

**ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00478/2020

HYDERABAD, this the 9th day of October, 2020



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

M. Ravi Babu, IRTS,
S/o M. Venkata Ramaiah, aged 59 years,
Chief Administrative Officer (Systems)(Group -A/Gazetted),
O/o Passenger Reservation Systems,
Passenger Reservation Complex, South Central Railway,
Secunderabad.
R/o H.No.8-2-338/7, Road No.3, Panchavati Colony,
Banjara Hills, Hyderabad-500 034.

...Applicant

(By Advocate : Mr. K.R.K.V. Prasad)

Vs.

1. Union of India Rep by
The Secretary, Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi-110 011.
2. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad-500 071.
3. The Principal Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad-500 071.
4. The Principal Financial Advisor,
South Central Railway, Rail Nilayam,
Secunderabad-500 071.

....Respondents

(By Advocate : Mr. S. M. Patnaik, SC for Railways)

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

Through Video Conferencing:

2. The O.A. has been filed in regard to recovery and pay fixation by challenging the order dated 6/7.8.2020 read with letter dated 15.7.2020 & 21.8.2020 of the respondents.



3. The brief facts of the case are that the applicant worked as an IRTS officer in the Higher Administrative Grade and was due to retire on 31.8.2020. Without any notice, respondents issued the impugned letter dated 7.8.2020, informing the applicant that his pay w.e.f. 1.7.2017 is re-fixed with attendant recovery from pensioner benefits. Applicant submitted a representation citing relevant instructions in response to the impugned order dated 21.8.2020. Aggrieved that his pension would be adversely impacted, applicant filed the present O.A.

4. The contentions of the applicant are that revising his pay just before retirement is illegal and arbitrary. He claims that his case is fully covered by the judgement of the Hon'ble Supreme Court in *State of Punjab & Others vs Rafiq Masi & Others*. The action of the respondents pertains to correction of a mistake committed by them 13 years back. Such correction is not permitted under Rule 1023 of Indian Railway Accounts Code. Besides, the recovery proposed by the respondents is against the Railway Board's order RBE No.27/2009 dated 6.2.2009. Applicant contends that he should not be made to suffer for the mistake committed by the respondents. The case of

the applicant is fully covered by the order of this Tribunal in O.A. No.1193/2018.

5. The respondents in their reply statement state that during the introduction of VI CPC, the applicant was on deputation with Rail India Technical and Economic Service (RITES) from 22.12.2006 to 27.12.2001. He was also on deputation to NIRD from 3.2.2014 to 2.12.2016. Further, he went on deputation to CRIS from December, 2016 to 31.1.2019. After the series of deputations, the applicant returned to the respondents organization on 4.2.2019. The respondents claim that the annual increment granted to the applicant on 1.7.2017 by mistake has resulted in drawing one extra increment which is not admissible. This discrepancy in the payment of additional increment has come out only when the records were verified, keeping in view his superannuation on 31.8.2020. Therefore, the applicant was asked to pay the excess amount paid to him. Applicant did make a representation, which was responded to by giving reasons for the recovery. The incorrect drawal of one additional increment occurred when the applicant was on deputation with RITES. Consequently, there was no scope to recover the excess amount paid from the official who was responsible for the mistake. The excess amount to be recovered is Rs.2,52,060 whereas his retiral benefits were nearly Rs.1,00,00,000/-. Hence, recovery of an amount of Rs.2,52,060/- would not put the applicant to any financial hardships. The excess amount paid to the applicant is public money and, therefore, it has to be recovered excepting in cases of extreme hardships. Rule 15(2) & (4)(i)(b) of Railway Servants (Pension) Rules, 1993 allow recovery of Govt. dues such as overpayment of pay and

allowances remaining outstanding till the date of retirement. The applicant cannot be said to face any hardship by recovering a small amount around Rs.2,00,000/- vis-à-vis his retiral benefits. The judgement of the Hon'ble Supreme Court in Rafiq Masih& case does not apply to the case of the applicant since he belongs to Group -AØ service. OA No.1193/2015 allowed by this Tribunal pertains to Group -CØ employee. The Principal Bench of C.A.T., New Delhi in their orders dated 8.8.2019 in OA No.3440/2018, while dealing with the case of a Group -BØ Gazetted Officer held that the said case does not come under the ambit of parameters laid down by the Hon'ble Supreme Court in Rafiq Masih& case. The respondents also cited the judgement of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others vs State of Uttarakhand & Others** in support of their defence.

