

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
(THROUGH VIDEO CONFERENCING)**

Original Application No. 332/00147/2020

Serial No. 1

Dated: 15.07.2021

HON'BLE MR. A MUKHOPADHAYA, MEMBER (A)



Vijay Kumar Kureel, aged about 61 years, S/o Late Shri Krishn Kureel, R/o 582/1308, Satya Lok Colony, Bagh No. 2, Badaly Khera, Kanpur Road, Lucknow .

...Applicant

For Applicant: Shri Praveen Kumar

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Loco Workshop, Northern Railway, Charbagh, Lucknow

For Respondents: Shri Rajendra Singh

ORDER (ORAL)

By HON'BLE MR. A MUKHOPADHAYA, MEMBER (A)

Final arguments were heard with the consent of both learned counsel for the applicant as well for the respondents.

2. Learned counsel for the applicant, Shri Praveen Kumar submitted, that the applicant retired from a Group 'C' Post of the respondent department on 31.05.2019 and although a Pension Payment Order, (PPO), issued to him on 23.05.2019, (Annexure-A-2), had shown an amount of Rs. 12,56,640/- as being payable to him on account of gratuity, he was unpleasantly surprised later to find that a deduction of Rs. 2,04,423/- had been made from this gratuity payment without any prior intimation or notice. When the applicant made enquiries on this account, he was handed over a copy of an order of the downward revision of his pay dated 09.04.2019; (Annexure A-4). Shri Kumar, learned counsel for applicant reiterated that even this downward revision had been done without serving him any notice or offer him any opportunity of a hearing. Learned counsel for e applicant argued that this action of the respondents in revising the pay of the applicant downwards without notice and thereafter making a deduction unilaterally from his retiral dues, (gratuity, again without notice, represents a serious violation of the principles of natural justice. However, the applicant is presently





only praying for the return of the deduction of Rs. 2,04,423/- made from his retiral dues and does not wish to press for any order with regard to the aforementioned downward revision of pay. Learned counsel for the applicant further argued that it stands established, on the basis of the ruling of the Hon'ble Apex Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer), [2014] 8 SCC 883**, which had been followed up subsequently in DOP&T OM dated 2nd March, 2016, and RBE No. 72 of 2016 dated 22.06.2016, (Annexure-A-6), that such recoveries cannot be made from retiring Group C employees like the applicant within a period of one year before their retirement. He emphasized that in this case, both the downward fixation of pay as well as consequent recovery were made during it not after the last month of his service. Therefore, the recovery had been illegally made and should be restored with interest as payable under rules.

3. Per contra, learned counsel for the respondents, Shri Rajendra Singh submitted that the applicant has not challenged the downward fixation in question which indicates clearly that the fixation was correctly made and therefore, what has been recovered from him is clearly only excess payment made to him as a result of an error. He argued that, as averred in the respondents' counter affidavit, the respondents, are well within their rights to

recover excess payment made to an employee in error as the same represents public money.



4. I have carefully considered the rival submissions made by learned counsel for the applicant as well as for the respondents. There are a catena of rulings of both the Hon'ble Apex Court as well as the High Courts that visiting adverse civil consequences, in this case a recovery, on a pension without giving him prior notice or opportunity of a hearing contravenes the principles of natural justice. It is also undisputed that in the case of Rafiq Masih, (Supra), the Hon'ble Supreme Court has clearly ruled that, whatever be the reason, recovery cannot be made from Group C employees within a period of one year prior to their retirement. This ruling has been followed by the respondents themselves in the shape of DOP&T OM dated 2nd March, 2016, and RBE No. 72 of 2016 dated 22.06.2016, (Annexure-A-6), which instructions have also also not disputed. In the circumstances, it appears that the respondents have gone against both law laid down by the Hon'ble Supreme Court in the case of Rafiq Masih, (Supra), as well as their own government and departmental instructions, clearly conveyed to them vide Annexure A-6, and made an illegal deduction of Rs. 2,04,423/- from the gratuity of the applicant.

5. In the aforementioned circumstances, the O.A. succeeds. The respondents are directed to restore the deduction of Rs. 204423/- illegally made from the Gratuity of the applicant. Interest shall be paid on this deducted amount as per rules for the period between the date of deduction and the date of repayment. The respondents shall carry out this entire exercise of payment of principal and interest within a period of two months from the date of receipt of certified copy of this order.



6. OA is allowed accordingly.
7. There will be no order as to costs.

(A.MUKHOPADHAYA)
MEMBER (A)