

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

Original Application No. 332/00126/2020

This, the 12th day of April, 2021

Serial No. 7

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

HON'BLE MR. R.N.SINGH, MEMBER (J)

Raj Narain aged about 61 years, son of Late Shri Gaya Prasad, R/o C/o Q. No. II-58-E, Sleeper Ground Colony, 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 Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Sr. Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. The Sr. Divisional Finance Manager, Northern Railway, Hazratganj, Lucknow.

For Respondents: Shri Rajendra Singh

ORDER (ORAL)**BY HON'BLE MR. A MUKHOPADHAYA, MEMBER (A)**

Heard both learned counsel for the parties.



2. Sri Praveen Kumar, learned counsel for the applicant submitted that the applicant who retired from the post of Master Craftsman (now known as Senior Technician), from the services of the respondents Northern Railway on 31.07.2019, was drawing pay @ Rs. 43600/- per month till the time to his retirement. However, when his service certificate was issued, his last pay drawn was shown as being Rs. 38700/- only; (Annexures A1 and A2 refer). Further, a recovery of Rs. 9,36,000/- was made from his retiral dues. Sri Kumar pointed out that this entire action of the respondents, which visited such severe adverse civil consequences upon the applicant, was effected without putting the applicant to any notice. He argued that in terms of the ratio laid down by the Hon'ble Supreme Court in the matter of **State of Punjab & Ors Vs Rafiq Masih (2015) 4 SCC 334**, this recovery is liable to be set aside and the amount recovered is liable to be refunded along with interest from the date it was made till the actual date of repayment. He further stated that since the pay fixation of the applicant reducing his pay was carried out unilaterally and arbitrarily resulting in a reduction in his pension as compared to what is correctly due, such reduction should be reversed.

3. Per contra, Sri Rajendra Singh, learned counsel for the respondents submitted that the applicant had been overpaid earlier on account of an administrative error and that this

error had rightly been corrected by the respondents while making the aforementioned recovery.



4. We 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 31.07.2019 or again that he was intimated the supposed error made in the earlier fixation of his pay only around the time of his retirement. It is further not being denied or contradicted by the respondents that this supposed rectification was made without giving the applicant notice or indeed any kind of a hearing. Further, as regards the DoP&T O.M. of 2nd March 2016 circulated vide RBE No. 72/2016. (Annexure A-5 refers), which prescribes such recovery from Group C employees, learned counsel for the respondents stated that he had no comments to offer on this.

5. A perusal of DoP&T OM of 2nd March, 2016, 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 employee where they fall into any one of the categories mentioned in the judgment of the Hon'ble

Supreme Court; (as reproduced in essence in para-4 of the OM). It is noticed that Para-4 of the OM specifically bars 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 becomes 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' own RBE 72/2016.



6. Given the foregoing analysis, we 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 proscribed for this by the Hon'ble Supreme Court in its judgment in the case of

State of Punjab and Ors. vs. Rafiq Masih, (Supra).

7. In the result the OA succeeds. The impugned letter/order effectively reducing the applicant's pay prior to his retirement from Rs. 43600/- per month, as stated by him, to Rs. 38700 /- as stated in his PPO, is quashed and set aside and the recovery of Rs. 9,36,000/-, made without any prior notice or hearing and in violation of DoP&T OM dated 2nd March 2016 circulated by RBE No. 72/2016 is hereby declared illegal. This sum will be restored/ refunded to the applicant and his pension will also be recalculated and payments along with arrears will commence within two months 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 due to an error, as claimed by them, 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 a hearing against the same.



8. There shall be no order as to costs.

(R.N.SINGH)
MEMBER (J)

(A.MUKHOPADHAYA)
MEMBER (A)