

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 89 of 2015**

**Date of order : 28.2.2020**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Krushna Chandra Mahapatra, aged about 52 years, S/o Late Harihar Mahapatra, at present working as a SSE (Electrical) Maintenance/ Rail Sadan, under DEE (G)/KUR/BBS, permanent resident of Plot No. 1102, Shiva Nagar, Saheed Dibakar Marg (Tankapani Road), Bhubaneswar-18, Dist.-Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, E.Co.rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Chief Personnel Officer/East Coast Railway/E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
3. Senior Divisional Personnel Officer/East Coast Railway/Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
4. Senior Divisional Electrical Engineer/East Coast Railway/Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
5. Senior Personnel Officer/Con./Co-ordn./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

**O R D E R (ORAL)**

**Per Mr. Gokul Chandra Pati, Member (A)**

The OA has been filed by the applicant seeking the following reliefs :

- a. To quash the orders dtd. 09.02.2015 and 25.06.2014 under Ann. A/10 & A/11 respectively;
- b. And to direct the Respondents to refix the pay of the applicant @ Rs.27,220/- for the month of January 2015 and pay the arrear salary;
- c. And to quash the decision for recovery of amount of Rs.1,70,028/- from the salary of the applicant.”

2. Heard learned counsel for the applicant who submitted that the applicant while working in Mancheswar Workshop of the Railways, was allowed an ad hoc promotion on 29.6.1996. On 9.1.1997, he was released to be posted in the Construction Department and on 22.5.1997, he was promoted by the authorities in

the Construction Department to a higher pay scale vide order at Annexure A/3 of the OA. However, his lien continued with the Electrical Department as per the order at Annexure A/2. Although the ad hoc promotion to higher pay scale was allowed for a period of six months, it was extended from time to time and was finally regularized vide the order dated 31.8.2004 at Annexure A/4 of the OA. The applicant was given another promotion vide order at Annexure A/6 and on 19.1.2009, he was repatriated to his parent Division and thereafter he was granted 2<sup>nd</sup> financial upgradation under MACP scheme to the Grade Pay of Rs.4800/-. In January 2015, it came to the notice of the applicant that his pay had been reduced from Rs.27,220/- to Rs.25,730/- without assigning any reason or without issuing any notice or order to him. He filed a representation dated 28.1.2015 (Annexure A/9) which was disposed of by the respondent No.2 vide order dated 9.2.2015 (Annexure A/10) stating that as per the order dated 26.5.2014 (Annexure A/11), his pay has been refixed after detection of error in his pay fixation which was detected when another employee represented for stepping up of pay giving example of the applicant. Accordingly, the applicant's pay was reduced to Rs.25,730/- with recovery of Rs.1,70,028/- vide order at Annexure A/10 which is impugned in this OA. The applicant also claims refixation of his pay at Rs.27,220/- as one of the relief in the OA.

3. Learned counsel for the applicant further submitted that these impugned orders are not tenable in view of the judgments of the Hon'ble Apex court referred in the OA which are in the case of Syed Abdul Kadir & Ors. –vs- State of Bihar & Ors. [(2009) 1 SCC (L&S) 744], State of Rajasthan –vs- Mahesh Kumar Sharma [(2011) 1 SCC (L&S) 673], Om Prakash Singh –vs- Union of India & Ors. [(2011) .....SCC (L&S) 343, Yogeswar Prasad & Ors. –vs- National Institute of Education Planning & Administration & Ors. [(2011) 2 SCC (L&S) 533], Union of India & Ors. –vs- R.Basudev Murty & Ors. [(2010) 2 SCC (L&S) 711] mainly challenging the order of recovery. The judgment of the Hon'ble Apex Court dated 18.12.2014 in CA No. 11527/2014 and also State of Punjab –vs- Rafiq Masih & Ors. [AIR 2015 SC 1267] have also been cited against the order for recovery of excess amount paid to the applicant.

4. Heard learned counsel for the respondents. He submitted that the pay of the applicant was wrongly fixed at higher level which was not as per the rule 1320 of the Railway Fundamental Rules (Annexure R/5 of the Counter) as averred in para

7 of the Counter. It was further submitted by the learned counsel for the respondents that although persons senior to the applicant were not given ad hoc promotion, the applicant was allowed such ad hoc promotion in the Construction Department. To some extent, his pay in the Construction Wing was carried over to a substantive post in his permanent cadre which was found to be Rs.25,730/- as on 1.7.2014 as against Rs.27,220/- which was wrongly allowed to the applicant earlier. Thus, recovery of Rs.1,70,028/- has been assessed on account of excess payment made to him due to wrong pay fixation in the substantive post.

5. It is seen from the rejoinder filed by the applicant that the specific averment in para 7 of the Counter has not been contradicted, except stating that the applicant's seniority was not fixed correctly and he was senior to Sri Arun Dam who got regular promotion much earlier than the applicant. He contradicted the contention in the Counter that Sri Arun Dam was senior to the applicant. It is further stated that Rule 1320 was not applicable to the applicant.

6. It is seen that the contention in the Counter that his pay has been carried forward to the substantive post when he was posted in the Line Department on transfer from Construction Department and on calculation the correct basic pay arrived at was Rs.25,730/- as on 1.7.2014, has not been contradicted. Further, no rule is furnished by the applicant in support of such a claim for getting his pay fixed at Rs.27,220/- w.e.f. January, 2015 as claimed at para 8(b) of the OA. Hence, the claim for fixation of his pay at Rs.27,220/- from January, 2015 has no merit.

7. However, the contention of the applicant regarding recovery from his pay amounting to Rs.1,70,028/- deserves consideration in view of the judgment of the Hon'ble Apex Court in the case of State of Punjab –vs- Rafiq Masih & Ors. [AIR 2015 SC 1267] which has been referred to in the Rejoinder of the applicant. In this case, it is clear that the applicant is covered as per the paragraph 12 of the above referred judgment in the case of Rafiq Masih (supra). It is also stated in the Rejoinder that the ad hoc promotion to the applicant was given for a limited period, which was continued subsequently and he had enjoyed the excess payment due to ad hoc promotion in the Construction Department for more than 5 years. This excess payment was given to the applicant by the authorities for which the applicant is no way responsible. There is nothing on record to show that the applicant had furnished any undertaking to refund if any excess payment to him is

detected subsequently. Hence the judgment of Hon'ble Apex Court in the case of Rafiq Masih (supra) is squarely applicable in this case.

8. In view of the above discussions, we allow the OA in part by setting aside the order at Annexure A/10 and Annexure A/11 so far as it is concerned with the recovery of Rs.1,70,028/- from the applicant. The respondents are directed to refund to the applicant if any amount has been recovered from him towards the aforesaid amount, within a period of 3 months from the date of receipt of the copy of this order.

9. The OA is allowed in part as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)