

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/214/2020
with
MISC. APPLICATION NO. 291/400/2020**

Order reserved on 18.11.2020

DATE OF ORDER: 24.11.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Ghan Shyam Singh son of Late Shri Sukh Lal, aged about 59 years, Resident of 929/43, New Rajeev Nagar, Dholi Bhata, Ajmer – 305008 and presently working as Senior Technician (MCF) Ticket No. 58804/31), Shop No. 31, under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.

....Applicant

(Group-C, Mob: 80033-65970)

Shri C.B. Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur – 302017.
2. Chief Works Manager, Carriage Work Shop, North Western Railway, Ajmer Division, Ajmer – 305001.

3. Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.
4. Senior Divisional Finance Advisor & Accounts Officer, Carriage Work Shop & Store, North Western Railway, Ajmer Division, Ajmer – 305001.

....Respondents

Shri M.K. Meena, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(i) That the respondents may be directed to hold good pay & allowances at the stage of Rs. 50500 (level-6) as on 31/05/2020 with the benefits of annual increment as on 01/07/2020 by quashing order dated 27/04/2020 (Annexure-A/1) with all consequential benefits.
- (ii) That respondents be further directed not to recover any amount from pay & allowances and further retirement benefits of the applicant and to hold good the pay fixation allowed time to time prior to passing order dated 27/04/2020 (Annexure-A/1) by quashing any other order passed by the respondents showing recovery which nowhere served upon the applicant with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Waterman in 1980 and thereafter appointed as a Khallasi in 1986. After working on several posts, finally he was working as Senior Technician (MCF) as per order dated 28.10.2005 (Annexure A/2). He was allowed pay and allowances after due fixation since 2003 and time to time his service records were verified by the Accounts Department. He was granted further promotions and lastly his pay was fixed in level 6 as per recommendations of seventh pay commission as Rs. 44900 as on 01.01.2016 and his pay became Rs. 50500/- as on 01.07.2019 after allowing annual increments and the same has been reduced by respondents as Rs. 49000/- instead of Rs. 50500/- as on 01.07.2019 as per order dated 27.04.2020 on the ground that his pay fixation as on 01.11.2003 was wrong. However, as per his pay slip of May 2020 (Annexure A/4) his pay was Rs. 50500/-. Since his date of birth is 28.11.1960, he is due to retire on 30.11.2020 and just prior to his retirement, respondents re-fixed his pay since 2003 i.e. for last 17 years and recovery was ordered. The respondents on

recovery only alleged that his pay fixation as on 01.11.2003 was wrong and only shown that pay and allowances from Level-6 to Level-5 as per order dated 27.04.2020 in spite of the fact that the applicant is entitled for his pay as per Level-6 holding the post of Senior Technician (MCF). The applicant represented vide request dated .06.2020 (Annexure A/6) but he has not received any reply to the same. As per impugned order dated 27.04.2020 (Annexure A/1), he was informed that wrong fixation has been done in his service book, which has been corrected and, therefore, fixation has been correctly done. But it is to submit that the re-fixation of his pay has been done without hearing him and without considering his representation. The applicant has also relied on several OM/circulars of D.O.P.T. as well as Railway Board on the issue of wrongful recovery of excess payments made. Therefore, he states that the action of the respondents is arbitrary, illegal and unjustified. Hence, he has approached this Tribunal for quashing the order dated 27.04.2020 (Annexure A/1) with all consequential benefits.

3. This Tribunal issued notices to respondents and vide its order dated 16.06.2020, as an interim

measure, granted stay towards order dated 27.04.2020 on recovery till the next date of hearing.

It was also observed in the said order dated 16.06.2020 that any other action for any prospective revision of pay/pension following this order will be subject to the outcome of this O.A.

4. The respondents, after issue of notices, have filed their reply. Respondents stated that the applicant was working in Grade Rs. 3050-4590 and promoted to Grade Rs. 4000-6000 and minimum benefit of Rs. 100/- was to be given at the time of promotion as per Railway Board's letter No. E(P&A)773/0 Vol VII dated 27.10.1999, so the employee should get: $3875+100=3975/-$ (stage available). But he was wrongly given Rs. $3875+100+300=4275/-$. As per above, one additional increment of Rs. 300/- was wrongly given to the employee, which was not admissible to him. Therefore, the pay of the applicant has been corrected as per office order No. 115/2020 dated 27.04.2020.

