

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00545/2020

HYDERABAD, this the 18th day of September, 2020.

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



Mr. B. Siva Shankar Rao, 63 years,
Occupation Retired as OS Group 'C',
In the office of Sr.DPO/E.Co.Rly Waltair,
Resident of H.No.49-38-20, Ushavathi Nilayam,
NGGO's Colony, Akkayyapalem,
Visakhapatnam 530016.

...Applicant

(By Advocate : Mr. B. Rama Mohana Rao)

Vs.

1. The Union of India Rep by General Manager,
East Coast Railway, Chandrasekharapur,
Bhubaneswar, Odisha 751016.
2. Secretary Railway Board, Rail Mantralaya,
Rail Bhavan, New Delhi-01.
3. Joint Director (P&A),
Railway Board, Metro Railway Station,
Pragathi Maidan, New Delhi.
4. Principal Chief Personnel Officer,
East Coast Railway, Rail Sadan,
Chandrasekharapur, Bhubaneswar 751016.
5. Principal Financial Advisor &
Chief Accounts Officer,
East Coast Railway, Bhubaneswar.
6. Divl. Railway Manager,
E.Co., Rly. Waltair Division, Dondaparthi,
Visakhapatnam Andhra Pradesh.
7. Sr.Divl.Finance Manager,
E.Co.,Rly. Waltair Division,
Visakhapatnam Andhra Pradesh.
8. Sr. Divl. Personnel Officer, E.Cos.Rly.
Waltair Division, Visakhapatnam, Andhra Pradesh.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 challenging the action of the respondents in reducing the pay of the applicant from Rs.56,900/- to Rs.52,000/- vide their letter dated 29.8.2017.

3. The brief facts of the case are that the applicant retired as Office Superintendent on 31.08.2017 while working for the Construction Organization, which is a Wing of the respondent's organization. The applicant's pay drawn in the Construction Organization was protected by the Open Line Division of Waltair, even after the applicant joined in the Open Line Division as Senior Clerk. The pay of the applicant was fixed from time to time from the date of his joining the Open Line Division w.e.f. 22.7.2004 to 31.7.2017. The pay of the applicant was reduced from Rs.56,900/- to Rs.52,000/- by issuing the impugned order dated 29.8.2017, and the respondents have also recovered an amount of Rs.4,21,045/- from the retiral benefits payable to the applicant, without issuing any notice. The respondents have also violated the Railway Board instructions on the subject, while reducing the pay and recovering the amount from the applicant. After coming to know about the reduction of pay and recovery of alleged over payment, the applicant represented to the respondents on 27.6.2017 followed by another one on 26.6.2020. There being no response till date, the O.A. has been filed.

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4. The contentions of the applicant are that reduction of his pay, without giving protection to the pay drawn by him in the Construction Organization in the cadres of Junior Clerk & Senior Clerk on ad hoc basis, followed by regularization in substantive capacity is illegal and arbitrary.



The respondents have not followed the principles of natural justice in reducing the pay and recovering the amount. Besides, the Railway Board orders issued vide RBE No.72/2015 issued pursuant to the law laid down by the Hon'ble Supreme Court in State of Punjab & Others Vs Rafiq Masih & Others, have also not been followed. The respondents initially fixed the pay of the applicant properly but at the time of retirement, they unilaterally withdrew the same, which is in violation of the Rule 1313 of Indian Railway Establishment Code Vol.II. The applicant has cited judgements of the superior judicial forums in support of his contentions. The applicant contends that he has worked against sanctioned posts of Junior Clerk & Senior Clerk in the Construction Organization for more than one and half decades in both adhoc and substantive capacity. The applicant reported to the Open Line Waltair Division in a substantive capacity . to join the post of Senior Clerk in the year 2004. From 2004 onwards till 31.7.2017, the applicant's pay has been protected. Hence the recovery ordered and the reduction of pay is arbitrary and illegal.

5. Heard Sri B. Rama Mohan Rao, learned counsel for the applicant and Sri S.M. Patnaik, learned counsel for the respondents and perused the pleadings on record.

6. The issue is regarding reduction of the pay of the applicant and ordering recovery from his retiral benefits. The applicant claims that as



per the relevant Railway Board instructions, reduction of pay and recovery are impermissible. The applicant has also cited the judgement of the Hon'ble Supreme Court in Rafiq Masih's case in support of his contention that no recovery should be made from retired employees. He has also cited many judgements of superior judicial forums in support of his contentions. For resolution of the grievance the applicant represented on 27.6.2017 & 26.6.2020 which have not been disposed of till date. The Tribunal would be able to do justice once the respondents dispose of the representation so that there could be a clear view as to whether the respondents would concede to the request and if not, the reasons thereof. Thereupon, the Tribunal thereupon can adjudicate on the issue, if required. Hence, in view of the above, the respondents are directed to dispose of the representations of the applicant within a period of 8 weeks from the date of receipt of this order in accordance with the relevant rules and as per law, by issuing a speaking and a reasoned order.

With the above direction, the O.A. is disposed of at the admission, without going into the merits of the case. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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