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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Oct-05-2006

Reported in : (2007)(2)SLJ206CAT

Judge : A Agarwal

Appellant : Chandeshwar Singh

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicant aggrieved by the downward revision of his pension has approached this Tribunal for quashing and setting aside order dated 13.12.2000 of the respondents.

2. The applicant has submitted that he was working in the Railways as Goods Guard and retired from service on 29.2.1996. Pension Payment Order (PPO) was issued on 11.3.1996 which was based upon his emoluments drawn in pursuance of the Fourth Pay Commission scales. The applicant was placed in the Fifth Pay Commission scale of Rs. 4500-7000 w.e.f.

1.1.1996 but such orders fixing his pay in this scale were issued subsequently. The initial PPO issued to the applicant on 11.3.1996 was subsequently revised by PPO dated 13.1.1999. The applicant has stated that in August, 2005 he came to know that his pension had been reduced on the ground that his basic pension fixed initially, was wrong. The Senior Divisional Accounts Office, Bombay Division

advised the Versova Branch of Canara Bank from where the applicant was drawing his pension, for making recovery from the Dearness Relief payable to the applicant.

The applicant made a representation on 10.8.2005 against the recovery and revision of pension but has not received any reply. Hence this O.A.3. The learned Counsel for the applicant Mr. G.S. Walia stated that though the applicant had retired after 1.1.1996 but PPO dated 11.3.1996 was based upon the pay drawn by him in Fourth Pay Commission pay scale.

The revised PPO, after fixing the basic pension of the applicant at Rs. 5572 per month w.e.f. 1.3.1996, in pursuance of the implementation of the recommendations of the Fifth Pay Commission, was issued on 13.1.1999. The respondents subsequently, without any notice to the applicant, reduced the pension to Rs. 3391 w.e.f. 1.3.1996. The learned Counsel stated that the applicant was getting basic pension at the rate of Rs. 5572 till August, 2005. This is also confirmed by an endorsement made by Canara Bank Branch on the impugned order, wherefrom the applicant was drawing pension. The applicant gave a representation on 10.8,2005 but did not receive any reply. The applicant thereafter filed this O.A. on 10.4.2006.

4. The learned Counsel stated that as per the calculation sheets made available by the respondents along with the written statement, the applicant's pension as on 13.1.1999 was Rs. 5572 but as on 13.12.2001 it has been shown as Rs. 3391. The pension of the applicant has been further revised and has been shown as Rs. 4256 as on 31.7.2006. The learned Counsel contended that after filing the O.A. the respondents have revised the basic pension from Rs. 3391 to Rs. 4256. The applicant had retired from service at the end of February, 1996 and as per Rule 90 of the Railway Services (Pension) Rules, 1993, pension once sanctioned cannot be revised downwards unless it becomes necessary on account of detection of a clerical error. The learned Counsel for the applicant has relied upon a verdict of the Apex Court in the case of Master Construction Co. (P.) Ltd. v. State of Orissa and Anr. AIR 1966 SC 1647 wherein it has been held that "a clerical mistake is a mistake in writing or typing." It has been further held in this verdict that a mistake

of calculation is an arithmetical mistake. The learned Counsel contended that as per the provisions contained in the Rules, pension once sanctioned cannot be revised downwards.

5. The learned Counsel for the applicant has also relied upon a decision of CAT, Principal Bench in the case of G.B.K. Jain v. Union of India and Ors. (1992) 20 ATC 576 wherein it was held that downward revision of pension is barred under the rules except in the case of clerical error. The learned Counsel stated that Bombay Bench of CAT, had also taken similar view while disposing of the case of R.L. Bakshi v. Union of India and Anr. O.A. 809/2003 & 4 other connected matters on 2.3.2005.

6. The learned Counsel for the applicant concluding this submissions stated that the impugned order deserves to be quashed and set aside.

Further the respondents be directed not to recover any amount from the applicant in view of the ratio laid down by the Apex Court in the case of Shyam Baku Verma v. Union of India and Ors.

7. The learned Counsel for the respondents Mr. V.D. Vadhavkar stated that the pension of the applicant was already fixed on the basis of pay scales of the Fourth Pay Commission and PPO was issued on 11.3.1996.

However, subsequently after the decision of the Government for granting Fifth Pay Commission scales w.e.f. 1.1.1996, the applicant's pension was only to be revised on the basis of replacement scales. In this case the pension initially fixed has not been challenged by the applicant.

The respondents while fixing the pension amount in the new pay scale committed an error which needed to be rectified. The learned Counsel stated that the amount of basic pension shown in PPO dated 13.1.1999 was wrongly mentioned as Rs. 5572. This was revised vide PPO dated 13.12.2000 i.e. within a period less than two years. The learned Counsel stated that even the endorsement made by the Bank on the impugned order shows that the PPO was received by them on 18.1.2001 but the same was kept pending for want of some clarification. Shri

Vadhavkar mentioned that a copy of this order was also sent to the applicant as may be apparent from the impugned order itself. When the Bank Branch had received the order in January, 2001, the contention of the applicant that he came to know of the revision of pension only in August, 2005 cannot be relied upon.

