

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 426/2013

Jodhpur, this the 12th day of May, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Sushil Chandra Chaturvedi s/o Shri Tara Chand Chaturvedi, aged about 73 years, by caste Brahmin, resident of 15 Vijay Colony, Near Railway Station, Chittorgarh (Raj.) (Retd. Senior Clerk from Deputy Chief Engineer (S&G), Western Railway, Kota.

.....Applicant

By Advocate: Shri Harshit Bhurani on behalf of Shri Rajesh Joshi

Versus

1. Union of India through its General Manager, Western Railway Mumbai.
2. Deputy Chief Engineer (Construction), West-Central Railway, Kota Junction, Kota (Rajasthan)
3. FA&CAO (Pension), FA&CAO's Office, Churchgate, Mumbai-40020.

.....Respondents

By Advocate : Mr. Kamal Dave

ORDER

The present OA has been filed against the order dated 11.03.2013 (Ann.A/1) by which recovery of Rs. 4,41,306/- with interest has been ordered and in relief, he has prayed that:-

(i) By an appropriate order or direction, the impugned orders dated 11.3.2013 (Ann.A/1), 28.5.2004 (Ann.A/2), 7.6.2004 (Ann.A/3), 24.6.2004 (Ann.A/4) and 17.8.2004 (Ann.A/5) passed by the respondents may kindly be quashed and set aside.



annum from the issuance of order dated 28.5.2004 (Ann.A/2);

(iii) Further the respondents may be directed to pay interest on the delayed payment;

(iv) Further the respondents may be restrained from recovering the amount from the applicant and a declaration may be given that the respondents are having no authority or jurisdiction to recover the amount from the applicant;

(v) Further the respondents may be directed to pay all retrial benefits like gratuity, PF Pension etc. to the applicant, without making any deduction as shown in impugned orders (Ann.A/1) to Ann.A/5), with interest @ 18% p.a.

(vi) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

(vii) Costs of the application may kindly be awarded in favour of the applicant.

2. Brief facts of the case are that in the year 1990 while the applicant was working as Assistant Store Keeper (C) Chanderiya, new rails were received and issued to PWI for B.G. Track lying work. Due to shortage of rails found on 17.05.1996, a chargesheet was issued to the applicant. After holding an inquiry, a penalty of reversion, to lower scale, was imposed with future effect vide order dated 5.1.2000 (Ann.A/7). Applicant filed an appeal against this order, which was also dismissed vide order dated 3.5.2000 (Ann.A/9). Aggrieved of dismissal of appeal, the applicant has filed OA No.194/2001 before Jaipur Bench of this Tribunal. The *Dohar* said OA was allowed vide order dated 26.11.2007 (Ann.A/10), and the order of penalty was quashed and set-aside. It appears from record that the applicant filed OA No.292/2004 before Jaipur

Bench of this Tribunal regarding recovery of Rs. 1.74 lakhs from the gratuity, which was disposed of on 13th September 2005 as premature. The applicant then filed D.B.Civil Writ Petition No.6225/2005, which was finally disposed of with a direction to the applicant, to file representation to the respondents and the respondents were directed to decide the same. The applicant filed a representation on 16.02.2013, which was rejected by the respondents vide order dated 11.03.2013 (Ann.A/1). Thus, the applicant has approached this Tribunal against the impugned order.

3. By way of reply, the respondents have denied the averments made in the OA. They have submitted that orders for recovery of the outstanding dues/shortage is in consonance with the Rules. Since the applicant failed in his duties as regard the charge of the material under him and maintain the accounts of rails and SM rounds, it has culminated into the impugned order. The Disciplinary Inquiry initiated, was entirely in respect of misconduct, whereas, the recovery was ordered on account of failure on the part of the applicant, to keep the accounts of rails etc. under his control. The contention of the applicant, that after having faced the disciplinary inquiry, no recovery can be ordered has no foundation as both are distinct and different. The respondents have submitted that recovery can be ordered even

(Signature)

from the pensioner, in respect of which reference of Rule 15 of the Railway Service (Pension) rules, 1993 is relevant which provides for recovery and adjustment of government and Railway dues from the pensionary benefits.

4. The learned counsel for the respondents submitted that Rule 15 of the Railway Pension Rules empowers the Railways to make recovery from the retiral benefits of an employee. However, the ratio of judgment of the Hon'ble Apex Court cited supra, is fully applicable in this case.

5. Heard both the counsels.

6. In this case the applicant retired in the year 2000 and recovery has been ordered in the year 2004. The learned counsel for the applicant contended that in view of the recent judgment of the Hon'ble Apex Court in Civil Appeal No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) in the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. with other Civil Appeals decided on 18th December, 2014, it has been clearly laid down that recovery from retired employees is impermissible in law. It has been laid down that :-

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“..... summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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.
- (iii)

The applicant's case is squarely covered by this case.

7. In view of above, the impugned recovery is impermissible in law. Accordingly, the respondents are directed to re-examine the matter as per the decision of the Hon'ble Apex Court in the case of State of Punjab and Ors. Vs. Rafiq Masih (supra) and pass appropriate orders.

8. The OA stands disposed of accordingly with no order as to costs.


(PRAVEEN MAHAJAN)
Administrative Member

R/