

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 422/2013

Jodhpur, this the 16th April, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

Prem Lal Chaturvedi S/o Shri Mangal Sen, aged 63 years, R/o A-56, Karni Nagar, Pawan Puri, new Vasu General Store, Bikaner (Raj). Retired Division Cashier, NW Railway, Bikaner.

.....Applicant

Mr Rajeswar Vishnoi, counsel for applicant.

Vs.

1. The Union of India through the General Manager, Northern-Western Railway, Jaipur.
2. The Divisional Finance Manager, Northern-Western Railway, Bikaner.
3. The Chief Cashier, Northern-Western Railway, Jaipur.
4. The Financial Advisor and Chief Accounts Officer, Northern-Western Railway, Jaipur.

...Respondents

Mr Vinay Jain, counsel for respondents.

ORDER (Oral)

The applicant, Shri Prem Lal Chaturvedi, has filed this application under section 19 of the Administrative Tribunals Act, 1985 challenging the orders Annex. A/1 dated 25.07.2013 and 04.05.2013 by which the respondent-department rejected the representation of the applicant and ordered to recover the excess Honorarium paid to the applicant between October 2003 to September 2008.

2. The short facts of the case are that the applicant was appointed on the post of Divisional Cashier on 16.05.1968 in the respondent-department. After attaining the age of superannuation, he retired on 31.7.2009 and was granted pension w.e.f. 01.08.2009. The respondent No. 2 vide order/communication dated 03.09.2012 informed the applicant that he has been paid Rs 48,271 in excess under NWR payment policy and Rs 20,680/- has been adjusted with the arrears paid to the applicant. It has been stated that the applicant was directed to deposit remaining excess amount of Rs 27,591/- within 15 days otherwise the excess amount would be recovered from the dearness relief of the applicant. The applicant approached the respondent-department and requested not to recover this amount on the ground that all the payments to the applicant had been made in accordance with prevailing policies and he is not responsible for any excess payment made due to fault of the respondent-department. Aggrieved with the action of the respondents, the applicant filed OA bearing No. 411/2012 before this Tribunal as no heed was paid to his request. This Tribunal allowed the OA vide order dated 28.05.2013 while quashing the communication dated 03.09.2013 with a direction to the respondent to decide the representation of the applicant with reasoned and speaking order regarding the issue. After passing of the order in OA No. 411/2012 by this Tribunal, the applicant filed representations dated 13.06.2013 and 12.07.2013 in the respondent-department and respondent authority, in turn, vide communication dated 25.07.2013 informed the applicant that there was no such task in the NWR Payment Policy as to bring the

cash and distribute the same. The Railway Administration has decided to maintain the recovery order and the applicant has been informed that recovery of Rs 27,591/- is maintained. The applicant has also been directed to deposit this remaining excess amount within 15 days unless the same shall be recovered from the dearness relief. However, again a communication dated 04.05.2013 was delivered to him on 11.07.2013 (Annex. A/1). The applicant again approached the respondent authorities moving a detailed representation on 05.08.2013 and requested them not to recover this amount as the applicant has not been paid any excess money and all the payments have been made in accordance with prevailing policies and that the applicant is not responsible for any excess payment and he cannot be penalized and made to suffer financially on the fault of respondent-department but no heed was paid to his request. Therefore, the applicant has filed this OA seeking following relief(s) :

- A. The respondent authorities may kindly be restrained from recovering any excess money paid to the applicant and the impugned order dated 25.07.2013 and 04.05.2013 (Annex. A/1) may kindly be quashed and set aside;
- B. The letter of Railway Board No. PC6th/2013/1/RSRP/1 dated 23.03.2013 which has been referred in the impugned communication Annex. A/7 by which recovery has been made from the applicant may kindly be quashed and set aside;
- C. The respondent authorities may kindly be directed to refund the recovered money which has been recovered from the applicant after his retirement with interest @ 18% p.a.; and
- D. Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

E. Application of the applicant may kindly be allowed with costs.

3. By way of reply, the respondents have denied the claim of the applicant and have averred that the applicant has wrongly claimed and received Honorarium @ 10% of total cashier working under 2 DC/ADC, although the applicant was entitled to claim at half of the rate because there were two supervisors working in the division and both were entitled for 10% maximum upto the ceiling totally and not individually. It has been further averred in the reply that the applicant was wrongly granted the Honorarium, therefore, the same was required to be recovered and accordingly, the order dated 03.09.2012 was passed. The applicant was duly communicated the decision on his representation and since policy matters are being dealt by Headquarter, therefore, letter was sent to Chief Cashier North Western Railway on 22.08.2013 alongwith representation of the applicant. The Headquarter vide letter dated 29.08.2013 informed that the recovery which is to be made is correct because excess payment of Honorarium has been made and the applicant has deliberately taken the Honorarium without informing the correct facts to his Senior Officer. In this letter, it was also categorically mentioned that if applicant would have been in service then even disciplinary proceedings would have also been initiated because the applicant was expected to submit the claim correctly as he was himself working as supervisor, but he misconceived the facts and wrongly claimed the Honorarium, therefore, the recovery being made is not illegal but

the same is as per law. Thus, respondents have prayed for dismissal of the OA.

4. Heard both the parties. Counsel for the applicant contended that according to the letter of Railway Board No. PC6th/2012/1/RSRP/1 dated 23.03.2013, the excess payment has been made to the applicant and a sum of Rs 20,680/- has been recovered, but the said payment was made to the applicant after due scrutiny and recommendation of the respondent authorities in which there is no remark; therefore, the applicant was paid remuneration for the job which was performed by him and there is no question of paying any excess amount to him. He further contended that there is no excess payment to the applicant and this fact is proved from the circumstantial evidence as had there been any irregularity, the respondents would have informed the applicant about this long ago, but at this stage, when the applicant has been retired, the recovery has been made in a hot haste manner without providing any opportunity of hearing to the applicant. In case, any excess money had been paid, at this juncture the applicant is not responsible, as it is the fault of the department and the applicant cannot be penalized and made to suffer financially for the same. In support of his argument, counsel for the applicant relied upon the judgment passed in Syed Abdul Qadir and Ors v. State of Bihar & Ors (2009) 3 SCC 475.

5. Per contra, counsel for the respondents contended that the applicant has claimed 10% honorarium although he was entitled for

5% honorarium only and the applicant was in knowledge of this fact but despite this, he claimed 10% honorarium, therefore, the applicant is responsible for recovery of excess payment and the respondent-department has got every right to recover the same.

6. Considered the rival contentions of both the parties and also perused the judgment cited by counsel for the applicant. In my considered view, the applicant being in supervisory position claimed Honorarium @ 10% instead of 5% which constitute misrepresentation of facts before the respondent authority. Thus, judgment cited by counsel for the applicant bears different facts from this case. Further, it is settled position of law that any excess payment made without any authority of law can be recovered at any stage because it is the public money. However, looking to the fact that the applicant is a pension holder, therefore, respondents are directed to recover the remaining amount of Rs 27,591/- in 28 installments (27 installments @ Rs 1,000/- per month and rest in 28th installment)

9. In terms of above direction, the OA is disposed of with no order as to costs.


(JUSTICE K.C.JOSHI)
Judicial Member

SS/

R/C
~~25/4/14~~

Copy needed
for Rajeshwar Singh

Sneekantade
5/5/14