

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD



OA/020/00830/2019
Date of Order : 23-12-2019

HYDERABAD, this the 23rd day of December, 2019.

THE HON'BLE MRS.NAINI JAYASEELAN: ADMINISTRATIVE MEMBER

J.JUDE MATHIAS, Aged 59 years,
S/o G.Joseph Mdathias,
Tech/TCM/I/Renigunta, Group 'C' (Retired),
SR.DSTE/O/M/Guntakal, Guntakal Division,
South Central Railway, Senior Manager/RAIL TEL/Secunderabad/Chennai,
Flat-06, Anu Apartment, No.35 Circular Road,
United India Colony, Kodambakkam,
Chennai – 600 024.

(By Advocate : Mr. M. Bhaskar)

...Applicant

Vs.

1. Union of India,
Rep by The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 025.
2. The Divisional Railway Manager,
South Central Railway, Guntakal-515 801.
3. The Senior Divisional Finance Manager,
South Central Railway, Guntakal-515 801.
4. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal-515 801.
5. The General Manager, Railtel Corporation of India Ltd.,
3 Block, 2nd Floor, Rail Nilayam, Secunderabad-500 025.

(By Advocate : Mr.V.V.N.Narasimham SC for Rlys)Respondents

(Oral Order per Hon'ble Mrs.Naini Jayaseelan, Administrative Member)

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The present OA has been filed to set aside the impugned order No.

A/PEN/GTL/Rlys/Tech.Resgn, dated 21.11.2016 for recovery of over payment from the pension of the applicant.



2. The impugned order is for recovery of excess payment of Rs.3,75,516/- (Rupees three lakhs seventy five thousand five hundred and sixteen only) for the period from 14.06.2007 to 30.11.2016 which was paid to the applicant as Dearness Relief.

3. The applicant was appointed as Technician through Railway Service Commission to the Group 'C' post and posted to Railway Electrification Project on Vijayawada- Balharshah Section. Subsequently the applicant was posted to Guntakal Division of South Central Railway as Telecom Maintainer (TCM) Grade III in Signal and Telecommunication department. The applicant was on deputation to the RAIL TEL Corporation as Assistant Manager from 14.06.2004 to 14.06.2007. The applicant then submitted his Technical Resignation on 14.06.2007 to the Railways to enable him to join the RAILTEL Corporation with effect from 15-06-2007. The applicant has retired on 30.09.2019 after working as Senior Manager at Chennai in Rail Tel Corporation Limited of Secunderabad.

4. The 3rd Respondent vide the impugned letter No. A/PEN/GTL/Rlys/Tech. Resgn, dated 21.11.2016, sought to recover an amount of

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Rs.3,75,516/- (Rupees three lakhs seventy five thousand five hundred and sixteen only) towards overpayment of dearness relief on pension.



5. Heard Mr.M. Bhaskar, learned counsel for the applicant and Mr. Bhim Singh representing Mr. V. V. N. Narasimham, learned Standing Counsel for Respondents.

6. It is the contention of the counsel for the applicant that the case of the applicant is fully covered as per the decision of the Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014, dated 18.12.2014.*** The Hon'ble Supreme Court laid down five parameters where recoveries by the employer are impermissible in law, which are as under :

- (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 for outweigh the equitable balance of the employer's right to recover.

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As per the contention of the learned counsel for the applicant, his case is fully covered under clauses (i), (ii) and (iii) of the



order cited supra. Learned Counsel for the applicant further relies on the orders passed by the Hyderabad Bench of CAT in OA Nos. 724/2019, dated 24.10.2019 and in OA No.133/2017, dated 28.09.2018 of another applicant in the same impugned order. Both the judgments clearly state that the case of the applicants therein squarely covered by the observations made by the Hon'ble Apex Court in the case of ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014, dated 18.12.2014*** and the law in this regard is well settled. Moreover the Respondents have not produced any undertaking of the applicant that in case any excess payment made by the Respondents Department, the same can be recovered by them.

7. Learned Standing Counsel for the Respondents contends that while the employee tendered technical resignation on 14.06.2007, the office worked out the dearness relief from 14.06.2007 to 30.11.2016 paid to the applicant and the amount worked out to be Rs.3,75,516/- (Rupees three lakhs seventy five thousand five hundred and sixteen only) and necessary instructions to recover the overpayment of Dearness Relief was issued on the basis of the Railway Board's letter No. 2012/AC II/21/Misc.Matters, dated 11.04.2016, it is an undisputed fact that the applicant is absorbed in RAILTEL Corporation of India Ltd., and as such he is not entitled for Dearness Relief on the Railway Pension and accordingly the Bank was instructed to stop payment of Dearness Relief to the pensioner (applicant herein) and the recovery started from 01.01.2017. However, in the reply statement, the Respondents have not mentioned anything whether this

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case is covered by decision of the Hon'ble Apex Court judgment cited supra wherein, according to the counsel for the applicant, the applicant's case is covered under clauses (i), (ii) and (iii) of the five parameters stated in Rafiq Masih's case. The counsel for Respondents also contended that the OA was hit by limitation.

8. The counsel for the applicant reiterated that the case of the applicant is fully covered by the principles laid down in Rafiq Masih's case as well as the two judgments of this Bench of CAT cited supra. Learned counsel for the applicant also placed reliance on the decision of the Hon'ble High Court of Judicature at Hyderabad in WP No.27152 of 2018 & Batch, dated 13.12.2018 on the issue of Technical resignation and recovery wherein it is held as under :

“it is not open to the petitioners to resort to recovering the excess pension amount paid by them to the retired respondents-applicants over a long period of time on the ground that they had been wrongly extended dearness relief. Similarly, it is also not open to the petitioners to seek to recover the excess amounts paid, be it towards service pension or family pension, owing to the wrong fixation by the authorities themselves, from the railway servant's widow, the first respondent in W.P.No.32357of 2018. “

9. It is clear that the applicant's case is fully covered by clauses (i), (ii) and (iii) stated in the decision of **Rafiq Maish's** case. However, it may be added that it is left open to the Respondents to fix the responsibility in

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fixing the pension wrongly by allowing such excess payment to the applicants and financial loss to the government exchequer.



10. The amount recovered prior to the interim order dated 22.10.2019 also would need to be refunded to the applicant.

11. On the issue of delay in approaching the Tribunal, learned counsel for the applicant submits that since the rights of any third party is not effected, the Original Application cannot be dismissed on the ground of limitation.

12. In view of the forgoing discussions, the impugned order dated 21.11.2016 is set aside directing the Respondents to refund the amount recovered from the applicant towards excess payment of Dearness Relief within a period of three months from the date of receipt of certified copy of this order and also to ensure that the pension account of the applicant is unblocked by directing the Bank appropriately.

13. With the above directions, the OA is allowed. There shall be no order as to costs.

(NAINI JAYASEELAN)
ADMINISTRATIVE MEMBER

Dated : 23rd December, 2019.
Dictated in Open Court.

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