

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE**

ORIGINAL APPLICATION NO.170/00148/2020

DATED THIS THE 03RD DAY OF MARCH, 2020

**HON'BLE DR K B SURESH....MEMBER (J)
HON'BLE SHRI C V SANKARMEMBER (A)**

Sree Ramaiah M
S/o Muniswamy
Aged 61 years,
Rtd Mail Guard,
S W Railway/Bengaluru
R/o #155, 3rd Cross,
Munishwara Layout,
Kadugodi,
Bengaluru-560 067.

...Applicant

(By Shri.K Shiva Kumar)

Vs.

1. Union of India
Rep. by General Manager,
South Western Railway,
Hubli-580 020.

2. Senior Divisional
Personnel Officer,
South Western Railway,
Bengaluru-560 023.

...Respondents

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Heard. It appears that without any show cause notice as provided in the Railway Board order F.No. 2016/F(E)/II/6/3 dated 22.06.2016, which we quote:

***GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)***

....

RBE No.72/2016

F.No2016/F(E)II/6/3

New Delhi, dt. 26.06.2016

*The General Managers/FA&CAOs
All Indian Railways & Production Units incl. RDSO,
(As per Standard Mailing List)*

Sub:- Recovery of wrongful/excess payments made to Government servants

The issue of recovery of wrongful/excess payments made to Government servants has been circulated by DOP&T vide their O.M No.18/26/2011-Estt(Pay-I) dated 6th February, 2014 wherein certain conditions were stipulated to deal with the issue. Further, DOP&T vide their O.M No.18/03/2015-Estt.(Pay-I) dated 2nd March, 2016 in consultation with Ministry of Finance (Department of Expenditure) and the Department of Legal Affairs has enumerated certain situations wherein recovery by the employee would be impermissible in law. A copy each of these instructions is sent herewith for information/guidance. These will apply mutatis-mutandis to Railway employees also.

2. *The date of applicability to these orders would be the date of issue of DOP&T's letters.*

3. *Please acknowledge receipt.*

*Sd/-
(Vaidehi Gopal)
Jt. Director Finance (Estt.)
Railway Board.*

DA: As above

F.No.2016/F(E)II/6/3

New Delhi, dt. 22.06.2016

2. The OM No.F.No.18/03/2015-Estt.(Pay-I) dated 02.03.2016, which we quote:

*F.No.18/03/2015-Estt.(Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training*

New Delhi, the 2nd March, 2016

OFFICE MEMORANDUM

Sub: Recovery of wrongful/excess payments made to Government servants.

The undersigned is directed to refer to this Department's OM No.18/26/2011-Estt(Pay-I) dated 6th February, 2014 wherein certain instructions have been issued to deal with the issue of recovery of wrongful/excess payments made to Government servants in view of the law declared by Courts, particularly, in the case of Chandi Prasad Uniyal And Ors. Vs. State of Uttarakhand And Ors., 2012 AIR SCW 4742, (2012) 8 SCC 417. Para 3(iv) of the OM inter-alia provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information/misrepresentation/ fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 ibid has, inter-alia, observed as under:-

“7. Having examined a number of judgment rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effect was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.”

“10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the state, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

3. The issue that was required to be adjudicated by the Hon'ble Supreme court was whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2&3 of the judgment are essentially indispensable.

4. The Hon'ble Supreme Court while observing that 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 entitlements has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

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

5. *The matter, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries/Departments are advised to deal with the issue of wrongful/excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11257 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs. Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt(Pay-I) dated 6th February, 2014.*

6. *In so far as person serving in the India Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.*

7. *Hindi version will follow.*

*Sd/-
(A K Jain)
Deputy Secretary to the Government of India.*

1. *All Ministries/Department of Government of India*
2. *NIC, DoPT – with a request to upload this OM on the Department's Website under OMs & orders (Establishment – Pay Rules) and also under "What is New".*

3. Some amounts are sought to be recovered from the applicant without issuing a show cause notice and not giving him an opportunity of being heard. But the learned counsel would submit that even otherwise he is covered by the Whitewasher judgment as he was only a Group 'C' Mail Guard. Therefore, the recovery is hereby quashed. The amount recovered will be paid back without interest within one month next and thereafter at the rate of 15% interest as fixed by the Hon'ble High Court in several cases. But then we will grant liberty to the respondents to issue a show cause notice to the applicant and in that case the

applicant will have to provide a bank guarantee for the same amount to the respondents from a nationalized bank. But everything has to be completed within the next one month in any case.

4. The OA is allowed as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the applicant in OA No.170/00148/2020

Annexure A1	Copy of the details of Settlements
Annexure A2	Copy of the Relevant page of Service Register
Annexure A3	Copy of the representation dated 29.01.2020