

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/00465/2019

Dated this Friday the 28th day of February, 2020.

Coram : Dr.Bhagwan Sahai, Member (Administrative)

Mr.Surendra Kumar Tripathi,
Senior Section Officer (Retired),
From the office of Dy. FA&CAO (C),
Dadar Central Railway Station,
Mumbai - 400 014.

R/o. Flat E-601 Laxmi Park,
Kanchan Gaon, Thakurli,
Dist. Thane Maharashtra-421201. .. Applicant.

(In Person).

Versus

1. General Manager, through
PFA (Pension),
3rd Floor, New Admin. Building,
Chhatrapati Shivaji Maharaj Terminus,
Central Railway, Mumbai 400 001.
2. Dy. Chief Financial Advisor and Chief
Accounts Officer (Construction),
Between PF 5 W Rly and PF.1 OF C Rly
Near Railway Institute, Dadar,
Central Railway, 400 014.
3. The Branch Manager,
State Bank of India,
Dombivli Branch Behind Tilak Road
Dombivli Distt. Thane 421 201. .. Respondents

(By Advocate Shri V.S.Masurkar)

Order reserved on 21.01.2020
Order pronounced on 28.02.2020

ORDER

Shri S.K.Tripathi, retired Senior Section
Officer from office of Deputy Financial Advisor and
Chief Accounts Officer, Central Railway, Dadar,
Mumbai has filed this OA on 09.07.2019 seeking

directions to respondents to communicate to the Pension Paying Bank to stop recovery of Dearness Relief from his pension, to refund the already recovered amount from his pension, and provide cost of this OA.

2. Summarized relevant facts:

2(a). After joining service with the Railways as JAA in 1997, he was promoted as Senior Section Officer (Accounts) and retired from service on 31.08.2016. His pension was fixed as Rs.40,100/- with Dearness Relief as applicable from time to time and there was no penalty of any kind pending or contemplated against him which might result in reduction of the pension.

2(b). The pension is being paid to him as per PPO No.20167013210011 through State Bank of India, Dombivli (East) Branch, district Thane. He was informed on 05.02.2019 about audit objection related to privileges passes from 2014-2017 issued to him by the respondent No.2 for longer route than admissible and not depositing back of unused passes issued to him earlier.

2(c). Respondent No.1 through PFA (Pension) letter dated 30.05.2019 informed the applicant that he had been requested to return the unused passes or expired passes in original and to deposit Rs.68,298/- due to availing of longer route passes

as pointed out by the Audit Officer, but till date neither reply nor depositing of the amount had been done by him. Therefore, he was again advised to remit the amount of Rs.68,298/- to that office within 15 days to avoid initiation of legal recourse (Annex A-2).

2(d). Without waiting for 15 days to be over, the impugned order vide letter dated 07.06.2019 was issued to the Pension Paying Branch of State Bank of India, (respondent No.3) to recover Rs.68,418/- from Dearness Relief on pension of the applicant. In the letters dated 30.05.2019 and 07.06.2019, different amounts of recovery were mentioned (Rs.68,298/- and Rs.68,418/-). The applicant had demanded details of working out of the recovery but he has not been provided those details. Since respondent No.2 is the Pension Disbursing Agent of respondent No.1, it has been stated that both of them are jointly and individually liable for action of each other.

2(e). The applicant represented to the Pension Paying Authority (State Bank of India) on 21.06.2019 to reconsider the case and stop recovery from his Dearness Relief in light of Apex Court decision in case of **State of Punjab Vs. Rafiq Masih (White Washer)** in Civil Appeal No.11527 of 2014 decided on 18.12.2014 and Chandi Prasad Uniyal And

Ors vs State Of Uttarakhand and Ors, reported in 201 AIR SCW 4742 in Civil Appeal No.5899/2012 decided on 17.08.2012. However, the recovery has not been stopped and therefore, this OA has been filed.

