



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.N0.060/00285/2020
 (Reserved on: 03.11.2020)
 Pronounced on: 20.11.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Sudhir Pal

aged 36 years

S/o Sh. Braham Pal,

working as Senior Clerk

O/o Senior Section Engineer (PWI),

Saharnpur (U.P) -247001,

Group – C.

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Applicant

(BY ADVOCATE: MR. R.K.SHARMA, ADVOCATE)

VERSUS

1. Union of India through General Manager,

Northern Railway,

Baroda House, New Delhi-110001.

2. Senior Divisional Personnel Officer, Northern Railway, Ambala
 Cantt-133001.

(BY ADVOCATE: MR. YOGESH PUTNEY, ADVOCATE)

Respondents



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 5.5.2019/11.5.2019 with notice dated 18.3.2019, vide which recovery of pay and allowances for the period from 23.7.2015 to 28.10.2016 has been ordered from him and for refund of the amount already recovered from him.

2. Before touching upon the issues raised in this case, let us have a bird's eye view of the relevant facts culled out from the pleadings of the parties. The applicant while working as Assistant Loco Pilot (ALP) was declared unfit for Category A-1 and A-2 and medically decategorized on 21.10.2010 by declaring him fit for A-3 category on 9.11.2010 and he was kept against a supernumerary post. He was again found medically unfit for A-1 and A-2 category and fit for A-3 category vide letter dated 1.10.2012. He was declared suitable for the post of Technician – II/Boiler Maker in Mech/Loco Department on 21.7.2014. Again, he was found unfit for Technician-II/Boiler Maker and fit for C-1 or below category as per Certificate dated 20.1.2015. He was recommended for alternative job on 3.7.2015 as Running Room Cook and Dresser on 2.12.2015. He did not join that post and submitted a representation for alternative post. The supernumerary post against which he was drawing salary was abolished on 30.12.2015. He remained on leave for certain period and performed duties under SSE, Saharanpur for the period from January, 2016 to August, 2016 and from 1.9.2016 to 27.10.2016, during pendency of his representation for alternative job. He was



re-deployed as Clerk-cum-Typist on 14.10.2016 where he joined on 28.10.2016. However, due to some audit objection a recovery of Rs.3,95,188/- for the period from 23.7.2015 to 28.10.2016 was ordered from him without any notice etc and started making recovery @ Rs.7432/- per month. Hence the O.A.

3. The applicant claims that he performed duties of a post under verbal orders of Senior DME (O&F), Ambala; his presence was also marked and there is no mis-representation or fraud on his part and as such, no recovery can be made from him which is otherwise contrary to view taken by Hon'ble Apex Court in JT 2015 (1) SC 195 titled **STATE OF PUNJAB VS. RAFIQ MASIH.**

4. The respondents have filed a reply. The facts are not disputed. They submit that applicant drew salary for the post which stood abolished. Mere marking of his presence does not make him entitled to claim salary for the period when the special supernumerary post was not in force. The alternative post requested after the appointment of the applicant on the alternative post vide order dated 22.7.2015 (Annexure R-2) was considered as "request posting" on consent in accordance with para 1311 of the Indian Railway Establishment Manual. Letter dated 22.7.2015, posing him as Running Room Cook on which he did not join and letter dated 26.10.2016 posting him as Clerk-cum-Typist are two distinct order(s) operating in different spheres. The former is an order posting him on an alternative post on medical decategorization whereas the latter is an order posting him on the requested post of Clerk-cum-Typist at the request of applicant himself in a lower grade pay. The recovery is permissible in view of P.S.No. 12144 of 2000 (Annexure R-1). They submit that after



making recovery, the carry home salary of the applicant is approximately Rs.50,000/- . The case of the applicant does not fall within any of the exceptions carved out by Hon'ble Apex Court in the case of Rafiq Masih (supra). Thus, they pray for dismissal of the O.A

5. We have heard the learned counsel for the parties at length and examined the pleadings on file with their able assistance.

6. The learned counsel for the applicant vehemently argued that since the applicant has worked against a post lawfully and his presence was marked and as such, salary drawn by him for such working cannot be recovered from him that too in violation of principles of natural justice and principles laid down by Hon'ble Apex Court in the case of Rafiq Masih (supra).

On the other hand, learned counsel for the respondents argued that such recovery is permissible as per rules and law and case of the applicant is not covered by the exceptions carved out in indicated judgement from any angle.

7. We have considered the submissions made on behalf of both sides minutely.

8. The facts on record indicate that indeed the applicant has worked against a post which was not there and stood abolished and drew salary also. He did not join the post offered to him. Now the question before us is as to whether if it is a mistake, is the Competent Authority well within its power and authority to correct and make recovery of over payment. The question has to be answered positively as it is



settled law that if there is an error on the part of the authorities, they can correct it and recovery can also be made. In this regard, reference can be made to JT 1997 (3) SC 536

(CHANDIGARH ADMINISTRATION VS. NAURANG SINGH), in which it was held that the Government is well within its right to take corrective measures regarding undue benefit which has been wrongly granted to some employees. Similarly, in (2005) 13 **(G. SRINIVAS VS. GOVT. OF A.P. & ORS.)** it has been held that an order passed by mistake or ignorance of relevant fact can be reviewed by the authority.

9. A perusal of order dated 22.7.2015, Annexure R-2, makes it clear that applicant was posted in PB Rs.5200-20200+GP Rs.2400/- under SSE/L/SRE with a clear cut stipulation that in terms of Headquarters Office, New Delhi, P.S.No.12144/2000 relating to alternative employment upon medical decategorization, the applicant had no option to reject the alternative post offered to him and in case he does not join the post, payment being made on Special Supernumerary post would be stopped immediately. Thus, the law of estoppel would operate against the applicant and in the peculiar facts of this case, the respondents have not committed any illegality or irregularity in correcting the error due to which applicant worked against a post to which he was never lawfully posted by passing any order.

10. In so far as plea of violation of principles of natural justice is concerned, it may be mentioned here that in the case reported as 2007 (4) SCC 54, **ASHOK KUMAR SONKAR VS. UNION OF INDIA & ORS**, the Hon'ble Supreme Court



held that principles of natural justice cannot be applied in a vacuum. They cannot be put in any straitjacket formula. It may not be applicable in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences.

11. Regarding decision in the case of Rafiq Masih (supra), it may be mentioned here that respondents have rightly explained that the case of the applicant is not covered by any of the exceptions carved out by their Lordships. It is not likely to cause any hardship to the applicant as he is going to retire in 2042 and would be having carry home salary of more than Rs.50,000/- per month and in any case considering the fact that applicant had no other option but to join the post in terms of Annexure R-2 and he had no right, whatsoever, to reject the alternative post offered to him so the decision will not help him in view of peculiar facts of this case.

12. In the wake of the above discussion, this O.A. is found to be devoid of any merit and is dismissed according, leaving the parties to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 20.11.2020

HC*