

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

Original Application No. 332/00375/2019

Date of Order: This, the 15th Day of JANUARY 2021

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

Vijay Kumar Yadav, aged about 60 years, S/o Late
Shri Mewa Lal Yadav, R/o, 549/305, Bara Barha,
Alambagh, 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, Northern Railway, Loco
Workshop, Charbagh, Lucknow.

.....Respondents

For the Respondents: Shri Mithilesh Kumar

O R D E R (ORAL)

Shri Praveen Kumar, learned counsel for the applicant, submitted that the applicant retired from the services of the respondent railways on 30.6.2019 from the post of Senior Technician, a Group 'C' post. Just prior to his

superannuation, the applicant was drawing pay @ Rs. applicant was drawing pay of Rs. 44900/- per month as per his RELHS Scheme deduction; (Annexure A-2 and Annexure- A-3 refer). However, the Pension Payment order, (PPO), issued to the applicant shows his last drawn pay as being fixed at only Rs. 42300/- per month; (Annexure- A-4). As a consequence of this, a sum of Rs. 1,93,178/- was unilaterally deducted from the settlement dues of the applicant, (gratuity), and this too, without giving him any notice or opportunity of a hearing so that he could represent his case.



2. Learned counsel for the applicant, Shri Kumar, argued that in a catena of cases, the higher courts and the Hon'ble Supreme Court have repeatedly, held that where an action or an order has adverse civil consequences for a person such as the applicant, it is incumbent upon the authority taking such action or making such an order to hear the party which is going to be adversely affected by the order, so that this party/person can make his representation, if any, against the proposed order/action. Not doing so, Shri Kumar argued, is a clear violation of the principles of natural justice and on this count alone, the impugned letter/order,

(Annexure-A-1), issued on the applicant's date of retirement, i.e.30.6.2019, deserves to be quashed and set aside.



3. Shri Kumar also argued that following upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Ors. vs. Rafiq Masih (white washer) etc. in CA No. 11527 of 2014 (arising out of SLP (C) No. 11684/2012), 2015 (4) SCC 334***, a DoP&T OM dated 02.03.2016 complying with this order was circulated by the Railway Board vide RBE No.72/2016; (Annexure-A-6). In this OM, while referring to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Ors. vs. Rafiq Masih, (Supra)*, specific conditions, (Para 4 of OM at Annexure –A-6 refers), were laid down in which recovery cannot be effected from an employee such as the applicant, even if the sum in question, had been wrongly paid or paid in excess of employee's dues.

4. Shri Kumar pointed out that two relevant conditions in this regard are as follows:

- (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.



5. Pointing out that the recovery made from the applicant, who was a Group 'C' employee, was made/communicated on his last date of service, learned counsel for the applicant prayed that this recovery, which was clearly impermissible in law as ruled by the Apex Court, and thus, was made illegally from the applicant, may be restored/refunded to him forthwith and that, if the respondents thereafter proposed to reduce the applicant's pay or pension, this could only be done after issuing him notice and giving him a fair and full opportunity to represent against the proposed action.

6. Per contra, Shri Mithilesh Kumar, learned counsel for the respondents, argued that the recovery made from the applicant is correct as the applicant had erroneously been given an extra increment during his service period. Learned counsel for the respondents submitted that this

error was detected at the time of the retirement of the employee and consequently, the impugned letter/order of the respondents fixing the pay of the applicant at Rs. 42300/- per month and recovering the excess payment made to him amounting to Rs. 1,93,178/- merely represented the rectification of the error made earlier. Learned counsel for the respondents, argued that the respondents were well within their rights to make such a rectification as an error once detected cannot be allowed to continue in perpetuity.



7. I have carefully considered the rival contentions of learned counsel for the applicant as well as learned counsel for the respondents. It has not been disputed in this case that the applicant retired from the services of the respondent railways as a Group 'C' employee on 30.6.2019 or again fact that he was intimated the supposed error made in the fixation of his pay earlier only on 30.6.2019 itself vide the impugned letter / order dated of the same day. It is further not being denied or contradicted that this supposed rectification was made without giving the applicant notice or indeed a hearing. Further, as regards DoP&T OM of 2nd March

2016 circulated vide RBE No. 72/2016, (Annexure A-6 refers), learned counsel for the respondents stated that, he had no comments to offer on this.

8. A perusal of DoP&T OM of 2nd March, 2016, (Annexure- A-6), as circulated by the respondent railways themselves vide RBE No. 72/2016, clearly shows that the respondents are following the directions given by the Hon'ble Supreme Court in its judgment dated 18.12.2014 in the case of *State of Punjab and Ors. vs. Rafiq Masih, (Supra)*, and have directed all subordinate authorities not to make recoveries from employees where they fall into one of the categories mentioned in the judgment of the Hon'ble Supreme Court and reproduced in essence in para-4 of the OM. It is noticed that Para-4 of the OM specifically barred such recovery being made even where payments had been made to employees belonging to Group C and Group D services in excess of their entitlement. Again, the OM of 02.03.2016 specifically directs that recoveries are not to be made from retired employees or employees who are due to retire within one year of the order of recovery. For both these reasons, the recovery made in the



present case become unsustainable and impermissible in law in terms of the respondents' own directions issued in compliance of the ruling of the Hon'ble Supreme Court and conveyed by the respondents' OM dated 2nd March 2016.



9. Given the foregoing analysis, I find that the fixation of the pay of the applicant on the eve/date of his retirement, at a lower level and consequent grant of a lower pension to him as evidenced by the PPO issued to him without giving him any notice or opportunity of hearing violates the principle of natural justice. Likewise, the recovery effected from him unilaterally at the time of his retirement is also found to be impermissible in law as the applicant was undisputedly a Group 'C' employee of the respondent railways and the recovery in question was made within the period specifically prescribed for this by the Hon'ble Supreme Court in its judgment in the case of *State of Punjab and Ors. vs. Rafiq Masih, (Supra)*.

10. In the result, the OA succeeds. The impugned letter/order reducing the applicant's pay prior to retirement from Rs. 44900/- per month, as stated by him, to Rs. 42300/- as stated

in his PPO is quashed and set aside and the recovery of Rs. 1,93,178/- made from him without notice and in violation of DoP&T OM dated 2nd March 2016 circulated by RBE No. 72/2016 is hereby declared illegal. This sum may be restored/refunded to the applicant within one month of the receipt of a certified copy of this order. In case, the respondents still wish to pursue the matter regarding the supposed wrongful fixation of pay as claimed by them due to an error, they are permitted to do so, but only after giving the applicant due notice of the proposed rectification as claimed and affording him an opportunity of hearing against the same.



12. There shall be no order as to costs.

(A.MUKHOPADHAYA)
MEMBER (A)

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