3. Contentions of the parties:

In the OA and during his arguments on 21.01.2020 and 25.02.2020, the applicant contends that -

3(a). pension once sanctioned cannot be revised to detriment of the pensioner. Therefore, the orders of the respondents dated 30.05.2019 and 07.06.2019 are in violation of Indian Railway (Pension) Rules 1993 and liable to be set aside;

3(b). the above orders of the respondents are not those of Pension Paying Authority i.e. General Manager, Central Railway and therefore, on this ground they are liable to be set aside;

3(c). there is no provision under the Indian Railway (Pension) Rules, 1993 to recover any amount of pension from the pensioner;

3(d). the respondent No.2 had issued passes under his signature and seal for which the applicant cannot be held responsible and if there was any negligence or carelessness in issuing those passes, the applicant cannot be compelled to suffer for it. Therefore, the orders of recovery should be

quashed;

3(e) . recovery from the pension cannot be made beyond two years. As per Apex Court decision in the case of **Rafiq Masih** if the payment made is in excess of five years it would be extremely iniquitous and arbitrary to seek refund of payment mistakenly made to the employee. The Apex Court also held that the recovery from Class III and Class IV (Group C or Group D) employees should not be made even if they are beneficiaries of emoluments higher than due to them. Recovery of excess payment from retired employees or those close to retirement cannot be made;

3(f) . the respondents have not obtained sanction of Competent Authority before the orders of recovery where issued to the Bank. Since the recovery ordered by the respondents relates to a time earlier than five years, the order of recovery needs to be quashed. These orders have been issued without providing opportunity to the applicant to be heard;

3(g) . reply filed by the respondents is false and misleading, therefore, it is denied. The respondents have committed the crime of perjury under Section 91-93 of IPC and therefore, Criminal Proceedings under Section 340 of Cr.PC are liable to be initiated against the officer of respondents

who has filed the affidavit of reply as he has become personally liable for it. No over payment of any kind has been paid to the applicant during his service period or after his retirement from service. Therefore, the inspection report on issuing of privileges passes via longer route submitted by the Senior Audit Officer on 09.07.2018 does not apply to his case. To the audit objections, the respondent No.2 had himself in his reply (Annex RA-6) has admitted that correct passes had been issued and the distance covered was correct and recovery cannot become due from the applicant;

3(h). the Apex Court judgment dated 29.07.2016 is applicable in the applicant's case since it is not a case of over payment of any kind to him by the respondents (Para 4 of his rejoinder) and therefore, Annex R-1 is not relevant. Therefore, the order of recovery dated 07.06.2019 issued by the respondents should be set aside with cost; a

3(i). copy of letter dated 05.02.2019 had been received by him under the RTI Act with letter dated 18.07.2019 on which even address of the applicant was not mentioned for its proper delivery. That letter was an advice to the applicant to return the unused passes and it did not mention any amount of recovery of over payment and he has already

remitted the cost of unused passes as per pass rules;

3(j). the contention of the respondents that the letter dated 07.06.2019 was dispatched on 18.07.2019 is misleading and liable for action under perjury. That letter of 07.06.2019 had actually been posted on 13.06.2019;

3(k). the amount of Rs.68,298/- or any other amount is not due against the applicant and therefore, the order dated 07.06.2019 should be set aside with cost;

3(l). the respondents have admitted the arbitrary and casual approach in dealing with the audit objection and have accepted and informed the Audit Department that the applicant had been rightly issued the passes from Katra to Nagarcoil for which the shortest route was of 3774 kms, which with addition of 15% weightage comes to 4330 kms and distance availed by the applicant was 3985 kms.

Thus details of recovery worked out by the respondents (R-6) are incorrect;

3(m). the power of recovery in case of Non-Gazetted Staff is with General Manager of the Zonal Railway and in case of Gazetted Staff it is with the Ministry of Railways as per Rule 9 of Indian Railway (Pension) Rules, 1993 and therefore, the impugned order deserves to be set aside;

3(n). the provision mentioned under Annex R-7 are not applicable to the applicant's case. The power of recovery from the pension rests with General Manager and Senior Scale Officer does not have the power of recovery from the pension;

3(o). for the irregularity committed by the applicant in availing passes for larger routes, the respondents should have condoned for which the GM has the power. But they have not done so. Therefore, the OA should be allowed.

