BHAGWAN SHUKLA S/O SH. SARABJIT SHUKLA A

v.

UNION OF INDIA AND ORS.

AUGUST 5, 1994

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.] B

Service Law : Railways—Order reducing basic pay with retrospective effect—No show cause notice issued—Employee suffering civil consequences—Whether order reducing pay retrospectively without putting the employee—On notice is legally sustainable. C

The appellant who had joined the Railways as a Train Clerk, was promoted as Guard w.e.f. 18.12.1970. His basic pay had been fixed at Rs. 190 p.m. By an order dated 25th July, 1991, the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 191 p.m., retrospectively w.e.f. 18.12.1970. The appellant questioned the order before the Central Administrative Tribunal, but was not successful. Hence this appeal. D

Disposing of the matter, this court

HELD : Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving a hearing in the matter. Since, that was not done the order dated 25.7.91 which was impugned before the Tribunal could not certainly be sustained. [420-E-F] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5447 of 1994. F

From the Judgment and Order dated 17.9.93 of the Central Administrative Tribunal, Patna in O.A. No. 6 of 1992.

Manish Mishra and N.S. Bisht for the Appellant.

G

Altaf Ahmed, Additional Solicitor Genral, Arvind K. Sharma, Hemant Sharma and C.V. Subha Rao for the Respondents.

The following Order of the Court was delivered :

Leave granted. H

A The controversy in this appeal lies in a very narrow compass. The appellant who had joined the Railways as a Trains Clerk w.e.f. 18.12.1955 was promoted as Guard, Grade-C w.e.f. 1812-70 by an order dated 27.10.1970. The basic pay of the appellant was fixed at Rs. 190 p.m. w.e.f. 18.12.1955 in a running pay-scale. By an order dated 25th July, 1991, the payscale of the appellant, was sought to be refixed and during the refixation B his basic pay was reduced to Rs. 181 p.m. from Rs. 190 p.m. w.e.f. 18.12.1970. The appellant questioned the order reducing his basic pay with retrospective effect from 18.12.1970 before the Central Administrative Tribunal, Patna Bench. The justification furnished by the respondents for reducing the basic pay was that the same had been 'wrongly' fixed initially C and that the position had continued due to "administrative lapses" for about twenty years, when it was decided to rectify the mistake. The petition filed by the appellant was dismissed by the Tribunal on 17.9.1993.

We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There D is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without E following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the F order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated G 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970.

No costs.

A.G. Appeal disposed of.