6. Heard Sri K.R.K.V. Prasad, learned counsel for the applicant and Sri S.M. Patnaik, learned counsel for the respondents, and perused the pleadings on record.

7. The issue is in regard to recovery from the salary/ pension of the applicant on account of wrong drawal of an increment to the applicant 13 years ago. The respondents state that this mistake took place when the applicant was on deputation to the RITES. After returning to the parent organization, the details of the applicant in respect of salary etc., were verified and the mistake was detected just before his retirement and hence recovery was ordered. Applicant takes the defence that he is fully covered

by the judgement of the Hon^{ble} Supreme Court in Rafiq Masih^Øs case.

The relevant portion of the judgement is extracted hereunder:



ö18. 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 hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employees would be impermissible in law:

- i) Recovery from the employees belonging to Class-III & Class-IV service (or Group-C or Group-D service)
- ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery
- iii) Recovery from the 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^Øs right to recover.ö

Respondents state that since applicant is a Group A^Ø officer, he would not come under the ambit of the Hon^{ble} Apex Court judgment referred to. As is seen from the above judgement of the Hon^{ble} Apex Court, the case of the applicant is fully covered by clause (ii) and clause (iii) cited supra. The recovery is ordered in respect of irregular increment drawn 13 years back, which is covered by clause (iii). Applicant retired on 31.8.2010 and hence clause (ii) covers his case. Further, it is pertinent to point out that applicant has not committed any mistake or did he misrepresent nor did he commit a fraud to earn the additional increment which was granted to him. Respondents have made the mistake and the mistake of the respondents

should not recoil on to the applicant as laid down by the Hon'ble Supreme Court in a catena of judgments 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.”*

Further, the case of the applicant is also covered by Rule 1023 of IRAC.

The rule is extracted here 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 IRAC code cited, the financial details of the applicant have to be reviewed 2 years before his retirement and any recovery should not be made for an improper entry earlier to two years of the retirement of the applicant. Hence, any recovery would be violative of cited rule which is statutory in nature.

Respondents have stated that the recovery can be affected keeping in view the judgement of the Hon'ble Supreme Court in **Chandi Prasad Uniyal & Others vs State of Uttarakhand & Others**. In this case, the respondents themselves have issued a statutory guideline under IRAC referred to above.

When the respondents have a statutory guideline, they have to abide by it. The Hon'ble Supreme Court has laid down the law stating that rules have to be abided by 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 dehors rules"*

Hence, the respondents citing the judgement of the Hon'ble Supreme Court in Chandi Prasad Uniyal's case would not come to their rescue.

Besides, the Principal Bench judgement in O.A. No.3440/2018 is not applicable to the applicant's case since the IRAC code applies to the Railway employees and, therefore, the order passed by the Principal Bench in respect of CPWD employees cannot be applied to the instant case.

Thus, in view of the above, the case of the applicant is fully covered by Rafiq Masih's case as well as the statutory instructions contained in IRAC code referred to above. Hence, respondents are directed not to make any further recovery from the applicant and if any recovery is made, it shall be refunded to the applicant. However, in view of the irregular drawal of the additional increment, the respondents are permitted to take necessary action to refix his pay/pension, as per the relevant rules and in accordance with law. Time period allowed to implement the order is 3 months from the date of receipt of a copy of this order.

With the above direction, the O.A. is allowed to the extent indicated. No order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

/pv/

(ASHISH KALIA)
JUDICIAL MEMBER