

## CENTRAL ADMINISTRATIVE TRIBUNAL

## LUCKNOW BENCH

Original Application No. 332/00022/2020

This, the 5<sup>th</sup> day of July, 2021**HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER**

Ashok Kumar Prajapati, aged about 60 years, S/o Mahaveer Prasad Prajapati, R/o 545/Ka/A-13, Laxman Bihar, Rajajipuram, Lucknow.

.....Applicant

By Advocate : Shri Praveen Kumar

-VS-

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.

....Respondents

By Advocate: Shri Balendu Bhushan Tripathi

**ORDER(ORAL)**

Heard both learned counsel for the applicant as well as for the respondents.

2. Learned counsel for the applicant Shri Praveen Kumar submitted that the brief facts of the case are that the applicant superannuated from the respondents' service on 30.4.2019. The Pension Payment Order (PPO) issued to him on 29.4.2019 i.e. one





day before his retirement clearly showed a sum of Rs. 12,19680/- as being payable towards Gratuity. However, the applicant was un-pleasantly surprised when he found that a sum of Rs. 188472/- had unilaterally been deducted from the aforementioned Gratuity payment and that too, without any notice or opportunity of hearing. When he made enquires, he found that this had been done as a result of his last draw pay being revised on 09.04.2019 i.e. just a few days before his superannuation on 30.04.2019. Learned counsel for the applicant submitted that this revision was effected without giving any notice to the applicant or indeed any opportunity of a hearing. In the present instance, however the applicant is agitating not against the revision but the unilateral illegal recovery of Rs. 1,88472/- made from the Gratuity on account of the said re-fixation. Citing the case of **State of Punjab and Others Vs. Rafiq Mdasih (White Washer) vs (2014) 8 SCC-883**, learned counsel for the applicant submitted that the ruling laid down in that judgment and followed up subsequently in DOP&T OM dated 2<sup>nd</sup> March, 2016, and RBE No. 72 of 2016 dated 22.06.2016,( Annexure-A-5), clearly and specifically provide that such recoveries are not being made from retiring Group C



employee like the applicant within a period of one year before their retirement, whereas, in the present instance, the recovery was made and that too without notice or any hearing in the last month of service of the applicant. Shri Kumar argued that this recovery has been made illegally and should be refunded forthwith to the applicant along with penal interest payable from the date of recovery to the date of repayment. Citing the case of Gopal Narain Mishra Vs. Union of India (in O.A. No. 245/2017) , decided by this Tribunal on 26.4.2018 (Annexure- R-1), where such recovery was ordered to be refunded. Shri Praveen Kumar emphasised that the said judgment squarely covered this case, in that, the cited case related not only to the same respondent department but also the same unit of the department. Shri Kumar argued that consequently , as in that case, rate of interest payable in this case should also be the then the prevailing rate of interest on GPF.

3. Per contra, Shri B.B. Tripathi, learned counsel for the respondent, reiterated the averments made in the counter affidavit of the respondents and submitted that, as admitted by the applicant himself, the revision of pay made in his case is

absolutely justified and he is not questioning the same. He submitted that the recovery made pursuant to this revision therefore represents the recovery of public funds admittedly paid in excess of entitlement to the applicant. Therefore, the recovery effected cannot be termed as arbitrary or illegally in any manner.



4. I have carefully considered the rival submissions made by opposing learned counsels and perused the record. A perusal of the record confirms the applicant's version of events in that a recovery of Rs. 1,88472/- was admittedly made from his gratuity as a result of, a downward revision of pay on 09.04.2019 without prior notice or opportunity of hearing to the applicant.

5. The ruling of the Hon'ble Supreme Court in the case of Rafiq Masih, (Supra), as followed by the DOP&T in OM dated 2<sup>nd</sup> March, and RBE No. 72 of 2016 dated 22.06.2016 (Annexure-A5), makes it clear that following upon the ruling of the Hon'ble Supreme Court in the Rafiq Masih case, (Supra), the respondents should not have unilaterally made the recovery in question.



6. Accordingly, the recovery of Rs. 1,88472/- unilaterally made from the applicant on the eve of his retirement is held to be illegal and is quashed and set aside. Looking to the circumstances of the case as detailed above, it is deemed appropriate that the respondents, while returning the aforementioned amount illegally recovered from the applicant, shall pay interest of the prevailing rate of GPF for the period between the date of recovery and the date of return of the amount to the applicant.
7. OA is allowed accordingly. With this, all linked MAs also stand disposed of.
8. There shall be no order as to costs.

**(A. MUKHOPADHAYA)  
MEMBER (A)**

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