

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
Circuit Sitting: Bilaspur

Original Application No.203/00717/2015

Jabalpur, this Friday, the 3rd day of January, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Purna Chandra Mandi Retd. Lab Assistant,
S/o Mohan Chandra Mandi, presently residing at
c/o K.L.Das, House No. 237/3, Sector-3, Behind 30-Block,
Balaji Nagar, Shivanand Nagar, Raipur,
Chhattisgarh-492008

-Applicant

(By Advocate –**Shri A.V.Shridhar**)

V e r s u s

1. Union of India-through the Secretary, Railway Board,
Rail Bhawan, Rafi Marg, New Delhi-110001

2. General Manager, South East Central Railway,
New GM Building, Bilaspur, Chhattisgarh-495004

3. Senior Divisional Personnel Officer,
South East Central Railway, Divisional Office,
Personnel Branch, Raipur-492008

4. Assistant Personnel Officer,
South East Central Railway, Divisional Office,
Personnel Branch, Raipur-492008

-Respondents

(By Advocate –**Shri R.N.Pusty**)

(Date of reserving the order:-06.12.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The instant Original Application was directed against the impugned order dated 13.07.2015 (Annexure A-1), whereby the

representation of the applicant has been rejected and despite of providing the benefits of 3rd MACP to the applicant, the recovery of Rs. 3,90575/- has been justified and further recovery of Rs. 40963/- is proposed to be made from the pension of the applicant.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:-

8.1 That, the learned Tribunal may kindly be pleased to quash the order no E/PB/R/COU/2015/06 dated 13.07.2015 to the extent it justifies the whereby recovery made from the DCRG of the applicant and directs further recovery of Rs. 40963/- from the pension of the applicant. Annexure A-1.

8.2 That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to refund the amount of Rs. 390575/- recovered from the applicant with an interest of at the rate of 18% p.a.

8.3 Cost of the Original application.

8.4 Any other relief which the learned Tribunal deems fit and proper may be awarded.”

3. The brief facts of the case are that the applicant was appointed as Khalasi in Kharagpur work shop on 10.10.1981 and rendered services to the satisfaction of his superiors. On 12.11.1988 the applicant was promoted to the post of Lab Assistant after being promoted to the post of Lab Attendant and served the respondent dept. The respondents issued the order reverting the applicant to the post of Lab Attendant on 01.04.2000. The applicant aggrieved by the order of reversion preferred an Original

Application before the Central Administrative Tribunal Kolkata and on 26.04.2000 the Co-ordinate Bench at Kolkata stayed the order of reversion by Original Application No. 443/2000 and the applicant continued to the post of Lab Assistant. The said Original Application was dismissed by the Co-ordinate Bench on 01.03.2006 holding that applicant did not have requisite qualification.

4. The applicant preferred a Writ Petition No. 250/2006 before the Hon'ble High Court of Kolkata and the Hon'ble Court on 16.11.2006 was pleased to dispose of the Writ Petition with a direction to the respondents to pass appropriate orders. The applicant continued to perform the duties of Lab Assistant and draw salary for the same. In December 2006 the applicant obtained the requisite qualification and submitted the certificates to the respondents for consideration. The respondents never considered the representation of the applicant and the applicant continued to the post of Lab Assistant. Being aggrieved by the non consideration of his representations the applicant preferred Original Application No. 558/2012 before the Co-ordinate Bench at Kolkata. The said Original Application was disposed of with a direction to decide the representation of the applicant. On 25.08.2013 the representation filed by the applicant was rejected.

On 15/16.07.2014 the respondent No.4 passed orders of recovery from the DCRG of the applicant on account of excess payment granted to the applicant. A copy of the order dated 15/16.07.2014 has been filed as Annexure A-2.

5. The applicant made representation against the said recovery on 22.07.2014 and superannuated on 31.07.2014, a copy of the representation dated 22.07.2014 is annexed as annexure A-3. The representation of the applicant were never considered and the applicant filed Original Application No. 203/00114/2015 before the Tribunal and the Hon'ble Tribunal vide order dated 12.05.2015 was pleased to dispose of the Original Application with a direction to the respondents to consider the pending representation of the applicant. That vide impugned order the respondents have rejected the representation of the applicant.

6. The main grounds of the Original Application is that the applicant is a low paid employee and the recovery of huge sum from the DCRG is inhumane. The order provides that excess payment has been made to the applicant, however, the facts remains that no any excess payment has been made to the applicant and that the applicant had been performing the duties of Lab Assistant and allowances commensurate to the post of Lab assistant has been paid to the applicant.

