents dated 08.05.2014 (Annex-A-2) was with reference to exercise of option about the date from which the 4th CPC pay fixation was to be done. As per copy of the option exercised by the present applicant (page 43) for fixation of his revised pay based on the 4th Pay Commission recommendations, the applicant himself had opted for continuing with the then existing scale of pay till the date of his next increment on 01.08.1987. In view of this fact, the contention of the respondents (page 37) that instead of opting for revision of his pay from 01.07.1986, the applicant himself had sought its fixation from 01.08.1987 is correct. Therefore, the claim of the applicant about his option from 01.08.1986 is false and cannot be accepted in view of Railway Board's Circular dated 31.12.1987 enclosed with the DRM Office letter of 07.03.1991, mandating that the option exercised once was to be treated as final.

4(c). About the claim of the applicant that his case can be considered with reference to Railway Board letter of 06.02.2009, the respondents have contended that this circular was with reference to calculation of retiral benefits based on the average salary of 10 months before the date of retirement. However, this is not relevant now in view of consideration of the salary of the last month prior to retirement for this purpose. This contention of the applicant also has substance.

4(d). The earlier pay fixation of the applicant based on his own option for refixation of his 4th CPC pay from 01.08.1987, his pay was fixed and thereafter he received overpayment. This overpayment was deducted by the respondents at the time of verification of the payments received by him when his service record was verified prior to his retirement and accordingly the recovery has been made from gratuity.

The claim of the applicant that when recovery was made from him, no details and reasons were given is also not correct because breakup of the recovery communicated to him has been mentioned by himself in Para 4.6 of the O.A. memo.

4(e). The respondents have further conceded in their submissions filed on 07.09.2017 that based on the 4th CPC recommendations, his pay was wrongly fixed at Rs.2100/- from 01.01.1986 by applying the pay scale of Running Category Staff whereas the Accounts Office had certified the pay fixation of only Rs.1800/- which was applicable in the non-running Category of Staff to which the present applicant belonged at that time - he came to be promoted to the running staff category as Motorman only on 08.05.1986. Since this mistake was found during verification of his service record, the applicant was issued a revised Memo of 27.12.2013.

But later on based on the representation, his case was reviewed by the respondents and only recalculated difference of Rs.1,21,000/- was retained and the amount of Rs.3,04,000/- was refunded to him on 28.06.2014.

4(f). We also note here that out of total amount of recovery informed to the applicant on 31.12.2013, he did not object to recovery of 4 items amounting to Rs.50,203/- i.e. he accepted the recovery of this amount and has objected at that time only to the recovery of Rs.4,25,196/-. This clearly shows that the applicant is not opposed to recovery of overpayment except that of one item which resulted because of his own wrong option given for fixation of 4th CPC pay scales from 01.08.1987 instead of 01.08.1986.

4(g). The applicant has tried to benefit from the caselaw of Smt.Pushpa Bhide Vs. Union of India and others decided by Jabalpur Bench of the Tribunal on 12.12.1988, in which the mistake had been committed by the respondents only and withdrawing of that benefit given to the applicant in the past therein retrospectively was not allowed. However, in the present case the initial revision of the applicant's pay based on the 4th CPC pay scales was because of his own wrong option chosen.

4(h). The applicant has also relied on the caselaw in State of Punjab and others Vs. Rafiq Masih in which the Apex Court view in Para 18 is why recovery in given five categories of cases may not be permissible. However, this caselaw is for justified exceptions to the law when recovery is likely to result in hardship to the concerned employee. In the Rafiq Masih case, the Supreme Court decision of 18.12.2014 is under Article 142 of the Constitution and thus the orders issued under this Article are directory in nature and not mandatory as interpreted by the Apex Court decision of 08.07.2014.

4(i). In the present case the overpayment has resulted in view of the wrong option submitted by the applicant himself although there was a mistake of the respondents also in first fixing his salary on 01.01.1986 for the running staff category whereas the applicant became Motorman (i.e. running staff) on promotion much later on 08.05.1986. Hence here it is relevant to refer to the law related to recovery of overpayment. As per Supreme Court view with reference to State of Punjab and others Vs. Rafiq Masih and a bunch of other SLPs in which 13 earlier decisions of the Supreme Court were referred to and it has been interpreted in the decision of 08.07.2014 that the law laid down in Chandi Prasad Uniyal's case is under Article 136 of the Constitution which is mandatory and that excess payment made by negligence of even the employer can be recovered.

4(j). From the above observations and facts, we conclude that the wrong fixation of applicant's pay based on the 4th CPC pay scales was because of his own wrong option given, he himself has accepted the principle of recovery of overpayment by not objecting to the recovery of 4 items amounting to Rs.50,203/- and on reconsideration of his representation, the respondents have already withdrawn the recovery of Rs.3,04,000/- from him.

4(k). Also as per the memorandum of 27.01.2015, the pay of the applicant has already been revised to Rs.36,330/- as on 01.07.2013 which is higher than what the applicant has sought in this O.A. i.e. Rs.35,860/- at the time of his retirement on 31.12.2013. The remaining amount of recovery made from him i.e. Rs.1,21,000/- is after factoring in the revision dated 27.01.2015.

However, in view of the fact that the applicant retired on 31.12.2013, it would be just and proper that the amount of Rs.1,21,000/- is also be returned by the respondents to the applicant. But in view of our observations above related to the wrong choice submitted by the applicant himself for fixation of his 4th CPC pay scales, he is not entitled for payment of any interest sought by him on the refunded amount of Rs.3,04,000/- and on the amount of Rs.1,21,000/- to be refunded now by the respondents.

4(l). As regards his demand for payment of accident free award, the respondents may examine his eligibility for it and take appropriate decision in three months from receipt of certified copy of this order.

5. Decision:

O.A. disposed of with directions as recorded in para 4(k) to 4(l) above

