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Court : Delhi

Decided On : May-26-2010

Judge : Anil Kumar and; Mool Chand Garg, JJ.

Acts : Administrative Tribunal's Act, 1985 - Section 19; ;[Constitution of India](#) - Article 226

Appeal No. : W.P. (C.) No. 730/2009

Appellant : Raj Kumar and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Geetanjali Mohan, Adv.

Advocate for Pet/Ap. : H.P. Chakravorti, Adv.

Disposition : Petition dismissed

Judgement :

Anil Kumar, J.

1. The petitioners have challenged the order dated 7th March, 2006 passed by the Central Administrative Tribunal, Principal Bench in OA 1785/2005 titled as Sh. Om Prakash v. Union of India through General Manager, Northern Railway and Anr. dismissing the petition of Late Sh. Om Prakash, filed under Section 19 of the

Administrative Tribunal's Act, 1985 seeking direction to the respondents to revise the pay in grade of Rs. 4500-7000 w.e.f. 1st January, 1996 and to grant difference of pay and also to pay interest @ 18% at the amount due w.e.f. 1st October, 1996.

2. Late Sh. Om Prakash was initially appointed as Lamp Man in 1960 and had been promoted to the rank of Shunting Jamadar and thereafter to Shunting Master in the grade of 380-560/1320-2040.

3. The father of the petitioners alleged that because of domestic circumstances, i.e., on account of sickness of his wife, he remained absent for about 4-5 years and thereafter, on account of her daughter's heart ailment, he had to go to Madras Railway Hospital and he remained absent before he joined the duties in 1995. When he joined after remaining absent for a number of years, he was issued major penalty charge sheets. In respect the major penalty charge sheet No. 84TM/11/A/35/94TM dated 20th July, 1994, he was exonerated by order dated 1st August, 1996 and in respect of another charge sheet (SF-5) No. 84TM/11/A/23/96 dated 12th March, 1996, the penalty of censure was imposed by order dated 14th October, 1996. The petitioners did not disclose about any other charge sheet against their father.

4. Late Sh. Om Prakash's pay was however, reduced by three stages in April, 1996 and he continued to get reduced pay which was challenged by him after his retirement in May, 1996 in a petition filed in 2005 and contended that he was paid revised pension by PPO dated 1st December, 1998, where his basic pay was taken as Rs. 3100/- and it was not known to him as to on what basis his basic pay was taken as such. According to him, he was issued another revised PPO in the scale of Rs. 4000-6000 taking basic pay as Rs. 4100/-. According to him, the pay scale of Rs. 4000-6000 was normal replacement, however, subsequently, shunting master has been allotted the pay scale of 4500-7000 w.e.f. 1st January, 1996.

5. The pleas and contentions of the petitioner were refuted by the respondents contending, inter alia, that the matter suffers from delay as he retired from 31st May, 1996 and major penalty charge sheets were issued to him about ten years back and his pay was also reduced by three stages in from 1.4.1996 and he continue to accept the reduced pay since April, 1996 and even after retirement in

May, 1996 he continued to get the retiral benefits on the basis of reduced pay.

6. Besides the two charge sheets, It was also pleaded by the petitioners that late Sh. Om Prakash was also awarded a punishment of reduction to three stages in time scale for one year which was affected from 1st April, 1996 and his pay was reduced from 1380/- to Rs. 1290/-w.e.f. 1st April, 1996 in the grade of 1200-2040 which was revised by 5th Pay Commission and the pay became equivalent to Rs. 4000-6000 w.e.f. 1st January, 1996 and the pay was not revised to Rs. 4500/- to 7000/-.

7. The respondents had asserted that Late Sh. Om Prakash's pensionery benefits had been arranged amounted at Rs. 1290/- in the grade of 1200-2040 and revised in new scale at Rs. 4100/- in the grade of 4000-6000, which is correct. It was also pleaded by the respondents that late Sh. Om Prakash was working in erratic manner and he was given punishment for his behavior which was upheld by the higher authorities. The respondents also disclosed that late Sh. Om Prakash had entered into a conspiracy with undesirable staff members of the department as the record in respect of late Sh. Om Prakash had gone missing and it was done with malafide intentions.

