

**G.R. Bindra Vs. Union of India (Uoi) and ors.**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Oct-29-1998

**Judge :** S A N.

**Appellant :** G.R. Bindra

**Respondent :** Union of India (Uoi) and ors.

**Judgement :**

2. The relief sought by the applicant in this Original Application is for a direction to the respondents to calculate pay and retirement benefits on the basis of a basic pay of Rs. 2,100/- which he was receiving immediately before his retirement with an interest at the rate of 18% per annum on arrears and also for a direction for repayment of the recovery from gratuity with interest.

3. The admitted facts are that the applicant joined the Railway organisation on 24.7.1956 as a Typist and on 17.6.1960 he was transferred to Construction Organisation while retaining his lien in Headquarters Office of Northern Railway. He retired from the said Construction Organisation on 31.5.1993. He worked there roughly for 33 years and had been receiving promotions in that organisation. It is admitted that the applicant's last pay drawn as per Annexure-A-6-pay bills for the months of September, 1992 to March,1993 was Rs. 2100/-per month. He was drawing this pay in the scale of Rs. 1600-2660/-. His grievance is that the respondents reduced his basic pay to Rs. 2050/- after his retirement without show cause notice or prior intimation: and accordingly worked out his pension gratuity and other retirement benefits on the basis of this basic pay.

4. The important fact to be noticed is that a portion of his retrial benefits, namely, leave encashment was paid to him on the basis of a basic pay of Rs. 2100/- but when it came to payment of other retirement benefits the basic pay was reduced.

5. The respondents state in the counter that in terms of Rule 49 of the Railway Services (Pension) Rules, 1993 as also Rule 1303(i) of Indian Railway Establishment Code (in short IREC) pension and retirement benefits are to be paid to the applicant with reference to his substantive pay fixed at the time of retirement in the parent cadre and other dues such as leave encashment and P.P. are allowed to be paid by the Construction cadre itself.

6. Mr. Mahendru learned Counsel for the respondents has drawn my attention to Rule 1303 in Chapter 13 of the IREC, The definition of the word pay is extracted hereunder as this is basic to his contention on merits.

1309. (F.F 9) (21) (a)-Pay.-Pay means the amount drawn monthly by a Government servant as:- (i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reasons of his position in a cadre:" 7. It is submitted by him that the applicant was placed on a ad hoc basis on 2.9.1987 as O.S. II (Type) but his pay was wrongly fixed without keeping in view the stage of Rs. 1,950/- of his substantive pay in the immediate lower grade of Rs. 1400-2300. On the basis of that pay of 1950/- as on 1.3.1993 his pay would be only Rs. 2050/- when he retired. The learned Counsel for the respondents made two other important submissions. He stated that having retired on 31.5.1993 the applicant acquiesced in the computation of pension and other retirement benefits and came to the Court only after 4-5 years. This O.A. is hit by laches and limitation. He stated that every entity has an inherent right to correct a mistake apparent on the face of record and the respondents think that this is an apparent mistake. There was no need to give an opportunity of being heard.

8. Mr. Mahendru also mentioned that the post held by the applicant in the construction organisation is an ex cadre post and the promotions conferred on him were ad hoc and, therefore, he cannot claim that the pay drawn by him under such circumstances eventually would be substantive pay. Substantive pay should be

referred back to the pay fixed for him in the parent organisation.

9. The learned Counsel for the applicant has made a number of submissions. In the first place he stated that an arbitrary reduction of pay without a show cause notice is bad in law because such an action visits with civil consequences. He cited for this purpose two of the famous decisions of the Hon'ble Supreme Court on the subject-Bhagwan Shukla v. Union of India, 1994 SCC (L&S) 1320. The second decision cited by him is that of Shyam Babu Verma and Ors. v. Union of India and Ors., 1994 SCC (L&S) 683. In Shyam Babu's case a higher pay scale was erroneously given to petitioners since 1973 and this pay scale was reduced in 1984. The Hon'ble Supreme Court held that since the petitioners received the higher scale due to no fault of theirs, it shall be only just and proper not to recover any excess amount already paid to them. The third decision cited by the learned Counsel is that of Gabariel Sever Fernandes and Ors. v. State of Karnataka and Ors., 1995 (1) S.L.J. 24 (SC). wherein the Hon'ble Supreme Court unequivocally ruled "Government cannot recover the amount from the unqualified persons which they had already received though they were not eligible for the same". On the question of limitation the learned Counsel cited the decision of M.R. Gupta v. Union of India, 1995(2) SCSLJ 337, wherein the Hon'ble Supreme Court held that where fixation of pay was not in accordance with rules it is a continuing wrong against the concerned employee giving rise to a recurring cause of action each time he was paid salary. According to the applicant each time he received a lower pension, this gave rise to a recurring cause of action. The learned Counsel for the applicant opposes the claim of acquiescence raised by the respondents on the ground that the applicant had been representing against this arbitrary reduction by virtue of Annexures A-8 to A-12 appearing in pages 26 to 29 of the paper book. The respondents inspite of this persisted in sticking to a reduced basic pay. The learned Counsel stated that the Organisation in which he was working is not a temporary organisation but is an extension of the main Railway organisation itself. The relevant circular is dated 18.3.1997 addressed to all the General Managers of the Railways.

10. I have carefully considered the rival submissions. This is not a mere case of rectification of a mistake apparent on the face of record.

The respondents themselves have pointed out at para 4.5 of the counter that the applicant was promoted as OS II (Type) with effect from 2.9.1987. There is a provision to allow the benefit of promotion in one grade higher to staff working in the Construction Organisation to that of his substantive grade/ capacity in his parent cadre. The mistake sought to be corrected affected the pay of the applicant since 1987 when he retired in May, 1993. The result is financial loss due to deprivation of pay drawn by the applicant year after year. It is settled law of the Hon'ble Supreme Court that unless the statute provides specifically for not giving an opportunity of being heard; an opportunity of being heard shall be given wherever the administrative action affects the person in any manner prejudicial. I have already extracted the law laid down by the Hon'ble Court Supreme Court in the cases referred to above. There is absolutely no justification whatsoever in the orders reducing his basic pay from Rs. 2100/- to Rs. 2050/-. It is unnecessary at this stage to enter into a discussion about the semantics and the status of the organisation in which the applicant worked. Suffice it to say that he worked in that organisation for well over three decades. He earned promotions albeit ad hoc. It is very late in the clay for the respondents to say that his pay will be referred to what he was drawing in the parent cadre at the time of drawing pension. A substantive pay is one which a person draws in a scale in which he worked and retired, The distinction sought to be made in my view has no merit.

11. A number of cases have come before this Bench where the respondents are taking such action without a show cause notice. If a show cause notice was issued, in the instant case, possibly the merits could have been discussed and if there was any injustice or substance in the claim of the respondents it could have been saved. By not doing so, the respondents have lost the case both on merits as well as on procedure.

I record that such actions will be disapproved in future and all monetary consequences shall be made liable for recovery from the personal pay of the officials who are responsible for initiating such action when the Hon'ble Supreme Court has held time and again that when an action is going to harm somebody it shall not be resorted to without a show cause notice.

12. In the result the O.A. is allowed. The respondents are directed to revise the pension and retirement benefits of the applicant on the basis of the pay last drawn by him at Rs. 2,100/- and recompute his retirement benefits on that basis. Any amount recovered on this point is not in accordance with law and the respondents are directed the refund the recovery within 8 weeks from the date of receipt of a copy of this order alongwith an interest of 12% per annum. No costs.

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