

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01502/2014

HYDERABAD, this the 20th day of January, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



S.A.Rahim, Mail Guard, aged 57,
S/o Late Nazar,
O/o Station Manager,
S.C. Railway, Vijayawada Railway Station,
Vijayawada, Krishna, AP, 520001.

...Applicant

(By Advocate : Mr.Ch. Satyanarayana Murthy)

Vs.

1.Union of India,
Rep by its Chairman to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi.

2.The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3.The Senior Divisional Personnel Officer,
South Central Railway, Office of Divisional Railway
Manager, Vijayawada Division, Vijayawada 520001.

....Respondents

(By Advocate : Mr. N. Srinatha Rao, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed aggrieved by downward revision of pay of the applicant from Rs.23,080/- to Rs.22,400/- and recovery of alleged excess payment of Rs.56,622/- and for restoration of promotional increment granted at the time of promotion as Passenger Guard on 30.12.2009.

3. Brief facts of the case are that the applicant was promoted as Sr. Goods Guard on 1.8.2003 in the pay scale of Rs.5000 – 8000 on a non functional basis. Thereafter he was promoted to the functional post of Passenger Guard on 30.12.2009 and pay fixed as per FR 22/1313 (1) (a) (1) of IREC Vol-II with G.P of Rs.4200. However, pay was reduced and revised on 6.3.2014 violating Rule 13 of Railway Services (Revised Pay) Rules, 2008 and have ordered recovery of the alleged excess amount paid without notice. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the instructions of the Railway Board vide RBE Nos. 54/2014, 95/2013 and RS (RP) 2008 Rules were not followed. Without notice, recovery was ordered and the judgment of the Hon'ble Supreme Court in Rafiq Masih case was violated.

5. Respondents in their reply statement state that the applicant was promoted as Sr. Goods Guard on a non-functional basis w.e.f. 1.11.2003 in the pay scale of Rs.5000-8000. Thereafter, applicant was promoted as Passenger guard on 4.12.2009 with grade pay of Rs.4200 and Mail Guard w.e.f 11.9.2013 with grade pay of Rs.4200. Pay was fixed as per Railway



Board letter dated 8.10.2003 when the applicant was promoted as Passenger Guard from Sr. Goods Guard by allowing the 3% increment, by mistake. As per Rule 13 of RS (RP) Rules 2008, only when there is a change in the grade pay/ pay band, an increment to the extent of 3% of previous pay plus grade pay is added to arrive at the new pay. Subsequently, when the applicant was promoted from Passenger Guard to Mail Guard, as there was no change in grade pay, the increment @ 3% was not allowed. Nevertheless, on detecting that a mistake that was committed in allowing the increment when the applicant was promoted from Sr. Goods Guard to Passenger Guard in 2009 though both the posts were in the same grade pay, it was withdrawn by informing the applicant on 6.3.2014. However, Railway Board in RBE No. 95/2013 has clarified that the 3% increment can be allowed when a promotion is effected from Passenger Guard to Mail Guard though both the posts have identical grade pay. Hence, the same was allowed which has more or less set off the withdrawal of increment allowed on promoting the applicant from Sr. Goods Guard to Passenger Guard. Ultimate result has been that the pay of the applicant has not undergone any change except for some recovery of Rs.56,622/-. The same action was taken in respect of other staff like running staff, Technicians, Matrons etc.

Applicant filed rejoinder, more or less, reiterating the contentions made in the OA.

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

7. I. The dispute is about reducing the pay of the applicant and ordering of recovery of Rs.56,622/- from the pay. To understand the

controversy, the career record of the applicant is traced hereunder, along with the grade pay.



S.No	Post	Pay Scale /Grade Pay in Rs.	Date of appt/ promotion
1.	Goods Guard	4500 – 7000 pay Scale – 5 th CPC	
2.	Sr. Goods Guard	5000- 8000 revised to PB-2 with GP of Rs.4200 – 6 th CPC	1.11.2003
3.	Passenger Guard	5000- 8000 – PB-2 with GP of Rs.4200 – 6 th CPC	4.12.2009
4.	Mail Guard	5500- 9000 – PB-2 with GP Rs.4200 – 6 th CPC	11.9.2013

Rule 13 of RS (RP) Rules 2008 permits grant increment of 3% of previous pay plus the grade on promotion, if there is change in grade pay or pay band consequent to effecting the promotion. The rule is extracted here under for reference:

“In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:

i) One increment equal to 3% of the sum of the pay in pay band and the existing grade pay will be computed and rounded off to next multiple of 10.”

