

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/154/2019

HYDERABAD, this the 5th day of April, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member



Yalla Ramakrishna, S/o. Musalayya,
Aged about 58 years,
Occ: Special Gateman (Retd.),
O/o. SSE/PWAY,
South Central Railway, Eluru, A.P.

...Applicant

(By Advocate : Sri K. Sudhaker Reddy)

Vs.

1. Union of India rep. by its
Divisional Railway Manager,
South Central Railway, Vijayawada.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Secunderabad Division,
South Central Railway, Vijayawada.

... Respondents

(By Advocate: Sri S.M. Patnaik, SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. Ashish Kalia, Judl. Member)

The following reliefs are sought by the applicant in the present O.A.:



to set aside the impugned order No. SCR/P-EE/230/W3/SR dated: 27-12-2018 issued by the Sr. DPO/O/BZA is clearly illegal, arbitrary and clear violation of the applicants fundamental rights guaranteed under Article 14 and 16 of the Constitution of India and Consequently direct the respondents herein to release withheld amounts of Rs.25,000/-. Family planning increment, refund of GIS amount of Rs.48,570/- and CTG (Composite Transfer Grant) forthwith and pass such order or orders as deemed fit in the circumstances of the case.

2. The applicant worked as Special Gateman in the respondent's organization and retired from service on 31.12.2014. In short, the applicant, who was a Group 'D' employee, is demanding three reliefs i.e. grant of CTG, GIS & Family Planning Allowance. He has also prayed for refund of GIS amount of Rs.48,570/-. He has relied upon the judgement of the Hon'ble Supreme Court in the case of *State of Punjab & Others vs Rafiq Masih & Others (2015) 2 SCC (L&S) 33* wherein the Hon'ble Apex Court summarised the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

Learned counsel for the applicant submitted at the bar that in the present case recovery cannot be made since the applicant was a Group 'D' employee.



3. Notices were issued. Sri S.M. Patnaik, learned Standing Counsel put appearance. In regard to Composite Transfer Grant, he has apprised this Tribunal that the applicant has not submitted any documentary evidence in support of shifting of residence from Eluru to Venkatapuram Panchayat, which is within 6 kms. In regard to GIS, he has submitted that the respondents have not paid the same as the dues of subscription towards GIS by the applicant were more than what is due to him. The applicant has retired from service. Hence, the respondents may calculate the GIS amount due to him after deducting the dues of subscription towards GIS and the residual amount, if any, be paid to him.

4. Lastly, with regard to the Family Planning Allowance, learned counsel for the respondents submitted that the applicant has not produced the sterilization certificate which is required for grant of the said allowance. To counter this argument, Sri K. Sudhaker Reddy, learned counsel for the respondents has drawn my attention to page 16 wherein it is shown that the applicant was being paid the said allowance for the last so many years. He submitted that the respondents have stopped the allowance abruptly and are demanding to produce the sterilization certification, which the applicant is not able to produce at this juncture of time, being a Class-IV employee.



5. After hearing the rival contentions of the parties, I am of this view that a facility, which was granted for more than a decade, cannot be stopped abruptly as decided by the Honøble Apex Court in numerous cases. This Tribunal is of the view that the withheld Family Planning Allowance is liable to be paid to the applicant.

6. In view of the above, the O.A. is partly allowed with the following directions:

- (i) The applicant is hereby directed to produce the proof of shifting of residence with an application within a period of two weeks from today and the respondents shall consider the same and issue the Composite Transfer Grant due to the applicant, if any.
- (ii) As regards the GIS, the respondents may calculate the GIS amount due to him after deducting the dues of subscription towards GIS and the residual amount, if any, be paid to him.
- (iii) Lastly, as regards the Family Planning Allowance, the respondents are directed to pay the amount pertaining to the said Allowance to the applicant within 45 days from the date of receipt of a copy of this order. The applicant is directed to co-operate with the respondents in this regard.

7. In view of the judgement of the Honøble Apex Court in *Rafiq Masih's* case (supra), in case any recovery is made from the applicant, the recovered amount should be refunded to him and no further recovery can be made from him. No order as to costs.



(ASHISH KALIA)
JUDICIAL MEMBER

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