

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 20/2014  
M.A. No. 74/2020**

Reserved on: 28.01.2020  
Pronounced on: 06.02.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)**  
**Hon'ble Mr. A. Mukhopadhaya, Member (A)**

1. Chandra Prakash Yadav son of Shri V.P.Yadav, aged about 52 years, resident of House No.14, Gali No.4, Poonam Colony, Kota Junction, Kota and presently working as Chief Office Superintendent, Office of Chief Works Manager (Works Shop), West Central Railway, Kota Division, Kota.
2. Umrao Singh Meena Shri Rameshwar Lal Meena, aged about 53 years, resident of House No.249, Gali No.4, Saraswati Colony, Kota Junction, Kota and presently working as Chief Office Superintendent, Office of Chief Works Manager (Works Shop), West Central Railway, Kota Division, Kota.

...Applicants.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through the General Manager, West Central Zone, West Central Railway, Jabalpur (M.P.)
2. General Manager, (Establishment), Western Railway, Church Gate, Mumbai.
3. Chief Works Manager (Works Shop), West Central Railway, Kota Division, Kota

...Respondents.

(By Advocate: Shri M.K.Meena for R-1 and R-3 and None for R-2)

(2)

## **ORDER**

**Per: A.Mukhopadhyaya, Member (A):**

The issues agitated in this Original Application, (OA), relate to refixation of the pay of the applicants and consequent recoveries sought to be effected from them by the respondents.

2. The salient facts relevant to the issues being agitated are that the respondents issued an office order dated 06.02.1999 fixing the pay of the applicants at Rs.5450/- per month with effect from 01.01.1996, (Annexure A/5), bearing in mind the fact that the applicants were in receipt of Special Pay of Rs.70/- per month even prior to that date; (i.e. 01.01.1996). Later however, after the receipt of clarifications from Western Railway Head Quarters, (WR HQ), dated 08.03.1999, (Annexure A/7), enclosing RBE No.169/2000 dated 26.09.2000 from the Railway Board, (Annexure A/8), the respondents served a show cause notice upon the applicants, (Annexures A/9 and A/10), stating that the pay fixation earlier issued vide their order of 06.02.1999, (Annexure A/5), was erroneous and that in accordance with the clarifications/directions received from WR HQ dated 08.03.1999, (Annexure A/7), read with Railway Board instructions conveyed vide RBE No.169/2000 dated 26.09.2000, (Annexure A/8), their pay was required

(3)

to be fixed in terms of Rule 7 of the Railway Services Revised Pay (RSRP), Rules, 1997 and not as was done earlier vide their earlier order dated 06.02.1999; (Annexure A/5). The notices stated that as a consequence of this erroneous fixation, the applicants had been receiving excess payments since 01.01.1996 and proposed to recover the same. The applicants state that they represented against the proposed reduction in pay as well as recovery referred to in the said notices, (Annexures A/11 and A/12 refer), but despite their representations, the respondents, vide their letter of 19.12.2012, (Annexure A/13), decided to go ahead with the proposed reduction of pay and consequent recovery. Finally, vide impugned orders dated 07.01.2014, (Annexures A/1 and A/2), the representations of the applicants were rejected by the respondents stating that the pay of the applicants was to be fixed as per Rule 7(b) of the RSRP Rules, 1997 and thereafter, on promotion from Senior Clerk to Head Clerk as per FR(22)(i)(a)(i); (Annexures A/1 and A/2).

