

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 29th day of July 2021

ORIGINAL APPLICATION NO. 330/00201 of 2021

HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)

Dinesh Kumar Verma, aged about 47 years, S/o Shri Kashi Deen Verma,
R/o Qr. No. 507/CD Indian Institute Railway Colony, Mughalsari, District
Chandauli.

.....Applicant.

Advocates for the Applicant : Mr. Rakesh Verma/Mr. Akash Verma

VERSUS

1. Union of India through General Manager, East Central Railway, Hazipur.
2. The Chief Personnel Officer, East Central Railway, Hazipur.
3. The Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.
4. The Principal, East Central Railway Inter College, Mughalsarai.

.....Respondents

Advocate for the Respondents : Shri P.K. Rai/ Shri Lal Mani Singh.

ORDER

The applicant Shri Dinesh Kumar Verma, who is a Trained Graduate Teacher assails the order passed by the respondents affecting a recovery of Rs. 3,67,880/- from his salary on account of reported overpayment to him over the past years. For the sake of clarity, the reliefs sought by the applicant, in his own word, are as follows:-

- “(i) *To issue writ order or direction in the nature of certiorari quashing and setting aside the impugned order dated 08.11.2019 passed by the respondents, imposing recovery of Rs.3,67,880/- from the monthly salary of the applicant.*
- (ii) *To issue writ order or direction in the nature of prohibition restricting the respondents from making recovery from the monthly salary of the petitioner pursuant to the impugned order dated 08.11.2019 and further to refund the amount already recovered.*
- (iii) *To issue such other order or direction of suitable nature as may be deemed fit proper and expedient in the interest of justice.*
- (iv) *To award cost of the petition throughout”.*

2. Briefly stated, the applicant who is a Trained Graduate Teacher sought transfer from one Division to another Division accepting the loss of seniority in the process. At his new place of posting, his Controlling Authority informed him that there was an error while fixing his pay in the year 2007 and as a result, he had been made a payment in excess of Rs.3,67,880/-. He was informed that this excess payment will be recovered from him in 24 monthly installments of Rs.15336/- each. The applicant's representation against this recovery was not accepted.

3. The learned counsel for the applicant argues that the applicant has no role or influence in the matter of his pay fixation. He terms it patently unfair that the applicant is being subjected to such a recovery after a lapse of a long time and if there has been any error in fixation and payment of salary, it is the sole responsibility of the respondents. Hence, he terms the order of recovery as illegal and arbitrary. He further points out that the order of recovery is unilateral and the applicant has not been

afforded any opportunity to present his case. Learned counsel takes support from the judgment of Hon'ble Supreme Court in Civil Appeal No. 11527/2014 State of Punjab and others Vs. Rafiq Masih, wherein the Hon'ble Apex Court has laid down the principles which will govern such situation where recovery on account of excess payment is to be affected.

4. Learned counsel for the applicant points out that in the instant case, there has been no misrepresentation or misconduct which can be attributed to the applicant and if there has been any excess payment, it has been as a result of wrong decision or interpretation of rule by the respondents. The case of the applicant is squarely covered by the aforesaid judgment.

5. On the other hand, learned counsel for the respondents points out that the applicant is bound to refund the payment in excess made to him as he is not legally entitled to the same. He would further argue that the applicant draws a good salary and the order of recovery will not put him in any hardship. Learned counsel for the respondents has also raised the issue of delay on the part of the applicant in filing this O.A. However, the delay already stands condoned.

6. Having given a patient hearing to the learned counsel for the parties and perusal of the documents on record, I am of the view that there is no evidence pointing to the role of applicant in drawing an amount of salary which is now to be in excess of what he was entitled to. The legal preposition laid down by the Hon'ble Apex Court in abovementioned case is clear that since the entire responsibility of the

fixation of pay and the payment thereof rest with the respondents. It is on the face of it unjust to now subject to the applicant to recovery of the past payment. No doubt the applicant would not be subjected to any severe hardship on account of this recovery but the case of the applicant gets unambiguously covered in one of the situation summarized by the Hon'ble Apex Court wherein recovery from employee has been held to be impermissible in law and this situation is *"recovery from employee, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued."*

7. In the present case, the documents on record indicate that initially so called erroneous fixation has been done in the year 2007 and the recovery has been initiated in the year 2019 i.e. after a gap of 12 years. Hence, this recovery besides being unfair, arbitrary and unilateral and also contrary to the principle laid down by Hon'ble Apex Court. Therefore, the order issued by Principal, East Central Rail Inter College, Mughalsari dated 8.11.2019 is hereby quashed.

8. The original application is disposed of accordingly. No order as to costs.

(TARUN SHRIDHAR)
Member (A)

Manish/-