

Central Administrative Tribunal,
Mumbai Bench, Mumbai.

O.A.2120/2020

Dated this Monday the 26th day of July, 2021

Coram: Dr. Bhagwan Sahai, Member Administrative)

Chandramani U. Patil,
Senior Passenger Guard,
South East Central Railway,
Nagpur, residing at
Plot No.22, Parwati Nagar,
Near Awade Flour Mill,
Joginagar Road, Nagpur - 440 027.
Mobile No.: 9561005494. .. Applicant.

(By Advocate Shri Rahul Dhande)

Versus

1. The Union of India, through its Divisional Railway Manager, having office at South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur - 440 001.
2. The Senior Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur - 440 001.
3. The Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur - 440 001. .. Respondents.

(By Advocate Shri Alok Upasani).

Order reserved on : 19.04.2021.
Order delivered on : 26.07.2021.

O R D E R

The applicant has filed this O.A. seeking quashing and setting aside of recovery order/letter dated 09.11.2020 issued by Divisional Personnel Officer for Sr. Divisional

Personnel Officer, South East Central Railway, Nagpur directing for recovery of overpayment of Rs.2,00,678/- from the applicant from his DCRG. The applicant has also filed M.A.2010/2021 for amending the reliefs in the O.A. Since at the time of filing of the O.A. recovery of the overpayment had not been made but it has been made subsequently, so he also seeks refund of Rs.2,00,678/-. This M.A. is allowed. He also seeks grant of cost of this O.A.

2. Summarized facts and contentions of parties:

In the O.A. the applicant has stated that -

2(a). he was appointed as Commercial Clerk (Group 'C') on 02.04.1991 with South East Central Railway, Nagpur and then got promoted from time to time, and at the time of filing this O.A. he was holding post of Sr. Passenger Guard. He was due to retire on 30.11.2020. By the order/letter dated 09.11.2020, the Divisional Personnel Officer on behalf of Sr. Divisional Personnel Officer, South East Central Railway, Nagpur has communicated to him about recovery from him of overpayment of Rs.2,00,678/-;

2(b). while processing his service record before his retirement, a review by the Accounts Branch has pointed out the overpayment of



Rs.2,00,678 due to wrong fixation of pay during V Central Pay Commission period and this amount is proposed to be recovered from his DCRG on or before 30.11.2020. Before issuing this order, he had not been issued any show cause notice, thus principles of natural justice have not been observed. Hence the order of the recovery is illegal, arbitrary and contrary to law and, therefore, it needs to be set aside;

2(c). in the order of recovery of overpayment, the Competent Authority itself has stated that while reviewing his service record it was revealed that the overpayment made was not due to furnishing of any incorrect information or misrepresentation of facts by him, and it was a mistake of the higher authorities to make that payment. The overpayment was made from 1994 to 2006 and for a period which is in excess of 5 years before the order of recovery was made. Therefore, this recovery of overpayment is not permissible as he is a Group 'C' employee; and

2(d). the applicant has also enclosed a copy of legal notice sent by him to the Divisional Personnel Officer, South East Central Railway, Nagpur. In support of his contention the applicant has relied upon Apex Court decision in case of **State of Punjab and others etc Vs. Rafiq**



Masih (White Washer), etc reported in 2015 AIR (SC) 696 in which certain parameters/guidelines have been laid down where recovery of overpayment is not permissible.

In addition, the applicant has also relied on a Bombay High Court decision in case of **Issak Abbas Hawaldar Vs. Block Education Officer and another, reported in 2018(3)Bom.C.R. 147.** Based on those caselaws, he seeks the above mentioned reliefs.

2(e). The respondents have filed reply to the O.A. with the contentions :

(i) the applicant's pay as on 01.12.2001 was Rs.4875/- and in 2002 two punishments were imposed on him i.e. withholding of increments for two years with non-cumulative effect vide letter dated 22.03.2002, and withholding of increment for one year with non-cumulative effect vide letter dated 19.07.2002. After completion of the first punishment, the pay of the applicant was refixed as Rs.5,250/- instead of Rs.5,125/-. Due to that wrong refixation of his pay, thus overpayment has taken place from 01.12.2004. After completion of second punishment, his pay was refixed at Rs.5,500/- instead of Rs.5,375/- and thus due to the wrong refixation of pay, the applicant has received overpayment.