In the reply and arguments, the respondents contend that -

3(p). as per laid down procedure in the rules every retiring employee submits a declaration stating that in case the pensioner is inadvertently paid more than his due, he and his successors are liable to make good the amount. The applicant himself had submitted an undertaking in this regard (copy enclosed at Annex R-8, page 44). Therefore, the Apex Court decision dated 29.07.2016 in case of **High Court of Punjab and Haryana Vs. Jagdev Singh** is applicable to the present case and not the Apex Court judgment dated 18.12.2014 in case of **State of Punjab Vs. Rafiq Masih**. In light of these facts and decision in law, the interim relief granted to the applicant on 11.07.2019 is liable to be vacated and the OA is liable to be dismissed with cost;

3(q). the applicant had been given sufficient time to respond to the letter dated 30.05.2019. The letter dated 07.06.2019 was sent by Speed Post on 19.07.2019 but it is not known how the applicant received a copy of that letter and filed it before the Tribunal on 09.07.2019;

3(r). recovery of Rs.68,298/- was intimated to the applicant as per audit objection in letter dated 30.05.2019 but in the letter dated 07.06.2019, an amount of Rs.120/- was also added which was due from the applicant for non refund of used passes. Therefore, there was difference in the amount mentioned in the two letters. The amount of actual recovery to be made from the applicant should have been Rs.50,386/- as pointed out in the Audit Inspection Report on issue of privileges passes via longer route but inadvertently the amount of recovery communicated to the applicant was mentioned as Rs.68,298/-. The amount to be recovered from him is Rs.50,226/- as indicated in the Audit Inspection Report (Annex R-5) and the remaining amount of Rs.18,062/- pertains to other employees working under FA&CAO;

3(s). pension to the retiring employees is sanctioned in terms of Schedule of Powers and intimation of recovery has been communicated to the applicant accordingly. The applicant was a Group C

employee and the powers for sanctioning pension to him was the Senior Scale Officer as per item No.43 of Part F-Establishment matters of Model Schedule of Powers 2018 (Annex R-7). Accordingly notice of recovery of dues from Dearness Relief on Pension granted to the applicant has been issued by a Senior Scale Officer and contention of the applicant that the orders of the recovery issued are beyond authority of the concerned respondents is not correct;

3(t). with reference to the reply submitted to the Audit objection on 24.09.2014, the Sr. Audit Officer has informed that the reply is not accepted and it has been directed to recover Rs.50,236/- from the applicant. Even to the clarification submitted by the respondents on 30.10.2018, the Sr. Audit Officer has informed on 08.01.2019 (Annex-R-12) that the privilege passes were issued to Shri Tripathi i.e. the applicant from Katra to Nagarcoil and not from SVDK Station to Nagarcoil and thus the objection taken in the Audit Inspector Report is correct and the employee had availed passes via longer route which are not permissible as per orders/guidelines issued from time to time. Therefore, it is requested to recover the amount as pointed in the Part-I of the Audit Inspection Report from the concerned employee;

3(u). the applicant submitted on 19.01.2019 that the passes had been issued from Vaishno Devi Katra to different stations and various other stations to Katra and were availed accordingly. He also furnished copies of privilege passed to show that the passes were issued to and from SVDK and not Katra. By letter dated 05.02.2019 the applicant was asked to submit the unused and expired passes and by letter dated 30.05.2019 even an ultimatum was given to him to remit the unused and expired passes and the amount within 15 days but when he did not respond, the letter of recovery was issued to the Branch Officer, State Bank of India, Dombivli Branch dated 07.06.2019, a copy of which was also sent to the applicant.

3(v). but instead of submitting the original passes, he returned only their photocopies stating that he had taken passes from Katra to SMVD but in his application and in the counterfoil of the used passes, SMVD is not mentioned. In this way the applicant has manipulated the issued passes to cover his wrong doing. He has fraudulently made changes in the passes to prove his claim as can be seen from Annex R-21;

3(w). the applicant should produce verifiable facts about recovery of any outstanding amount from his Dearness Relief by the Bank. Since he has not

submitted any such evidence, his claim that the Bank has wrongly initiated the recovery from his Dearness Relief is false. The recovery as pointed by the Audit Inspection Report had to be made from him in view of rejection of the reply submitted by the respondents to the audit office. Therefore, the O.A. should be dismissed.

