



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/74/2015

Date of order : 10.2.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

MUKUNDA CHANDRA DINDA
VS.
UNION OF INDIA & OTHERS
(S.E. Railway)

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mrs. G. Roy, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant, aggrieved with deduction of Rs.71,612/- from his retiral benefits without notice, has come up with the following reliefs:-

- "a) Office order dated 23/11/2013 issued by the Workshop Personnel Officer, S.E. Rly., Kharagpur, cannot be tenable in the eye of law and as such the same may be quashed;
- b) An order do issue directing the respondents to grant leave salary of 64 days in favour of the applicant;
- c) An Order do issue directing the respondents to refund the amount of Rs.71,612/- which was deducted towards retirement benefits."

2. The applicant has alleged that the said deduction was without any opportunity and in view of several decisions of the Hon'ble Apex Court, deduction for an alleged overpayment cannot be made from retiral benefits and that he was actually entitled to 63 days' leave salary and such leave salary was not overdrawn by him. The order impugned in the present O.A. is extracted hereunder for clarity:-



SOUTH EASTERN RAILWAY

PENSION ADALAT-13

Office of the
Workshop Personnel Officer
Kharagpur-721301
Date: 23.11.2013.

No. P/Scn/511/PEN-ADALAT-13/4163

To
Sri Mukunda Chandra Dinda,
Vill. Rasikpur, Po. Haridaspur,
PS. Tamulak, Dist. Purba Medinipur.

Sub: Payment of leave Salary in favour of Sri Mukunda Chandra Dinda,
Ex. Tech-I, T.No. 8059, retired from railway service on 31.07.2012

This office is in receipt of your representation dated 25.10.2013 and your case has been figured against Pension Adalat Cases.

Your case has been deeply perused and the outcome is as under:-

The balance leave which was shown in the pay slip is marked as provisional and the final payment of leave salary was done at the time of retirement after certifying the Leave Record by associated accounts department.

In regard to your leave position, it is informed that 63 days were over drawn by you in different periods of your service which was deducted from the balance leave at credit during the time of certifying the leave record. The details of periods are shown here under:-

IInd Half 80	14½ Days	IInd Half 81	42½ Days
IInd Half 84	3½ Days	IInd Half 95	1½ Days
IInd Half 99	½ Day	IInd Half 03	½ Day
Total = 63 Days			

As such, after adjustment of above over drawn 63 Days, only 27 days of LAP were left at your credit which has been encashed to the tune of Re. 25,186/- and accordingly payment was made on the head of leave salary.

Please acknowledge the receipt.

Enc: Nil

(A.K. Mohapatra)
Asstt. Personnel Officer (W),
for Workshop Personnel Officer.

3. Per contra the respondents have submitted that in terms of Chapter VII of Railway Services (Pension) Rules, Para 81(4), service record along with leave record should have been sent to associated Accounts for final review not later than six months before the date of retirement of a railway servant. At final review it was observed that 63 days' LAP was availed in excess by the applicant during the period from 1980-2003 and the same was adjusted from his final LAP balance on 07.07.2012 and final LAP at his credit was certified as 27 days.

Accordingly he was paid leave encashment for LAP for 27 days amounting to Rs.25,186/-. Further that, on his representation dated 21.09.2012 to the Deputy Chief Personnel Officer(W), his case was included in the Pension Adalat and it got affirmed that LAP certified by Accounts Department was correct. Accordingly detailed position was intimated to the applicant vide order dated 23.11.2012. Further that, Rs.71,612/- as shown in "No demand" certificate dated 17.07.2012 was actually overpayment of wages for wrong fixation of pay during the period from January, 1986 to May, 1989 and October, 2011 to June, 2012 which was vetted by the Accounts and recovered at his retirement.

In support of their contention the respondents have relied upon the provisions of Rule 15 of Railway Pension Rules which is extracted hereunder for clarity:-

"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) *It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.*

(2) *The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).*

(3) *For the purposes of this rule, the expression "railway or Government dues" includes-*

(a) *dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee),. if any; .*

(b) *dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short*

collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant."



4. At hearing Id. counsel for the applicant would strenuously urge that the recovery being without notice, proceeding or opportunity of defence⁸ was bad. In support he would cite a decision of a Division Bench of this Tribunal dated 02.07.2018 in O.A.No.1248/2016, operative portion of which reads as under:-

"5. Since recovery of Rs.1,08,218/- from the salary of the applicant has been ordered without any show cause or notice or proceedings and in terms of the decision of *Rafiq Masih supra* which propounds that in case of 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" would be impermissible, the respondents are directed to refund the recovered amount to the applicant forthwith with liberty to act in accordance with law, if law permits."

5. In view of the settled position and since the amount stands already recovered, we direct the competent authority to look into the

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grievance of the applicant and consider his case in accordance with law and decisions cited. In the event the authority discern that the recovery was ordered without notice, the respondents shall refund the entire recovered amount to the applicant, with liberty to act in accordance with law.

6. Accordingly the O.A. stands disposed of. No costs.

(Bidisha Banerjee)
Judicial Member

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