Also as per IREC Para 1327 (FR 31-A), it is clear that any type of excess payment may be recovered any time from employee's payment. Therefore,

respondents stated that as there were inadvertent mistake in re-fixation of pay of the applicant, the same were rectified and proper re-fixation has been done as per rules.

5. The respondents have also filed an M.A No. 400/2020 for vacation of Interim order dated 16.06.2020 stating that due opportunity was granted to the applicant for filing representation but without waiting for the outcome of the said representation, the applicant filed the present O.A. The respondents prayed that since increment of Rs. 300/- was wrongly given to the applicant, which was not admissible to him, therefore, they should be allowed to correct the same as per office order dated 27.04.2020 else they will suffer irreparable loss.

6. Heard learned counsels for the parties through Video Conferencing and perused the material available on record and also the judgments produced by the parties.

7. Learned counsel for the applicant submitted that the applicant was allowed due fixation of pay as per the orders issued by the respondents from time to time, which was checked by the Accounts Department

regularly for promotions, etc. The action of the respondents to reduce the pay of the applicant at the verge of his retirement and that too after 17 years is not justified and, as such, the action of the respondents is liable to be quashed and set aside. The respondents have not followed principles of natural justice and did not disclose the facts under which adverse action of recovery was taken by them. The respondents are recovering the amount for no fault of the applicant and that he has never misrepresented while benefits and pay and allowances were granted to him. The applicant relied on the following judgments/orders:-

- i) State of Punjab & Others vs. Rafiq Masih (White Washer) & Others, reported in 2015 (2) SCC (L&S) 33.
- ii) Norat Mal vs. Union of India & Others, decided by Jaipur Bench of this Tribunal vide order dated 16.12.2019 and confirmed by the Hon'ble High Court of Rajasthan, Jaipur Bench vide judgment/order dated 19.02.2020 in D.B. Civil Writ Petition No. 1774/2020.
- iii) Swaroop Narayan vs. Union of India & Ors. (OA No. 620/2019) decided by Jaipur Bench of this Tribunal vide order dated 21.08.2020.

8. On the other hand, learned counsel for the respondents vehemently argued that it was brought to the notice of the applicant by order dated 27.04.2020

that irregularity pertaining to his pay has been found while going through the service book for which he was not entitled and, therefore, recovery of excess payments will be carried out. He was also given a chance to put his say/represent on the same within five days of receipt of the said order/letter. But the applicant instead of waiting for the final outcome on his representation, immediately approached this Tribunal challenging the said communication/letter dated 27.04.2020 and obtained stay vide order dated 16.06.2020. It was further argued that at least respondents have a right for proper pay fixation and can rectify the mistake else they will suffer heavy monetary loss, which is irreparable and, therefore, the discrepancies are bound to be corrected. Thus, respondents state that there is no illegality in their orders and the present Original Application deserves to be dismissed. The respondents relied on the order dated 09.10.2019 passed by Chandigarh Bench of this Tribunal in the case of Jagir Ram vs. Union of India & Others (OA No. 060/1262/2017) wherein recovery was permitted to be effected and respondents were also allowed to make adjustment of Government dues such as over payment on account of pay and

allowances or other dues even from retirement benefits even without obtaining consent of an employee/retiree.

9. It is clear that the facts are not in dispute with regard to applicant's appointment as well as his several promotions and that he will retire on 30.11.2020. It is also clear from the service book entries that the applicant has been promoted on several occasions and the same has been entered in his service records regularly. On several promotions, his pay was fixed accordingly. Time and again, on several occasions, his service book must have been verified by the concerned authorities for making the said entries as well as by the applicant, who has got the pay benefits. The respondents have shown due fixation since 2003 and have observed in its order dated 27.04.2020 that the applicant should be ready for the recovery. It is seen that the applicant's salary will be reduced from Rs. 50500/- to Rs. 49000/-. He was given five days' time to submit any grievance if such as per the order dated 27.04.2020. The applicant has made a representation before the authorities in the month of June, 2020 (Annexure A/6) stating that no recovery should be carried out as he is retiring on

30.11.2020 and that he is informed about wrong fixation almost only 06 months prior to his retirement along with other submissions. On the other hand, respondents stated that the applicant without waiting for the representation to be decided and without waiting for the final order, approached this Tribunal. It was further stated by the respondents that applicant's service records have been re-checked and verified and it is found that in his service records, there are several discrepancies, which are required to be rectified and, therefore, the pay fixation about to be done as per order dated 27.04.2020 was an intimation to the applicant that the mistake in his pay requires to be corrected as the fixation was wrong. Thus, according to the respondents, their action is just and proper.