4. Analysis and conclusions:

4(a). I have perused the OA memo, its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents and the arguments of the parties advanced before me on 21.01.2020. Based on careful consideration of all these, the case is analyzed as follows:

4(b). The issue for decision in this O.A. is justification of recovery of Rs.50,236/- from the applicant by the respondents. As per facts mentioned by the parties, respondent No.2 had issued privilege passes to the applicant for four years from 2014 to 2017. The applicant retired from service on 31.08.2016. In the Audit Inspector Report, it was pointed to the respondents that the applicant had been issued passes from Katra to Nagarcoil (Tamil Nadu) but he availed of those privileges passes on a longer route with break journey than the shortest route allowed under the pass rules. The reply to the respondents by the

Sr. Audit Officer in his letter dated 24.09.2018 (Annex R-10) has clarified that the privilege passes issued to the applicant were from Katra and Nagarcoil and back and from Katra to Kanyakumari and back by the different routes with break journeys. As per Rate Branch System (RBS) developed and utilised by the Indian Railways for calculating distance between two stations via different routes and shortest routes, Katra and SMVDK are different stations and abbreviations used for them are Kea for Katra and SVDK for Shri Mata Vaishno Devi Katra. The applicant availed of the passes from Katra and not from SMVDK as seen from the passes. Thus the applicant had availed of the passes via longer routes which are not permissible as per the Railway Boards orders / instructions / guidelines issued from time to time. Therefore, the objection in the Audit Inspection Report is correct and the recovery be made from the concerned employees.

4(c). Based on the scrutiny of the passes, PTOs by the Audit, it was noted that 14 passes were issued by the office to Shri Tripathi i.e. the applicant via longer route during 2014, 2015 and 2016 till his retirement. The passes were issued to him from Katra to Nagarcoil Junction and back via longer route allowing different journeys. The

applicant neither availed of the direct train facility nor availed of the shortest or quicker route but travelled by other longer routes. Therefore, the excess distance travelled by the applicant attracted recovery of Rs.50,236/-. It was also observed by the audit that the applicant was in knowledge of the administration section till his retirement and he was responsible for correct issue of passes / PTOs, but due to inadequate internal control mechanism, there was irregular issue of passes and PTOs via longer routes. Hence, the applicant's claim that the findings in the Audit Inspection Report are not applicable to his case is false and misleading.

4(d). The facts pointed out in the Audit Inspection Report clearly revealed that the applicant had availed of the passes for longer routes with break journey as against the shortest route allowed under the relevant rules/instructions of the Railway Board. In view of this, for the excess distance travelled with those passes by the applicant, the recovery of Rs.50,236/- worked out or pointed out by the audit is correct.

4(e). However, while the audit has pointed out that the amount of actual recovery due from the applicant of only Rs.50,236/-, the order of recovery issued by the respondents dated 30.05.2019

and 07.06.2019 was for Rs.68,298 / Rs.68,418/-.

Thus an incorrect amount of recovery due from the applicant has been communicated by the respondents.

The plea of the respondents that the correct amount of recovery (Rs.50,236/-) was noticed by them but not yet communicated due to the subject being sub-judice. This is not an acceptable view. They ought to have communicated the correct amount of the recovery and should do it now.

4(f). The applicant's contentions that recovery cannot be made from his pension, the recovery order is not of General Manager, Central Railway and for carelessness of respondent No.2 in issuing longer routes passes to him, he cannot be held responsible are of no consequence.

4(g). As explained by the respondents, as per the undertaking submitted by the applicant himself to Branch Manager, SBI, Dombivli (East) (page 44 of OA), he is bound by it and has to honour it as held in the Apex Court judgment in case of **High Court of Punjab and Haryana Vs. Jagdev Singh**. Therefore, he is liable for recovery by the respondents of excess expenditure caused by him to them in availing the passes for extra distance than was permissible under the instructions of the Railway Board. The applicant's claim that no recovery is due from him is, therefore, false and misleading. Because of

the specific facts of the case and his own undertaking for refunding any excess amount to which he was not entitled, his reliance on the Apex Court decision in case of **State of Punjab Vs. Rafiq Masih** cannot help him. In his case, the Apex Court view in the case of **Chandi Prasad Unniyal** is applicable as contended by the respondents.

4(h). Since the applicant realizes that he availed of the passes for longer routes than permissible under the Railway Board instructions, now he pleads that the General Manager of Central Railway ought to have condoned this irregularity. However, he has not even sought such condonation by making any representations to the General Manager, Central Railway and instead he expects automatic condonation by the respondents on their own of the irregularity committed by him. Since the applicant himself has exploited the facility provided by the respondents for his undue personal gain, this plea has no merit and cannot be accepted.

4(i). In view of the above analysis of facts of the case, I find no merit in the OA and it deserves dismissal.

5. Decision:

The OA is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (Administrative)

H/kmg*