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Court : Delhi

Decided On : Apr-12-1993

Reported in : [1994(68)FLR144]; 1993RLR319

Judge : P.K. Bahri, J.

Appeal No. : Regular Second Appeal No. 141 of 1976

Appellant : Rameshwar Das

Respondent : Union of India

Advocate for Pet/Ap. : G.N. Aggarwal and; Ashish Wad, Advs

Judgement :

P.K. Bahri, J.

(1) This second appeal involves a very short point. It appears that the appellant, who was working with the Railways, was given pro- motions from one grade to another at different times and his salary came to be fixed at Rs. 290.00 p.m. in a particular scale of pay in Grade-V vide letter dated 10.12.69 w.e.f. 26.1.70. The authorities found that salary ought to have been fixed at Rs. 280.00 the order was passed for recovering the excess amount paid on the basis of the wrong fixation of salary.

(2) The grievance of the appellant, in brief, is that his salary should not have been re-fixed at Rs. 280.00 p.m. without giving him a show- cause notice and opportunity of hearing as it adversely affected his right. It is admitted case that no such show-cause notice was given. However, the learned Additional D.J. while deciding the appeal had held that for correcting clerical mistakes in fixation of salary there is no need to give any show-cause notice. I think that this expression of view is quite in consonance with law. After all for every order which is to be made by the authorities, show-cause notice is not a must. Rules of natural justice cannot be stretched to that extent that even/or correcting typographical mistakes in the order passed on administrative side a show-cause notice must be given to the employee affected by such an order. One could understand if the pay has been wrongly fixed by the authorities and remedy is sought by the employee in that connection but he cannot, on the mere ground that no show-cause notice was given, get h'is fixation of salary reversed by the court of law. Two judgments were cited before me. They were distinguished by the learned Adj because they pertain to different facts.

(3) More particularly the judgment in the case Divisional Superintendent, Eastern Railway, Dinapur & Ors vs . L.N. Keshri & Ors., : (1974)ILLJ372SC , was strongly relied upon. In that case it appears that at one point of time the scale of pay granted to the employee was Rs. 110-180 but later on it was reduced to Rs. 105-185. In such a situation the Supreme Court held that the scale of pay cannot be reduced without giving show-cause notice to the employee concerned. In the present case, there is no reduction in the scale of pay and there is only question of fixation of pay in a particular scale. The case of the authorities is that by mistake the pay was fixed at Rs. 290.00 instead of Rs.280.00p.m. In such a situation I do not think that it was necessary to give any show cause notice to the employee before fixing his pay. If the employee was aggrieved of the said order he could make a representation to the authorities to point out as to how his pay had been wrongly fixed at Rs. 280.00 p.m. So, on this point the judgment of the Additional District Judge cannot be assailed.

(4) There was one more point raised before the Adj as to whether, in fact, the salary of the appellant was liable to be fixed at Rs. 280.00 p.m.w.ef. 26.1.70

instead of Rs. 290.00pm. The learned Judge did not give any finding on that aspect of the case because he recorded that it was not disputed before him during arguments that the salary of the plaintiff could not be fixed at Rs. 290.00 w e.f 26.1.70.'Counsel who argued the matter before the Adj had filed an affidavit that he had not made any such concession. So, on this point this appeal has to be accepted and case remanded back to the Adj for deciding this issue afresh. The Adj should now decide whether the salary of the appellant should have been fixed at Rs. 280.00 or at Rs 290.00 w.e f. 26.1.70.

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