7. The respondents have submitted their reply in the Original Application. They submitted that the applicant was appointed as Khalasi in Kharagpur on 10.10.1981 and promoted as Lab Attendant with effect from 23.07.1987. Due to not holding requisite minimum qualification i.e. matriculation which is essential for promotion to Lab Assistant, he was reverted back to Lab Attendant on 01.04.2000. On December 2006, the applicant passed Madhyamik Examination and passed certificate was submitted in March 2007. Thereafter the applicant preferred representation for his regularization. The Railway respondents i.e. the Chief Workshop Manager S.E. Railway Kharagpur disposed of the applicant's representation vide its reasoned order dated 25.08.2013 by negating his claim however while disposing the representation it has been made clear by the respondents that the applicant according to the guidelines stipulated in Railway Board wherein it is clearly stipulated that the requisite qualification for the post of Lab Assistant is Matric (Science)+ Diploma/Certificate in lab technology or 10+2 with Science. Copy of the Estt. Rule 202/98 is annexed as Annexure R-1. The certificate submitted by the applicant is not in adequate qualification for regularization for the post of Lab Assistant. Hence the applicant's case was rejected and the order was passed for grant of 2MACP with effect from

01.09.2008 in terms of Esstt. Srl. 120/09 and is also eligible for 3rd MACP after completion of 30 yrs of service. A copy of the letter dated 25.08.2013 is annexed as Annexure R-2.

8. On legal point of view in regard to the claim of the applicant for regularization for the post of Lab Assistant Grade III had attained to its finality. Copy of the order dated 16.04.2013 is annexed as Annexure R-3. In pursuant to the above implementation order the pay of the applicant has been recasted for determining to fix the correct pay by carrying out the proves of assessing through as drawn and should have been drawn since 01.10.1986 to 01.07.2013 vide office order dated 15.07.2014. As on 01.07.2013 the pay Rs. 10700/-+2000/- which the applicant was drawing and on recasting the pay Rs. 8840/- + Grade pay 2000/- has correctly been fixed. Copy of the order dated 15/16.07.2014 is annexed as Annexure R-4. Furthermore, vide office order dated 25.07.2014 the applicant was granted 3rd MACP with effect from 10.10.2011 on completion of 30 yrs. of service in PB-I with Grade pay Rs. 2400/-.

A copy of the order is annexed as Annexure R-5.

9. Consequent upon the recasting of pay vide office order dated 15.07.2014 overpayment has been assessed and arrived to the tune of Rs. 3,38528/- involved due to reversion from the post of Lab Assistant Gr. III to the post of Lab Attendant. Since the applicant

was retiring from the service with effect from 31.07.2014 as such as per Railway Service (Pension) Rules, 1993 the excess payment amount of Rs. 3,38528/- made to the applicant on account of above circumstances has been recovered from Retirement Gratuity with prior intimation to the applicant. A copy of the intimation letter dated 16.07.2014 is annexed as Annexure A-2 of the O.A.

10. It is further submitted by the respondents that at the time of retirement it has been observed by the Railway Respondents that the recovery amount is higher than the payment of gratuity, as such after adjustment yet more amount of Rs. 40,963/- has to be recovered from the dearness relief on pension of the applicant.

11. It is submitted by the respondents that the question of law is to be decide as to whether the recovery of overpayment consequent upon recasting and re-fixing of pay is justified and as per rules. Overpayment raised consequent upon re-fixing of pay since from year 2000 due to reversion from the post of Lab Assistant to Lab Attendant. The issue was finally settled after complying the direction passed by the Co-ordinate Bench of Tribunal at Calcutta in O.A. No. 558/2012. The respondents are placing reliance upon the direction passed by the Hon'ble Supreme Court in the matters of **Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand**

and Ors. decided on 17.08.2012. The relevant para of the decision is reproduced as under:-

“16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension.”

12. The respondents further submitted that in view of the above submissions, the case is devoid of any merit and deserves to be dismissed.

13. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

14. From the pleadings itself there is no dispute to the fact that the applicant was appointed as Khalasi in Kharagpur workshop on 10.10.1981. Thereafter, the applicant was promoted as Lab Attendant on 23.07.1987 and further promoted as Lab Assistant on 05.11.1987. It is also admitted fact by the parties that the respondents issued order reverting the applicant to the post of Lab Attendant on 01.04.2000 and the applicant aggrieved by that order had filed Original Application before the Central Administrative Tribunal, Calcutta Bench and on 26.04.2000, stay order was granted in Original Application No. 443/2000. Ultimately, the Original Application was dismissed by the Co-ordinate Bench at Calcutta on 01.03.2006 holding that applicant did not have requisite qualification.

15. It is also admitted fact that the applicant filed Writ Petition No. 250/2006 before the Hon'ble High Court of Kolkata and the Hon'ble Court on 16.11.2006 was pleased to dispose of the Writ Petition with a direction to the respondents to pass appropriate orders. It is also admitted fact by the parties that the applicant continued to perform the duties of Lab Assistant and draw salary for the same. In December 2006 the applicant obtained the requisite qualification and submitted the certificates to the respondents for consideration and the requisite certificate was

submitted in March 2007. Thereafter the applicant preferred representation for his regularization. It is also admitted fact by the parties that the applicant again preferred Original Application No. 558/2012 before the Co-ordinate Bench at Calcutta and directed the respondents to decide the representation of the applicant. Ultimately, the respondents has rejected the representation of the applicant on 25.08.2013. On 15/16.07.2014 the respondents passed orders of recovery from the DCRG of the applicant on account of excess payment granted to him vide Annexure A-2. The applicant made representation against the said recovery order on 22.07.2014 (Annexure A-3) and ultimately the applicant superannuated on 31.07.2014.