2(ii). This overpayment continued till the observations were made by the Accounts Branch after noticing the overpayment of Rs.2,00,678/- and it has been intimated to the applicant vide letter dated 09.11.2020. Since the overpayment was due to inadvertent mistake on the part of the respondents, it has been proposed to be recovered from the applicant from his Death-cum-Retirement Gratuity. If the amount of overpayment is not recovered, it would amount to condonation of the two punishments which were imposed on the applicant in the year 2002. Therefore, the recovery of overpayment of Rs.2,00,678/- from the applicant is justified.

2(iii). As per Supreme Court decision in **Chandiprasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.** reported in (2012) 8 SCC 417, except few instances pointed out in Syed Abdul Qadir and Col.B.J. Akkara, the excess payment made due to wrong/irregular pay fixation can always be recovered. Therefore, this O.A. having no merit should be dismissed.

The applicant has also filed rejoinder in the matter and the respondents have filed sur-rejoinder reiterating the above contentions.

3. Analysis and conclusions:

I have carefully considered the averments made by the applicant in the O.A., and contentions in the rejoinder as well as the contentions raised by the respondents in their reply and sur-rejoinder.

3(a). As admitted by the respondents themselves, refixation of pay of the applicant was made from 01.12.2004 after effect of two punishments was over and thus refixation of pay of the applicant was wrongly done, in the first instance at Rs.5,250/- instead of Rs.5,125/- and in the second instance at Rs.5,500/- instead of Rs.5,375/-. In the contentions of the parties, it is an undisputed fact that after period of two punishments, the pay of the applicant was wrongly refixed but this refixation was done by the respondents themselves. There was no misrepresentation on the part of the applicant in the wrong refixation of his pay on those two occasions. From December, 2004, the overpayment to the applicant continued till his retirement on 30.11.2020. Thus it was a case of extreme carelessness on the part of concerned personnel of the respondents supervising this work. The wrong refixation of pay and resultant overpayment made to the applicant was discovered by the



respondents only during verification of his service record prior to his superannuation and based on the calculations of the concerned Accounts Branch, the overpayment of Rs.2,00,678/- was worked out and has been recovered from DCRG of the applicant.

3(b). I have also gone through the two caselaws relied upon by the applicant i.e. Supreme Court decision in case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR (SC) 696, and the Bombay High Court decision in case of Issak Abbas Hawaldar Vs. Block Education Officer and others dated 07.11.2017, which had relied upon the above Supreme Court decision. The respondents are contending that the wrong refixation of pay of the applicant took place by inadvertent mistake of their concerned employees and recovery of wrongful or undue overpayment can be recovered as per the Supreme Court decision in Chandiprasad Uniyal case.

3(c). I have gone through this caselaw also. However, in view of the facts of this case, the subsequent Supreme Court decision in case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc, reported in 2015 AIR (SC) 696, listing certain guidelines on this subject





is more relevant here. As rightly pointed out by the applicant, as per guidelines (i) and (iii) in that decision, the applicant being a Class 'C' employee, recovery of the overpayment which continued due to laxity in supervision of the respondents for almost 16 years, amounting to gross negligence on their part, is not permissible. In this case, the refixation of applicant's pay was done twice after two punishments given to the applicant were over, and it is very strange to note that the concerned employees in the Accounts Branch of the respondents, internal audit unit as well as the supervisory officer of the applicant were so negligent that they did not notice this continuous overpayment to the applicant for a period of 16 years. During this period, the refixation must have been audited too.

3(d). Since the full responsibility for his continuous overpayment to the applicant was of the concerned personnel of the respondents, its recovery from the applicant is not justified. Therefore, this O.A. deserves to be allowed.

Resultantly the amount of Rs.2,00,678/- recovered from the applicant at the time of his retirement from the DCRG deserves to be refunded to him. Additionally for this continuous

overpayment, the respondents have to fix the responsibility on the concerned persons for such wrong refixation of pay of the applicant twice and its continuance for almost 16 years.

4. Decision:

(a). The O.A. is allowed. The respondents are directed to refund Rs.2,00,678/- to the applicant within one month from the date of receipt of certified copy of this order.

(b). The respondents no.1 and 2 are directed to fix responsibility on the concerned persons for the wrong refixation of pay of the applicant on two occasions and based thereon for allowing continuation of overpayment to the applicant for almost 16 years, and to recover the amount of Rs.2,00,678/- from them by appropriately apportioning its share among those found responsible. This exercise should be completed in four months from the date of receipt of copy of this order.

(c). No costs.

SD

(Dr. Bhagwan Sahai)
Member (A).

H. *Certified True Copy*
Date.....

Section Officer
Central Administrative Tribunal
Mumbai Beach, Mumbai

