IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 3019 OF 2018

Union of India and ors. ...Petitioners
Versus
Nabilal S. Saheb ...Respondent

Mr. T.J. Pandian for the Petitioners.
Mr. D.N. Karande for the Respondent.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 03.07.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 3.11.2017 made by the Central Administrative Tribunal (CAT), Mumbai partly allowing O.A. No. 140 of 2017 instituted by the respondent, who is presently stated to be 91 years old. The operative portion of the impugned judgment and order is in paragraph 15 and the same reads as follows:

> *"15. It is clearly evident from the records that the applicant who was working in the commercial department in pay scale of 1400-2300 was allowed the scale of Rs. 5000-8000 following the 5th CPC recommendation and in terms of RBE 138/1997. The said scale ie. 5000-8000 corresponds to pay scale of PB2 with Grade Pay 4200 following VIth CPC recommendation and based on which the minimum pension comes to Rs.6750. Accordingly the pension payment order dated 24.02.2010 fixing the pension of the applicant at Rs.6750 appears justified and the applicant is entitled to the same. The subsequent interpretation referring to the corresponding scale of Rs.1400-2300 as 4500-7000 and PB-2 with Grade Pay of Rs. 2800 based the clarifications letter dated 18.08.2010 does not stand to any logic. It did not take into consideration the fact that the scale of 5000 – 8000 was allowed to certain categories which includes the commercial department where the applicant was working. Hence the revised PPO issued on 12.12.2013 clearly appears to be incorrect and hence the same is quashed. It is held that the applicant is entitled to revised pension of Rs.6750 w.e.f. 01.01.2006. The respondents are therefore, directed to restore the pension of the applicant to Rs. 6750 w.e.f. 01.01.2006 and make payment to the applicant accordingly. The amount recovered from the pension shall be refunded to the applicant. This shall be done within a period of 2 months from the receipt of the copy of the order.*

4] Mr. Pandian, learned counsel for UOI/Railways, submits that the CAT has filed to appreciate that the revised pay scale of Rs.5000 – 8000, in pursuance of recommendations of 5th Pay Commission, was applicable only to employees, who were in service in the commercial department on the date of implementation of such pay scales. He submits that since the respondent had already retired, he was entitled to pension on the basis that his scale was notionally revised in the scale of Rs.4500 – 7000/-. Mr. Pandian submits that on this basis, the petitioners were justified in not only scaling down the respondent's pension from Rs.6750 per month to Rs.6150/- per month and further, recovering the excess amount of about Rs.90,000/-. Mr. Pandian submits that inasmuch as the CAT has not appreciated the matter from this perspective, the impugned judgment and order warrants interference.

5] Mr. D.N. Karande, learned counsel for the respondent, defends the impugned judgment and order. He submits that the CAT has quite appropriately dealt with this contention of the petitioners and there is absolutely no jurisdictional error in the view taken by the CAT. He points out that the respondent is 91 years old and there is great detail of insensitivity on the part of UOI/Railways in not only seeking to reduce the otherwise meagre pension allowed to the respondent, but, in recovering the alleged excess amount in an arbitrary and high handed manner. He submits that despite the order of CAT, till date, the UOI/Railways, have neither restored the revised pension of Rs.6750 nor refunded back illegally recovered amount of Rs.90,000/- or thereabouts. He submits that this is a fit case where directions should be issued for payment of interest.

6] The rival contentions now fall for our determination.

7] We have duly considered the contentions of Mr.Pandian in the context of pay revision orders brought by him to our notice. Based upon such documents, we are not at all persuaded to hold that there is any jurisdictional error or other infirmity in the view taken by the CAT in the impugned judgment and order. If the contentions of Mr.Pandian is to be upheld, then, we fail to understand as to the basis on which, the petitioners have no objections to the revision of the respondent's pay scale to Rs.4500-7000. Because, admittedly, on the date when such revised pay scale were brought into force, the respondent had already retired. Therefore, there can be no dispute that the respondent was entitled to the benefit of pay revision, no doubt, for the purpose of working out his retiral benefits only.

8] The pay revision orders very clearly provide that clerks in the commercial department drawing pay scale of Rs.1400 – 2300 were entitled to revise scale of Rs.5000 to Rs.8000/-. In contrast, the clerks who were not working in the commercial department were entitled to revised pay scale of Rs.4500 – 7000. There is no dispute that the respondent was working as a Clerk in the commercial department. The CAT has examined the matter in its proper perspective and there is really no case is made out to warrant interference with the impugned judgment and order.

9] Even if the petitioners were to make out some case for reduction of pension from Rs.6750 to Rs.6150, there was absolutely no case made out for ordering recovering of the so called excess payment. The petitioners in quite high handed manner proceeded to recover such amounts from the retiral benefits due and payable to the respondent, notwithstanding the position of law made clear by the Hon'ble Supreme Court in ***State of Punjab and ors. vs. Rafiq Masih (White Washer) and ors. (2015) 4 SCC 334.*** Such recovery indeed smacks of insensitivity, not to mention illegality. Now that the CAT has held that there was no good ground to even order the reduction of pension, recovery effected by the petitioners can certainly not be sustained. Even though, there was no interim relief in this matter, the petitioners, unconcerned with the advanced age of the respondent, failed to comply with the directions in the impugned judgment and order.

10] Taking into consideration of the aforesaid facts and circumstances, we see no good ground to interfere with the impugned judgement and order made by the CAT. Although, we do not accede fully to the request made by learned counsel for the respondent for award of interest, we direct the petitioners to restore the respondent's pension and refund the amounts recovered from him within maximum period of four weeks from today. If this is not done, then, without prejudice, to the respondent's rights to take out proceedings for contempt, the amount due and payable to the respondent shall bear interest at the rate of 9% per annum, which, the petitioners will bear in the first instance. Thereafter, the petitioners will be at liberty to fix responsibility upon the officer responsible for the delay and recover such interest amounts from such officer/officers.

11] With the aforesaid directions, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

Dinesh Sadanand Sherla
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Date: 2018.07.06 12:51:35 +0530