Thus, as per the rule cited above, grant of 3% increment when the applicant was promoted as Passenger Guard in 2009 with the same grade pay of Sr. Goods Guard was incorrect and hence, the respondents informed the overpayment vide letter dated 6.3.2014 and reduced the pay of the applicant appropriately. Besides, ordering a sum of Rs.56,622/- to be recovered vide letter dated 12.08.2014.

II. Again, when it came to the promotion from Passenger Guard to Mail Guard, initially respondents have not granted the 3% increment as the grade pay being similar for both the posts. However, Railway Board vide RBE No. 95/2013 dated 12.09.2013 has taken a policy decision to grant 3% increment for promotion from Passenger Guard to Mail Guard albeit the

grade pays are identical. Net effect is that the increment which was withdrawn while promoting the applicant to Passenger Guard has been restored by granting the same on promoting the applicant as Mail Guard. Thus, there would be no change in the pay of the applicant as has been brought out by the respondents in the reply statement, as under:



Pay Band/ GP	Date w.e.f.	Basic Pay fixed earlier	R-fixed	Remarks
PB-2+GP. 4200	1.7.09	22400	22400	As Sr.G. Gd (1.11.03)
PB-2+GP. 4200	14.12.09	23080	22400	Sr. Pass Guard prom. Same GP
PB-2+GP. 4200	1.7.10	23780	23080	Increment
PB-2+GP. 4200	1.7.11	24500	23780	Increment
PB-2+GP. 4200	1.7.12	25240	24500	Increment
PB-2+GP. 4200	1.7.13	26000	25240	Increment
PB-2+GP. 4200	11.9.13	26000	26000	Mail Guard Promotion SC 86/13

III. However, in the process of re-fixing the pay after an interval of time, a recovery of Rs.56,622/- has been ordered, which the applicant states is against the judgment of the Hon'ble Supreme Court Rafiq Masih case. The relevant portion of judgment in Rafiq Masih case is extracted hereunder:

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) and (v) cover the case of the applicant. The applicant is from the running cadre which belongs to Group 'C' cadre and forms part of the lower management of the respondents organization. However, the Ld counsel for the respondents states that the applicant was informed of the excess payment on 6.3.2014 and therefore, recovery can be done since he was put on notice.



IV. True, but the Rule 1023 of IRAC of the respondents which is statutory in nature, states as under:

“The correctness of the emoluments on the first date of the ten months period would naturally depend on the correctness of the emoluments prior to this date. However, any such check of the correctness of past emoluments should not become an occasion for an extensive examination going back into the distant past, the check should be minimum which is absolutely necessary and it should in any case not go back to a period earlier than a maximum of 24 months preceding the retirement.”

As per the above provision of IRAC code the respondents are not permitted to make the recovery since the mistake was committed in 2009 and recovery was ordered in 2014. Applicant has later retired from service in 2017. The time limit specified in the IRAC code was not adhered to by taking up the check into the distant past. Therefore, as far as the recovery is concerned the action of the respondents is against rules. Hon'ble Supreme Court has observed in a series of judgments, that rules cannot be violated, as under:

*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “the court cannot de hors rules*

V. As admitted by the respondents, it was their mistake in allowing the increment @ 3% when the applicant was promoted from

Sr. Goods Guard to Passenger guard and therefore they are trying to rub of their mistake on to the applicant which is not permitted as observed by the Hon'ble Supreme Court in a series of judgment as under:



*The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

Therefore, ordering recovery from the applicant is against the legal principles laid down by the Hon'ble Apex Court cited supra. In regard to the fixation of pay, there is no difference of pay as was brought out in paras supra. Restoring the promotional increment granted at the time of promotion as Passenger Guard, as sought by the applicant, is impermissible under the rules cited supra.

VI. In view of the above, the memo dated 12.08.2014 issued by the respondents to the extent of recovery, in so far as the applicant is concerned, is set aside and in case any amount has already been recovered from the applicant pursuant to the said Memo, the same has to be refunded to him, within a period of 3 months from the date of receipt of this order.

VII. With the above direction, the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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