

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**Original Application No.21/35/2019**

**Hyderabad, this the 20<sup>th</sup> day of January, 2020**



***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

M. Sambasiva Rao, S/o. late M. Subba Rao,  
Aged about 69 years,  
Occ: Retired Section Officer (A),  
National Institute of Rural Development,  
Hyderabad – 30, R/o. 4-12-698,  
Dwarakamai Nagar, Vanasthalipuram,  
Hyderabad – 500 070.

... Applicant

(By Advocate Dr. A. Raghu Kumar)

Vs.

1. Union of India, Rep. by Secretary, Ministry of Rural Development and Chairman, Executive Council, National Institute of Rural Development And Panchayati Raj, Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi -1.
2. The Director General, National Institute of Rural Development and Panchayati Raj, Rajendranagar, Hyderabad – 500 030.
3. The Assistant Registrar, National Institute of Rural Development and Panchayati Raj, Rajendranagar, Hyderabad – 500 030.

... Respondents

(By Advocates: Mrs. K. Rajitha, Sr. CGSC)

***ORDER***  
***{As per B.V. Sudhakar, Member (Admn.)}***

2. The OA is filed challenging the orders dated 1.10.2018 and 8.10.2018 in regard to recovery and re-fixation of pension.



3. Brief facts of the case are that the applicant retired from the respondents organisation as Section Officer on 31.7.2009. While working as Section Officer, the applicant was ordered to hold charge of the Asst. Registrar post on different dates and the last one being on 6.6.2008. On completion of the in-charge arrangement in the Asst. Registrar post, applicant was reverted to his original post of Section Officer on 20.7.2009. Applicant represented on 21.7.2009 to fix his pay as per FR 22(1)(a)(1), which was conceded to by fixing the pay in the appropriate pay band on 28.7.2009 for the period of holding additional charge from 6.6.2008 to 19.7.2009. Taking this into consideration, pension and pensionary benefits were also granted and accordingly availed from 1.8.2009 till 1.10.2018. However, without issue of any notice, respondents have reduced the pension from Rs.12,447 to Rs.11,715 w.e.f 1.8.2009 and proposed a recovery of Rs.1,65,235 vide orders impugned. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that the action of reduction of pension and proposed recovery is bad in law and violative of Articles 14 and 16 of the Constitution. FR 22 provides for pay fixation in a higher scale when a Government servant holds a post with higher duties and responsibilities. Moreover, Rule 70 of CCS (Pension) Rules does not

permit disadvantageous revision of pension after the original fixation, unless there is a clerical error and if the error were to be detected after 2 years, permission of Dept of Personnel and Administrative Reforms has to be obtained to do so. No notice was issued violating the principles of Natural Justice.



5. Respondents in their reply statement raise a preliminary objection that the applicant has not exhausted the remedies available under Section 20 of the Administrative Tribunal Act, 1985. Respondents admit that the pay has been fixed as per FR 22 (1) (a)(1) for holding a higher post of Asst. Registrar on 28.7.2009. The revision of pension and recovery were warranted due to an audit objection dt. 31.01.2011 raised on the issue, wherein it was observed that since the applicant was only holding additional charge of the post of Asst. Registrar, he is ineligible for higher pay.

6. Heard both the counsel and perused the pleadings on record.

7 (I) It is not disputed that the applicant while working as Section Officer was asked to hold charge of the higher post of Asst. Registrar during the period from 6.6.2008 to 19.7.2009 as was recorded in the audit objection dated 31.1.2011. Respondents have taken the objection that without exhausting the remedy available under Section 20 of the AT Act 1985 ie making a representation to the respondents, filing an OA in the Tribunal is incorrect. Section 20 uses the word “ordinarily” available remedies are to be exhausted before approaching the Tribunal. The said objection could have been taken before the OA was admitted. Having not taken such an objection at that juncture of time and doing so now is not

sustainable. The issue is regarding re-fixation of pension and recovery after 9 years of retirement, which would not come under the ambit of the word “ordinarily” used in Section 20 of the AT Act. The action of the respondents has given rise to a continuous cause of adverse impact every month and hence applicant approaching the Tribunal for relief in such matters is within the purview of the AT act.



II) The applicant has cited FR 22(1)(A)(1) in support of his contention which states that higher pay to be given for holding higher posts with higher duties and responsibilities. The applicant was accordingly paid. However, it is seen from the facts of the case that the additional charge of the post of Asst. Registrar was terminated on 20.7.2019 before the date of retirement of the applicant. As on the date of retirement on 31.07.2009, the applicant was working as Section Officer in a substantive capacity. In accordance with Pension Rules, 50 percent of last pay drawn has to be fixed as pension. The last pay that ought to be drawn for the applicant should be that of a Section Officer. Instead of doing so, respondents fixing pension based on the pay of a higher post of Asst. Registrar is contrary to Pension Rules. Had the applicant retired in the Asst. Registrar post, the claim made could have been sustained but the applicant retired in a lower post of Section Officer. Hence the applicant would only be eligible for the pension to be drawn for the post of Section Officer, in which post, he has smoothly retired.

III) Applicant represented that as per Rule 70 of Pension Rules, pension should not be revised to the disadvantage of the employee unless there is a clerical error and if the error is detected after 2 years then the

revision has to be done with the approval of the Dept of Personnel and Administrative reforms. However, in the instant case it is not a clerical error but the re-fixation and recovery ordered based on an audit objection citing FR 49 (v). Hence, Rule 70 of Pension Rules does not apply to the case on hand. FR 49 (v) reads as under:



*"F.R. 49. (v): No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge."*

IV) However, in the instant OA, the applicant has discharged the duties of the Asst. Registrar while he was in service and retired from service on 2009. Therefore, ordering any recovery from the applicant after 9 years of retirement is impermissible under law as per Hon'ble Supreme court Judgment in Rafiq Masih case, the relevant portion of which is hereunder reproduced:

*"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."*



Clauses (i) to (iv) squarely cover the case of the applicant. In fact, the respondents have directed the applicant to hold the higher post as per their own orders referred to above. After having made the applicant to work in the said post and paying salary for discharging associated duties, it may not be fair to order recovery of the excess payment made at this distant date. The applicant has neither misguided nor misrepresented to seek the benefit bestowed on him. Therefore, the proposed recovery of Rs.1,65,235/- from the applicant is not in order.

V) Hence, in view of the aforesaid circumstances, the interim order issued on 10.1.2019 granting stay of further recovery from the pension of the applicant is made absolute. Amount withheld, if any, towards the said recovery by the respondents shall be released, within period of 3 months from the date of receipt of this order.

VI) With the above directions, the OA is partly allowed, with no order as to costs.

**(B.V. SUDHAKAR )  
MEMBER (ADMN.)**

/evr/