3. Aggrieved by the aforesaid orders, the applicants preferred this OA seeking the following relief:

- (i) That the respondents be directed to amend pay fixation allowed in the year 1999 w.e.f. 01/01/1996 of the applicants and to hold good fixation**

(4)

**allowed vide order dated 06/02/1999 (Annexure-A/5) by quashing orders dated 07/01/2014 (Annexure -A/1 & A/2) with the show cause notices dated 25.11.2010 (Annexure A/9 & A/10) with the any further order passed during the pendency of original application, in respect of both the applicants with all consequential benefits.**

- (ii) That respondents be further directed not to recover any so called over payment, if found after amendment of pay fixation and applicant be allowed to draw pay & allowances as drawn in the month of December 2013 with all consequential benefits.**
- (iii) Any other order/directions or relief be passed in favour of the applicants which is deemed just and proper under the facts and circumstances of this case.**
- (iv) That the costs of this application be awarded.**

**Interim order:**

**The respondents be restrained from amending pay fixation and not to recover any amount by staying operation of orders dated 07/01/2014 (Annexure - A/1 & A/2) in the interest of justice.**

4. This Tribunal in its order dated 20.01.2014 directed the respondents not to make any recovery in terms of the impugned orders dated 07.01.2014; (i.e Annexures A/1 and A/2).

(5)

5. The applicants contend that the action of the respondents in treating their pay fixation in the year 1996 as being erroneous after a period of 17 years is arbitrary, illegal and unjustified and since the earlier fixation, (Annexure A/5), was made suo motu by the respondents, questioning this in the year 1999 after a period of 14 years is barred by limitation; [para 5(g) of OA refers]. They also contend that other similarly situated persons continue to enjoy the revision of pay brought about by Annexure A/5 and that therefore, questioning their fixation and refixing their pay goes against the provisions of Articles 14, 16, 21 and 39 (d) of the Constitution; [para 5(e) of OA refers]. They aver that during the entire process of refixation of their pay, the respondents have nowhere disclosed how the pay fixation made earlier vide Annexure A/5 was wrong; [para 5(d) of OA refers].

6. In their reply to the OA, the respondents aver that as per Railway Board circular No.PC-V/97/I/11/24 dated 17.08.1998, (RBE No.186/1998 – Annexure R/1), there is a specific provision, [para 2(iii) of the circular – Annexure R/1 refers], for fixing the pay of personnel such as the applicants as follows:

**2 (iii) - Sr. Clerks who were in receipt of Special Pay as on 1.1.2006 would be fixed in the scale of**

(6)

**Rs.4500-7000 on that date. On promotion to the post of Head Clerks Rs.5000-8000 on a subsequent date, FR 22(a) (I) (i) I would be applicable.”**

7. They aver that in terms of the aforementioned RBE, 10% of the total number of posts of Senior Clerk were to be upgraded as Head Clerk in the pay scale of Rs.5000-8000, [para 2(i) of RBE No.186/1998 – Annexure R/1 refers), and that, as demonstrated in the fixation table at para-4 (ii) of the reply to the OA, the Head Clerk’s pay as on 01.01.1996 would come to Rs.5150/- and not Rs.5450/- as wrongly stated in the fitment table annexed at Annexure A/4. They contend that this has been further clarified and reiterated vide the WR HQ’s letter dated 19.12.2012; (Annexure A/13). The respondents aver that the incorrect pay fixation of the applicants made earlier vide order dated 06.02.1999, (Annexure A/5), was occasioned by the fact that the Railway Board circular of 17.08.1998, (RBE No.186/1998 – Annexure R/1), was not available to the respondents at the time of making the fixation and as a result, the fixation was made erroneously. Thereafter, vide Railway Board circular dated 22.04.1999, it was clarified that those employees who were getting Special Pay of Rs.70/- prior to 01.01.1996, their pay fixation in the 5<sup>th</sup> Central Pay Commission was to be effected in terms of Rule

(7)

7(1)(B) of the RSRP Rules, 1997, (Annexure A/14), which reads as follows:

**7 (1) (B) - in the case of employees who are in receipt of special pay/allowance in addition to pay in the existing scale which has been recommended for replacement of a scale of pay without any special pay/allowance, pay shall be fixed in the revised scale in accordance with the provisions of clause (A) above except that in such cases "existing emoluments" shall include-**

**(a) the basic pay in the existing scales;**

**(b) existing amount of special pay/allowance;**

**(c) admissible dearness allowance at index average 1510(1960=100) under the relevant orders; and**

**(d) the amounts of first and second instalments of interim relief admissible on the basis pay in the existing scale and special pay under the relevant orders;**