16. It is also admitted fact that the applicant again filed Original Application No. 203/00114/2015 before this Tribunal and vide order dated 12.05.2015 the Original Application was disposed of with a direction to consider the pending representation of the applicant. Ultimately, vide impugned order dated 13.07.2015 the respondents have rejected the representation of the applicant.

17. The main grounds in this Original Application is that the applicant is a low paid employee and recovery of huge sum from the DCRG is inhumane. The submission of the applicant is that there is no question of any excess payment made to the applicant

because the applicant is performing the duties of Lab Assistant and allowances commensurate to the post of Lab Assistant has been paid to the applicant.

18. On the other hand, respondent department has submitted that the applicant was not holding the requisite minimum qualification so the applicant was reverted back on 01.04.2000. It has further been submitted by the replying respondents that though the applicant has submitted certificate of Madhyamik Examination in March 2007 but the railway respondents i.e. the Chief Workshop Manager, S.E. Railway, Kharagpur has disposed of the representation of the applicant by a reasoned order dated 25.08.2013 by negating the claim of the applicant. So reasons given by the respondents that according to guidelines it is clearly submitted that the requisite qualification for the post of Lab Assistant is Matric (Science) plus Diploma/certificate in Lab technology or 10+2 with science (Annexure R-1). The certificate submitted by the applicant is not inadequate qualification for regularization for a post of Lab Assistant. So the case of the applicant was rejected.

19. From the facts it is very clear that the applicant was reverted back to the post of Lab Attendant and applicant has approached the Co-ordinate Bench of this Tribunal at Kolkata and stay was

granted but ultimately the Original Application was dismissed. The applicant has filed another Original Application No. 203/00114/2015 which was also disposed of on 12.05.2015.

20. Learned counsel for the applicant has relied upon the judgment of Hon'ble High Court of Allahabad in the matters of **Surya Deo Mishra vs. State Uttar Pradesh, LAWS (ALL) 2005 12225**, to the fact that applicant has worked as Lab Assistant to the strength of the interim order and the payment made for that period cannot be recovered. The ratio of the above judgement is in Para 18 which reads as under:

18. Thus, broadly speaking, the principle which can be culled out from these decisions is that in commercial matters, the successful party is not only entitled to the amount withheld on the basis of the interim order, but it is also entitled to interest thereon. However, in service matters, if the incumbent has worked and has been paid, unless his claim was fraudulent, based upon frivolous grounds or upon acute factual dispute, the amount so paid ought not to be recovered. Even in cases of excess payment, it cannot be recovered unless said payment is result of the employee's mistake or on his showing. But, if the employee has been paid without working or has not been paid though has worked, he would not be entitled to it if the petition is dismissed as infructuous. We hasten to add, that the court cannot draw a exhaustive list of such situation, as each case is to be decided on its facts.

The applicant has also relied upon the judgment passed by the Hon'ble Apex Court in the matters of **State of Punjab v. Rafiq Masih, (2015) 4 SCC 334** dated 18.12.2014 and the Hon'ble Apex

Court has laid down the guidelines relating to recovery made from the retiring person. The relevant para reads as under:

18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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.

21. Admittedly the applicant was reverted from the post of Lab Assistant to Lab Attendant on 01.04.2000 and the applicant has filed the Original Application before the Co-ordinate Bench at

Kolkata in O.A. No. 443/2000 and the stay was granted by the Bench. Ultimately, the Original Application was dismissed on 01.03.2006. Though the applicant has preferred a Writ Petition No. 250/2006 before the Hon'ble High Court of Kolkata and the Hon'ble Court on 16.11.2006, till date there was no recovery order from the respondent department.

22. In the instant case legal preposition has arisen. Firstly the applicant has worked on the strength of the interim order by the Co-ordinate Bench of CAT at Kolkata and as per judgment passed by the High Court of Allahabad in the matters of Surya Deo Mishra (**Supra**), it has been held that the payment made to the incumbent on the strength of interim order in a particular circumstance can not be recovered. So in the instant case also the case of the applicant is fully covered by the above judgement and no recovery is to be made in view of the ratio laid down by the Hon'ble High Court of Allahabad in the matters of Surya Deo Mishra (**Supra**), subsequently, the recovery order was passed on 22.07.2014 and the applicant had retired on 31.07.2014. As per law settled by the Hon'ble Apex Court in the matters of Rafiq Masih (**Supra**) has summarized the legal position regarding recovery from retiring person and in the instant case, the applicant falls within the parameters of the above judgment.

23. The applicant is a Group 'C' official and has retired on 31.07.2014 whereas the recovery order has been passed on 22.07.2014 (Annexure A-3). So in view of the law laid down by the Hon'ble Apex Court in the matters of Rafiq Masih (**Supra**) the case of the applicant is fully covered by this judgment.

24. In view of the above, this Original Application is allowed and the recovery order dated 13.07.2015 is quashed and set aside and the respondents are directed to refund the amount of Rs. 3,90575/- already recovered from the applicant within a period of 60 days from the date of receipt of a certified copy of this order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member