8. The learned Counsel for the respondents stated that the calculation sheets have also been supplied with the written statement and no mistake has been pointed out by the applicant. The error which crept in clearly falls in the category of "clerical error" and has to be rectified. The learned Counsel stated that besides higher payment of pension, the applicant was paid an amount of Rs. 66,023 in excess of his eligibility for the commutation of pension. Respondents are justified in making recovery of this amount. The learned Counsel argued that as per the Railway Boards letter dated 20.9.1995 there can be no objection to the recovery of Government dues being made from the Pensioner's Dearness Relief without the consent of the pensioner. The learned Counsel stated that in the letter dated 31.7.2006 addressed to the Manager, Canara Bank, it is mentioned in the Note below that recovery of an excess amount of Rs. 66,023 has to be made from the pension relief and has to be affected only after next advice from this office.

9. The learned Counsel for respondents continuing his submissions stated that the reliance placed by applicant in the case of R.L Bakshi(supra) will not be helpful in this case since the facts are quite different. He submitted that in the case of R.L. Bakshi (supra) the real cause was wrong stepping up of pay and there was not clerical error in fixing of pension as such. While in the instant case though initially pension was fixed correctly but while arriving at the amount in the replacement scale of Fifth Pay Commission, some mistake crept in which when detected, the pensioner was informed. However, the Bank despite receipt of such communication, continued payment at higher level for as many as four years. The learned Counsel contended that in view of such facts of the case, the action of the respondents is perfectly justified and the O. A. deserves to be dismissed.

10. I have heard both the learned Counsel and have perused the material placed on record. The main thrust of the arguments put forth from the applicant's side is that no downward revision of pension can be made except at the detection of

some clerical error. The applicant has not raised any objection about the amount of pension fixed initially vide PPO dated 11.3.1996. The basic pension was subsequently revised vide order dated 13.12.2000. As far as the scope of clerical error is concerned, the learned Counsel for the applicant has relied upon a verdict of the Apex Court in the case of Master Construction Co.

(supra). I observe that this case relates to Sales Tax under the Sales Tax Act and the Apex Court has dealt with the scope of the jurisdiction of the Commissioner Sales Tax under Rule 83 of the Orissa Sales Tax Rules and has held that it provides a remedy only for correction of mistakes and omissions mentioned therein. The Apex Court has observed that "The errors, if any, arose because the Department did not raise those points before the Commissioner. They were also the errors not apparent on the face of the record for the decision depends upon consideration of arguable questions of limitation and construction of documents. Indeed the Commissioner re-heard the arguments and came to a conclusion different from that which he arrived on the earlier occasion. This is not permissible under Rule 83 of the Rules." Thus the operative portion of the judgment in the case of Master Construction Co. (supra) clearly indicates that the Apex Court has dealt with the correction of mistakes or omissions mentioned in Rule 83 of Orissa Sales Tax Rules. There is nothing on record to show the contents and details of such mistakes or omissions mentioned in the rules. On the other hand Rule 90 (1) of the Railway Services (Pension) Rules mentions only about the revision on account of detection of clerical error. I am of the considered opinion that even a calculation mistake which is apparent on the face of record and does not need any elaborate explanation falls within the meaning of 'clerical error' as mentioned in Rule 90 (1) of Railway Services (Pension) Rules. In the present case the revised pension of the applicant was already worked out in the Fourth Pay Commission pay scales. The error in working out the corresponding figure for the Fifth Pay Commission scale was detected within a period of less than two years and, therefore the department was empowered to issue a revised PPO based on the correct amount of basic pension. The facts of the case of G.B.K. Jain (supra) relate to a change in the qualifying service which obviously cannot be regarded as a clerical/calculation mistake. It is observed that after the decision of the Railway Board communicated vide letter dated 26.2.2004 the basic pension of the

applicant has been revised to Rs. 4256 per month and no specific objection on the amount has been raised by the applicant.

11. Another issue for adjudication in this case is about the recovery of alleged overpayment. It was contended from the respondents side that intimation regarding downward revision of pension was already communicated to the Bank with a copy to the applicant vide letter dated 13.12.2000. However when the applicant wrote to the respondents that he received a revised PPO only on 1.8.2005 and requested for calculation sheets, he did not receive any reply from the respondents. The respondents have furnished calculation sheets and reply only after the O. A. was filed. Further there is nothing on record to show that the applicant had any role in the issuance of the PPO dated 13.1.1999 with higher amount of basic pension. In view of this I hold that the applicant is entitled for the benefit of the ratio laid down by the Apex Court in the case of Shyam Babu Verma (supra). It is therefore directed that no recovery of alleged overpayment be made from the applicant.

12. In view of the analysis of the case in the foregoing paragraphs, I hold that - (a) The amount of pension initially worked out in pursuance of the recommendations of the Fifth Pay Commission, by taking basic pension as Rs. 1209 per month vide PPO dated 11.3.1996 based on, Fourth Pay Commission pay scales, can be rectified after detection of the mistake mentioned in this case.

(b) No recovery on account of alleged over payment of pension and terminal, benefits can be made from the applicant.

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