

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 2nd Day of December 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/01292 of 2018

(U/S 19, Administrative Tribunal Act, 1985)

Shri Om Prakash Mishra, age about 73 years (Senior Citizen) Retd., Guard BSB Div. N.E. Rly. S/o Late Kedar Nath Mishra, Residence of G-3/44, Rail Vihar, Phase-I, P.O- Charagawana, Gorakhpur.

..... Applicant

By Advocate: Shri Rajesh Kumar/Shri P.K. Mishra

Versus

1. Union of India through General Manager, North Eastern Railway, Headquarters Office, N.E. Railway, Gorakhpur.
2. General Manager, North Eastern Railway, Headquarters Office, N.E. Railway, Gorakhpur-273012.
3. Divisional Railway Manager, North Eastern Railway, DRM's Office, G.T. Road Lahartara, Varanasi-221002.
4. Senior Divisional Personnel Officer, North Eastern Railway, DRM's Office, G.T. Road, Lahartana, Varanasi 221002.

..... Respondents

By Advocate: Shri Rishi Kumar

ORDER

1. The present O.A. has been filed by the applicant Om Prakash Mishra seeking following reliefs:-

- "(I) Issue an order or direction in the nature of mandamus directing the respondents to restore the applicant pension as Rs.14,892/- per month from the date of it was reduced.*
- (II) Issue an order or direction in the nature of mandamus directing the respondents to pay the arrear of differences of the pension with 12% annual interest.*
- (III) Issue an order or direction in the nature of mandamus directing the respondents to pay the recovered amount*

Rs.1,62,293/- (Rupees One Lakh Sixty One Thousand Two Hundred Ninety Three Only) with 12% annual interest to the applicant.

(iv) Issue any further orders or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(v) Award the appropriate cost in favour of the applicants".

2. Case of applicant Om Parkash Mishra is that after recommendation of 6th Pay Commission, his pension was revised and fixed at Rs.14892/- vide PPO dated 26.12.2011 (Annexure A2). However, without notice, his pension was revised vide PPO dated 03.04.2013 (Annexure A3) and reduced from Rs.14892/- to 13682/- which is illegal and that in pursuance the reduction, Rs.161293/- was recovered by deduction from his Pension Bank Account. It is the case of applicant that the revision of his pension is in violation of Rule 90 of the Railway Services (Pension) Rules, 1993. Hence the present O.A.

3. In the counter affidavit, respondents have pleaded that ". . On checking by the Accounts department, the pay fixation on the basis of 6th CPC of the employees who retired between April 2004 to 2005 was found wrong hence the concerned bank was directed to deduct the excess pension received by the employees and accordingly their PPO was amended. In this list, the name of applicant was mentioned. Accordingly the PPO dated 26.12.2011 was amended vide PPO dated 3.4.202013, this process was done within two years."

4. I have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.

5. Applicant alleges violation of Rule 90 which reads as under:

"90. Revision of pension after sanction – (1) Subject to the provisions of rules 8 and 9 pension once sanctioned after final assessment shall not be revised to the disadvantage of the railway servant unless such

revision becomes necessary on account of detection of a clerical error subsequently

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Railway Board if the clerical error is detected after a period of two years from the date of sanction of pension.

(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the Railway Board. (Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

(2) For the purpose of sub-rule (1), the retired railway servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the railway servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment shall be adjusted in installments by short payments of pension in future, in one or more installments, as the Head of Office may direct".

6. In the instant case the revised pension was dated 26.12.2011 and it was amended and fresh PPO was dated 03.04.2013 on discovery of wrong fixation of the pension. The revision was ordered within two years of issuance of revised PPO dated 26.12.2011. The PPO dated 26.11.2011 giving the sanction of revised pension due to 6th CPC was corrected vide PPO dated 03.04.2013. So, what was corrected the revised PPO and not the original PPO of 2005. The contention of applicant that his original PPO dated 12.08.2005 is to be taken as the starting point for calculating the two years is devoid of any force of law and reasoning and to be rejected.

7. During the course of hearing, learned counsel for the applicant reiterated the submissions made in the O.A. and placed reliance on the judgment of Hon'ble Apex Court in **State of Punjab & Ors. Vs. Rafiq Masih & Ors., 2014(8)SCALE 613** wherein it was held that if the

excess amount is paid to the petitioner on account of no fraud or misrepresentation of facts made by him and there is an incorrect fixation, then no recovery can be made from him.

8. Per contra, the learned counsel for the respondents reiterated the issues raised in the counter affidavit and submitted that money paid to applicant due to wrong fixation is recoverable.
9. In my view, the case in hand is covered by the decision of the Hon'ble Supreme Court in the case of State of **Rafiq Masih** (supra) wherein a few situations have been postulated where recoveries from the employees have been held as impermissible in law. The said para is reproduced below:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or

arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The applicant gets protection from recovery by virtue of being mentioned under the purview of situations (i), (ii) and (v) mentioned above. It is a fact that there has been no misrepresentation from the side of the applicant/pensioner in getting his pension fixed at a higher rate. The recovery of the excess payment made to the applicant is a result of an error committed by the respondents themselves for which the applicant cannot be held responsible.

10. However, I do not agree with the contention of the applicant that even if the pension has been fixed erroneously, then the respondents are barred from correcting the same. The applicant certainly has no right to enrich himself on account of an inadvertent error committed by the respondents. Hence, the revised PPO dated 03.04.2013 cannot be faulted as far as the refixing of pension at Rs. 13682/- is concerned.

11. However, in view of the law laid down by the Apex Court in Rafiq Masih (supra) the respondents are directed to refund back the amount of Rs. 161293/- deducted from bank account of applicant within 03 months from the date of issue of a certified copy of this order. O.A. disposed of with these directions. No costs.

(RAKESH SAGAR JAIN)
Member (J)

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