8. The pleas raised by the respondents that major penalty was imposed upon late Sh. Om Prakash of reduction to three stages in the time scale for one year, was not refuted before the Tribunal by filing any rejoinder. The Tribunal has thus, accepted the pleas and contentions of the respondents in noting that late Sh. Om Prakash remained on long absence and was ultimately awarded the punishment of reduction of pay and, therefore, he is not entitled for increment during that period. It was also noticed by the Tribunal that there is no such grade of Rs. 4000-6000 as well as Rs. 5000-8000 and as when late Sh. Om Prakash superannuated, the revised scale was Rs. 4000-6000, therefore, his pay was rightly fixed and that pension paid to him cannot be modified and consequently, dismissed the petition.

9. The learned Counsel for the petitioner has very emphatically contended that charge sheets for major penalty were not finalized and the appeal against the penalty was pending at the time of his superannuation. It is asserted that he was exonerated by order dated 1st August, 1996 and in other proceedings, he was

issued the punishment of censure only.

10. The petitioner, however, has admitted in para 5.5(4) of the grounds in the present writ petition that late Sh. Om Prakash was awarded a punishment of reduction of three stages in the time scale of pay of Rs. 1200-2010/4000-6000 from Rs. 1380/- to Rs. 1290/- w.e.f. 1st April, 1996.

11. This is not disputed that reduction of pay to three stages in the time scale of pay was made effective from 1st April, 1996. If that be so, then despite the order dated 1st August, 1996 and 14th October, 1996 late Sh. Om Prakash was paid the pension on the basis of reduction of his pay to three stages w.e.f. 1st April, 1996.

12. From the pleas and contentions raised by the parties, it is apparent that the major penalty of reduction of three stages in the time scale of pay of Rs. 1200-2040/4000-6000 was not quashed or modified by the authorities and consequently, late Sh. Om Prakash also did not challenge the reduction in the pay scale for a number of years.

13. The application was filed by the petitioner only in 2005. The learned Counsel for the petitioners has contended that Late Shri. Om Prakash had been making representations. However, on account of merely making representations, the petitioners cannot justify the delay in filing the original application before the Tribunal. The learned Counsel for the petitioner has also drawn our attention to a representation made in 2003. This representation, however, does not explain that any action was taken by late Sh. Om Prakash in 1996, when his pay was reduced to three stages on account of punishment imposed upon him. Even in the representation dated 9th April, 2003, it had not been disclosed that the punishment of reduction to three stages in the time scale for one year was later on set aside. If the petitioner was awarded the punishment of reduction to three stages in time scale for one year effective from 1st April, 1996 which scale of pay was accepted by Late Shri Om Prakash and even the pension was accepted on the same basis from June, 1996 and even after October, 1996 when allegedly he was absolved in a charge sheet, then it is apparent that he was not absolved of charge sheet in which the punishment of reduction of pay of three stages for one year was awarded. Had it been so Late Shri Om Prakash would have raised dispute about it

in 1996 itself. He did not take any action till 2005 and even in the petition before the Tribunal it has not been stated specifically that the punishment of reduction of pay of three stages in one year was later on set aside. The allegation of the respondents is also that Late Shri Om Praksh in collusion with some officials of respondents had got his record misplaced with malafide intentions. Even in the representation dated 4th December, 2003 of Late Shri Om Prakash, the grievance of getting less pension has been made on account of non-regularization of arrears from 1987 onwards and not on account of setting aside of the punishment of reduction of pay to three stages in one year from 1.4.1996.

14. In the circumstances, the petitioners have failed to make out a case that the punishment of reduction to three stages in the time scale for one year affected from 1st April, 1996 could not be implemented on the allegation that Late Shri Om Praksh was absolved of in one charge sheet and in another charge sheet he was only awarded censure. In the circumstances, Late Shri Om Prakash was not entitled for revision of the pension.

15. In the totality of the facts and circumstances, this Court does not find any such illegality or irregularity or such perversity in the order of the Tribunal, which will require any correction by this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#).

16. The writ petition, in the circumstances, is without any merit and, it is, therefore, dismissed.