8. The respondents aver that when the above-mentioned procedure is followed in the case of the applicants, their pay gets fixed at Rs.5150/- per month on 01.01.1996 as shown in the table at para 4.2 of reply to the OA and not at Rs.5450/- per month as made out earlier vide Annexure A/5. The respondents contend, (Annexure R/3 refers), that the Accounts department of the respondent organisation brought up the issue of wrong fixation of the pay of the applicants and accordingly, after obtaining clarifications in terms of HQ level and Railway Board level orders as referred to earlier, the necessary corrections were made

(8)

after giving due notice to the applicants. Citing the case of **Chandi Prasad Unial and Others vs. State of Uttarakhand** (2012) 8 SCC 417, the respondents aver that the Hon'ble Supreme Court has ruled that any amount paid/received without authority of law is recoverable irrespective of whether the amount has been paid as a result of fraud or misrepresentation by the recipients or not. Accordingly, they contend that the refixation of pay as decided/effected vide the impugned orders at Annexures A/1 and A/2 are wholly justified and correct and consequently, the OA, being devoid of merit, be dismissed.

9. Learned counsels for the applicants and the respondents were heard and the material available on record was perused. In their arguments, learned counsel for the applicants and the respondents reiterated the points/grounds averred in the OA and its reply respectively. In addition, learned counsel for the respondents pointed out that the applicants had nowhere specifically challenged the contention of the respondents that as per law and rules, (i.e. RSRP Rules 1997), the pay of the applicants as on 01.01.1996 was to be fixed in terms of Rule 7(1)(B) of the said rules. This being so, he argued that the applicants could have no quarrel with the fixation correctly arrived at by the respondents in terms of the



(9)

rules/principles/directions referred to in the impugned orders at Annexures A/1 and A/2.

10. In this case, the contention of the respondents that the pay of the applicants as on 01.01.1996 was required to be fixed as per the provisions of Rule 7(1)(B) of the RSRP Rules, 1997 has not been effectively disputed or countered by the applicants. Likewise, the fitment tables presented on this basis at para 4(ii) of the reply to the OA have also not been specifically countered. Thus, merely because an error made earlier, (vide order dated 06.02.1999 – Annexure A/5), is sought to be corrected later, this in itself can be no ground for the argument/proposition that even after detection, the error should be allowed to continue to exist, especially when it involves excess payments from public funds. In this case, it is also noted that the rectification of the error in question has been effected after giving the applicants due notice and considering their replies to the same. As such therefore, we find nothing substantively wrong with the impugned orders at Annexure A/1 and A/2 which would justify intervention by the Tribunal.

11. Coming to the question of the proposed recovery of the excess payments made to the applicants however, it is

(10)

noticed that in the case of **State of Punjab and Others vs. Rafiq Masih** (2015) 4 SCC 334 the Hon'ble Apex Court has held that recoveries are impermissible in law in the following situations; (para/18 of judgment refers):-

**(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.**

12. In the present case, it is undisputed that the applicants are Group 'C' employees and that the excess payment in question has been made to them for a period in excess of five years. Thus, in terms of the situation detailed in sub paras (i) (iii) and (v) of para 18 of the aforementioned Apex Court order in the case of Rafiq Masih (supra), we find that any recovery from the applicants on

(11)

account of excess payments made to them suo motu by the respondent organisation is impermissible in law.

13. Given the foregoing position, while relief sought by the applicants in terms of the impugned orders dated 07.01.2014, (Annexures A/1 and A/2), being set aside are denied, the respondents are directed not to recover any excess payments made by them as a consequence of the fixation of the applicants' pay as on 01.01.1996 as per their earlier order dated 06.02.1999, (Annexure A/5), in the light of the directions of the Hon'ble Supreme Court in the case of Rafiq Masih (supra). Thus, the OA is partly allowed.

14. There shall be no order on costs.

15. Since the OA itself has been dismissed, therefore nothing survives in MA No.74/2020 and the same stands disposed of accordingly.

(A.Mukhopadhyaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/