10. It is also clear that the pay fixation in the case of the applicant has been verified time and again, but around 06 months before his retirement, respondents informed the applicant that his pay fixation is not proper and so re-fixation was carried out since 2003. Though, the respondents have informed the applicant but the same was done only 06 months prior to his retirement. The respondents should have checked the

incorrect fixation at the relevant time of recording entries in his service book to avoid embarrassment and financial loss to them. It is clear that the applicant neither was at any fault nor he has misrepresented. Also the respondents came out with wrong fixation only during his retirement. The case of the applicant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (supra) and it is clear that no recovery shall be made from either retired employees, or employees who are due to retire within one year, of the order of recovery. Also in the present matter, no recovery can be made from the employee, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. Also no recovery can be made from a Class III or Class IV employee.

11. As far as the case of Jagir Ram (supra) relied by the respondents is concerned, the same is not applicable to the present case as the facts of the said case and present case are different. The question in dispute in Jagir Ram's case was with reference to mistake in considering the period as qualifying service, which was arbitrarily reduced and in violation of principles of natural justice.

12. As far as the case of Norat Mal (supra) relied by the applicant is concerned, the Tribunal as well as the Hon'ble High Court of Rajasthan has held that no recovery could be effected from the applicant with regard to the retiral benefits liable to be paid in view of the decision of the Hon'ble Apex Court in the case of Rafiq Masih (supra). It was also observed by the Hon'ble High Court in its order dated 19.02.2020 that the Tribunal has rightly held that the order whereby the pay of the applicant has been reduced was liable to be set aside and the Tribunal has rightly directed the petitioners to pass a fresh order in accordance with law after affording an opportunity of hearing to the applicant. In the said order, the Hon'ble High Court has dismissed the Writ Petition filed by the Union of India - respondents but have observed that in case, after passing a fresh order any reduction in pension of the respondent i.e. the said applicant is to be made, the same would be applicable with prospective effect. If the present case in hand is seen, the applicant without waiting for the final order has approached the Tribunal and the recovery part was stayed by the Tribunal as an interim measure. It was clearly observed in order dated 16.06.2020 that

any other action for any prospective revision of pay/pension following this order will be subject to the out-come of the O.A. It is also seen that the applicant had neither waited for the final order nor for his representation to be decided. It is clear that he filed his representation in June 2020 and filed the present O.A. on 12.06.2020. As the applicant was given an opportunity to put his say on the order dated 27.04.2020, it cannot be said that the applicant was not put to notice. But at the same time, the respondents are also trying to show that the pay fixation of the applicant is wrongly done since 2003 and that too when hardly 06 months is remaining for the applicant to retire. Therefore, as far as recovery part is concerned, in view of the judgment passed by the Hon'ble Apex Court in the case of Rafiq Masih (*supra*), recovery cannot be effected from the pay of the applicant. Since the applicant is due to retire on 30.11.2020, they can pass a fresh order towards his pay fixation after affording an opportunity of hearing in accordance with law but with prospective effect. This apart, also as per IREC Para 1327 (F.R. 31-A) of the Railways, *the pay of a railway servant, who promotion / appointment to a post is found to be or to*

have been erroneous, shall be regulated in accordance with any general or special orders issued by the competent authority in this behalf. Thus, it is clear that any type of excess payment can be recovered at any time from the employee.

13. Also as far as the applicant's submission that the present case is exactly identical to the case of Swaroop Narayan, OA No. 620/2019, (supra) decided by Jaipur Bench of this Tribunal, cannot be accepted as in the said case, final orders were passed after giving a notice to the applicant and he already stood retired. In the present case, only notice was given to the applicant and the applicant without waiting for the final orders as well as without waiting for the outcome of the representation obtained stay on recovery. Also in the present case, the Tribunal had made clear while passing the interim orders on recovery that any other action for any prospective revision of pay/pension following this order will be subject to the outcome of the O.A.

14. Thus, in view of the observations made above, the present Original Application is allowed and the impugned order dated 27.04.2020 (Annexure A/1) is

quashed and set aside and the respondents are directed to re-visit the pay fixation of the applicant and pass fresh orders, if any, of re-fixation of his pay/pension after giving an opportunity of hearing to him and the same would be applicable only with prospective effect from the date of passing such order.

No order as to costs.

15. In view of the order passed in the Original Application, Misc. Application No. 291/400/2020 for vacation of interim order dated 16.06.2020 is hereby dismissed.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat