

**OA No. 291/152/2021, OA No. 291/153/2021, OA No. 291/154/2021,
OA No. 291/155/2021 & OA No. 291/156/2021**

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 291/152/2021,
ORIGINAL APPLICATION NO. 291/153/2021,
ORIGINAL APPLICATION NO. 291/154/2021,
ORIGINAL APPLICATION NO. 291/155/2021
&
ORIGINAL APPLICATION NO. 291/156/2021**

Order reserved on 30.07.2021

DATE OF ORDER: 05.08.2021

CORAM

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

OA No. 291/152/2021

Sudhir Kumar Sharma son of Late Shri Bhim Raj Sharma, aged about 56 years, Resident of 461/28, New Basti, Bhajanganj, Ajmer – 305001 and presently working as Technician Grade-I, (Ticket No. 57745/31), (Level-5) under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.

....Applicant
(Group-C, Mob: 93143-93536)

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 Workshop, North Western Railway, Ajmer Division, Ajmer – 305001.
3. Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer – 305001.

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4. Senior Divisional Finance Advisor & Accounts Officer, Carriage Workshop & Store, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

OA No. 291/153/2021

Nemi Chand son of Late Shri Gyarsi Lal, aged about 57 years, Resident of House No. 26/15, Pal Beechla Ki Chadar, Bairwa Basti, Ajmer – 305001 and presently working as Senior Technician (MCF) (Ticket No. 57204/31), (Level-6) under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant
(Group-C, Mob: 98295-39495)

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 Workshop, 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 Workshop & Store, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

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OA No. 291/154/2021

Pappu Singh son of Late Shri Hazari Singh, aged about 57 years, Resident of Near Power House, Ghatiwala Mohalla, Nasirabad Road, Ajmer – 305002 and presently working as Senior Technician (MCF) (Ticket No. 57651/31), (Level-6) under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant
(Group-C, Mob: 81072-31198)

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 Workshop, 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 Workshop & Store, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

OA No. 291/155/2021

Laxman Ram son of Late Shri Angana Ram, aged about 57 years, Resident of Shiv Colony, Tarkash Ki Bagichi, Paharganj, Ajmer-305001 and presently working as Senior Technician (MCF) (Ticket No. 57162/31), (Level-6) under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant
(Group-C, Mob: 94132-28392)

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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 Workshop, 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 Workshop & Store, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

OA No. 291/156/2021

Roop Kishore Mishra son of Late Shri Uma Shankar Mishra, aged about 57 years, Resident of 31-A, Chandra Vardai Nagar, Gali No. 5, Siya Ram Colony, Ajmer-305001 and presently working as Senior Technician (MCF) (Ticket No. 57708/31), (Level-6) under Deputy Chief Mechanical Engineer (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer-305001.

....Applicant
(Group-C, Mob: 94606-12460)

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.

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2. Chief Works Manager, Carriage Workshop, 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 Workshop & Store, North Western Railway, Ajmer Division, Ajmer-305001.

.... Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing)

ORDER

Per: Hina P. Shah, Judicial Member

With the consent of learned counsels for the parties OA No. 291/152/2021, OA No. 291/153/2021, OA No. 291/154/2021, OA No. 291/155/2021 and OA No. 291/156/2021 are taken up together for disposal as common question of law and facts is involved in all these cases.

2. For the sake of convenience, the brief facts of OA No. 291/152/2021 (Sudhir Kumar Sharma vs. Union of India & Ors.) are taken up. The OA No. 291/152/2021 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.

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41,600/- as on 01/07/2020 with the benefits of annual increment year to year and further promotions by quashing order dated 23/03/2021 with the letter dated 09.04.2021 (Annexure-A/1 & A/2) 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 23/03/2021 (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."

3. The brief facts of the case, as stated by the applicant, are that he was appointed as a Khallasi on 30.04.1986. After working on several posts, finally he was working as Technician Grade-I. He was allowed pay and allowances after due fixation since 1986 and time to time, his service records were verified by the Accounts Department. His pay was re-fixed in the year 2001 by giving him benefits of Rs. 100/- as per order dated 13.09.2001 (Annexure A/4) and further his service sheet was again verified vide letter dated 09.05.2002 (Annexure A/5). Time and again, he was granted promotion and his pay was rightly fixed. After

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seventh Pay Commission, pay of the applicant was fixed at Rs. 37000/- as on 01.07.2016, which is evident from order dated 23.03.2021. Since his date of birth is 12.07.1964, he is due to retire on 31.07.2024 and just prior to his retirement, respondents re-fixed his pay vide order dated 23.03.2021 (Annexure A/1) since 1993 i.e. for last 27 years and recovery was ordered. Respondents on recovery only alleged that benefits of Rs. 100/- were wrongly allowed on promotion, against which the applicant made a request on 31.03.2021 (Annexure A/6) against the order dated 23.03.2021 (Annexure A/1) to the effect that his re-fixation is not at all justified and objections are just a formality after passing of order of reduction of pay. Respondents vide order dated 09.04.2021 (Annexure A/2) further informed the applicant that his pay & allowances are rightly amended and any excess amount can also be recovered without taking a note of request of the applicant. Respondents have in fact only stated that benefits of Rs. 100/- have been allowed to the applicant at the time of promotion, whereas Rs. 12/- has been shown towards reduction in the year 1993 and thereafter year to year reduced the pay vide order

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dated 23.03.2021 (Annexure A/1) and due to this action of the respondents, the applicant is in receipt of less pay & allowances during service and also the same will effect his retirement benefits and pension. As on 01.07.2020, applicant's pay was Rs. 41,600 and the same has been reduced to Rs. 40,400/- and further the applicant was allowed to draw pay & allowances upto March 2021 at the stage of Rs. 41600/- which is going to be reduced. He further states that principles of natural justice have not been followed. The applicant has also relied on several circulars of DOPT as well as Railway Board on the issue of wrongful recovery of excess payments made. Therefore, the action of the respondents is arbitrary, illegal and unjustified. Hence, he has approached this Tribunal for quashing the order dated 23.03.2021 (Annexure A-1) along with letter dated 09.04.2021 (Annexure A/2) with all consequential benefits. He also prayed that his pay-fixation carried out prior to order dated 23.03.2021 be hold good.

4. The respondents, after issue of notices, have filed their reply on interim relief. Respondents stated that as per the challenge of orders preferred by the applicant in the present O.A., it is clear that due

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drawn statement providing for payment/recovery has yet to be prepared and, therefore, the present O.A. is premature. Bare perusal of the impugned order would disclose that as per the said order, the applicant was required to raise objection/representation within a period of five days. The applicant has failed to avail such an opportunity. Even his earlier representation does not disclose any illegality in the action of the respondents. Therefore, the challenge so made by the applicant is not only premature but also not sustainable by taking plea of violation of principles of natural justice. The respondents deny the plea of the applicant that in view of judgment of the Hon'ble Apex Court in the case of State of Punjab & Ors. vs. Rafiq Masih, the payments allowed by the respondents cannot be recovered as the law laid down by the Hon'ble Apex Court in the case of Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors. has not yet been overruled rather it still holds good though applicant belongs to Group 'C' cadre. However, subsequent to implementation of 6th Pay Commission and 7th Pay Commission as applicant is drawing hefty salary, the said excess payments made to the applicant can be recovered. Respondents state that

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the amount of recovery has yet not been determined and the applicant is still in service. Thus, recovery of meagre amount every month from his pay cannot result into hardship of a nature which would far outweigh the equitable balance of the employer's right to recover. Bare perusal of para 7 and 8 of the order of Hon'ble Supreme Court in the case of Rafiq Masih would substantiate this aspect. Also the impugned order challenged by the applicant would reveal that the applicant has failed to disclose any discrepancy in the fixation order Annexure A/1 and, therefore, the applicant cannot ask the respondents to restrain them from making recovery. Relying on the law laid by the Hon'ble Apex Court in the case of Rafiq Masih, Office Memorandum dated 02.03.2016 was issued by Railway Board vide RBE No. 72/2016, and it was observed in the aforesaid O.M. at 4(v) that recovery if made 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. In view of this O.M., the applicant has failed to disclose such eventuality in spite of the fact that he is drawing hefty salary. Also as per Rule 15 of the Railway Services (Pension) Rules 1993, recovery of

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railway dues which remain outstanding till the date of retirement or death of railway servant shall be adjusted from terminal benefits. It also includes other government dues such an over payment on account of pay and allowances. Thus, issuance of order Annexure A/1 prior to superannuation of the applicant cannot be said to be illegal or violative of the rights of applicant rather it is in consonance with the rules. Therefore, all the three principles for grant of interim relief i.e. principles of *prima facie* case, balance of convenience and irreparable loss are against the applicant and in favour of the respondents, hence, prayer for grant of interim relief by the applicant deserves to be rejected and the Original Application be heard and decided on its merits.

5. With the consent of learned counsels for the parties, the matter was finally heard through Video Conferencing and we have perused the material available on record as well as the judgments cited by the parties.

6. 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

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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 27 years and from the year 1993 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:-

- i) State of Punjab & Others vs. Rafiq Masih (White Washer) & Others – reported in (2015) 2 SCC (L&S) 33 : (2015) 4 SCC 334.
- ii) OA No. 620/2019 in the case of Swaroop Narayan vs. Union of India & Ors., decided by this Bench of the Tribunal vide order dated 21.08.2020.

The applicant stated that in the light of the aforesaid judgments/orders, excess amount cannot be recovered from a Group 'C' employee and, therefore, the impugned orders in challenge deserve to be quashed.

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7. On the other hand, learned counsel for the respondents argued that after re-verifying the service records of the applicant irregularity pertaining to pay has been found on his promotion since 1993 and benefit of Rs.100/- has been wrongly given to the applicant at the time of promotion. It was further stated that the applicant was not given any due drawn statement providing for payment/recovery. Bare perusal of the impugned order dated 23.03.2021 would reveal that as per the said impugned order, the applicant was required to submit his objection/representation within five days of the receipt of the same. In response to the letter of the applicant dated 31.03.2021, respondents vide letter dated 09.04.2021 had mentioned that on inspection of service records of the applicant, certain discrepancies were observed and, accordingly, as per Para 1327 of IREC (FR 31A), the respondents are entitled to recover the excess amount. Though applicant belongs to Group 'C' post, yet respondents are entitled to recover the excess amounts in view of the Rules as well as judgment of the Hon'ble Apex Court in the case of Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors., reported in 2012 (8) SCC 417 :

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AIR 2012 SC 2951 and that he cannot take shelter of judgment of the Hon'ble Supreme Court in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) & Others (supra). Subsequent to implementation of 6th and 7th Pay Commission, as the pay of the employees have increased many folds and as he is still in service and yet to retire in 2024, recovery of meagre amount every month from his pay, which is wrongly paid against his entitlement, cannot result in any hardship which would overweigh the equitable balance of the employer's right to recover. Also the applicant has failed to disclose any discrepancy in the pay fixation order dated 23.03.2021 (Annexure A/1), which is neither a due drawn statement nor a final order but only an intimation that recovery may be effected in view of wrong fixation and, therefore, any claim of the applicant to challenge the impugned order is premature and the O.A. deserves to be rejected.

8. 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 31.07.2024. It is also clear from the service book entries that the applicant has been promoted on

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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. It is noted that the applicant was appointed initially on 30.04.1986 as Khallasi and then as Senior Khallasi/Helper, then allowed Grade-III, Grade-II and Grade-I in the year 2008, 2014 and also in the year 2016 and lastly promoted in the year 2019 as Technician Grade-I. His pay was fixed at Rs. 41600/- as on 01.07.2020. Now the respondents all of sudden by their order dated 23.03.2021 (Annexure A/1) state that on verification of service book of the applicant, it is noticed that on promotion he had been granted the benefit of Rs. 100/- for which he was not entitled and, therefore, his pay has to be fixed accordingly. The respondents have shown re-fixation since 1993 and have observed in its order dated 23.03.2021 that the applicant should be ready for the recovery. It is seen that the applicant's salary has been reduced from Rs. 41600/- to Rs. 40400/- and that the applicant drew the said pay and allowances upto March, 2021. As per the order dated 23.03.2021,

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he was given 05 days' time to submit representation if he had any grievance on the said order. In lieu of the same, the applicant submitted his grievance by letter dated 31.03.2021 (Annexure A/6) asking the respondents not to make any recoveries. But the respondents vide their letter dated 09.04.2021 (Annexure A/2) stated that his service records have been verified and it is found that in service records there are several discrepancies which are to be rectified and recovery can be done as per Para 1327 of IREC (FR 31A). This shows that the respondents have clear intention to recover excess amount as per rules.

9. We have observed that the order dated 23.03.2021 (Annexure A/1) as well as letter dated 09.04.2021 (Annexure A/2) have been passed by the respondents after verifying the service records of the applicant and that the applicant should be ready for recovery and that the pay fixation done as per order dated 23.03.2021 is just and proper. The said re-verification has been carried out since applicant has been promoted and the respondents have found out that the applicant was wrongly paid Rs. 100/- and so since 1993, there are discrepancies in his pay fixation which needs to be corrected as the pay of the

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applicant has been re-fixed inadvertently. Though respondents have informed the applicant, but it is clear that it is a mere formality and they have also justified the same vide their letter dated 09.04.2021. But it was the duty of the respondents to check the incorrect fixation at the relevant time of recording entries in his service book. It is clear that the applicant was neither at any fault nor had he misrepresented in the said pay fixation. The case of the applicant is squarely covered by judgment passed by the Hon'ble Apex Court in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) & Others (*supra*) relied by the applicant that no recovery shall be made from the employees in certain conditions. No recovery can be made from the employees belonging to Class III and Class IV employees (or Group 'C' and Group 'D' service). Also no recovery can be made 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. According to the conditions applicable in the case of the applicant is that he is a Group 'C' employee and also the excess payment has been made for a period in excess of five years, before the

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order of recovery is issued. The question of Hon'ble Apex Court in the case of Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors. (supra) relied by the respondents cannot come to their rescue in the facts and circumstances of the present case. Therefore, it is clear that the recovery with regard to pay fixation carried out in the case of the applicant vide order dated 23.03.2021 (Annexure A/1) as well as letter dated 09.04.2021 (Annexure A/2) is highly unjust and improper. Thus, the question of recovery pursuant to re-fixation of pay of the applicant will be harsh and impermissible and, therefore, the respondents are required to stop the recovery and consider his pay as was existing prior to the passing of the order. However, we are also of the view that as the applicant is in service and is to retire on 31stJuly 2024, the respondents may pass a fresh order with regard to revision of the applicant's pay after giving him due notice and opportunity of hearing and if such order results in reduction of pay of the applicant, no recovery shall be effected either from the salary of the applicant or from his retiral benefits and the same shall have a prospective effect only from the date the said order is passed.

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10. In view of the observations made herein above, the present Original Application is allowed and the impugned order dated 23.03.2021 (Annexure A/1) and letter dated 09.04.2021 (Annexure A/2) are quashed and set aside. However, the respondents are at liberty to re-visit the pay fixation of the applicant and pass fresh orders after giving him due notice and opportunity of hearing and if such order results in reduction of pay of the applicant, no recovery shall be effected either from the salary of the applicant or from his retiral benefits and the same shall have a prospective effect only from the date of passing such order. No order as to costs.

11. With the above observations and directions, all the aforesaid similar Original Applications are also allowed accordingly.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**