

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00187/15

Reserved on : 04.10.2016

Jodhpur, this the 19th October, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Tikma S/o Late Shri Abha Ji aged about 81 years, R/o Plot No. 50 Sector 4F, Shastri Nagar, New Power House Road, Jodhpur. Retired from the post of Head Trains Clerk from the office of Station Superintendent North Western Railway, Jodhpur.

.....Applicant

By Advocate: Mr S.K. Malik.

Versus

1. Union of India through the General Manager, North Western Railway, Jodhpur (Raj).
2. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
3. Senior Divisional Finance Manager, North Western Railway, Jodhpur Division, Jodhpur.

.....Respondents

 By Advocate : Mr Salil Trivedi.

ORDER

In the instant Original Application, the applicant has challenged letter dated February, 2015 (Annex. A/1) issued by Assistant General Manager, Centralized Pension Processing Centre, State Bank of India, New Delhi whereby recovery of Rs 1,62,967/- @ Rs 3950/- per month has been ordered; and revised

PPO No. NWR-2010-11318-542601 dated 29.07.2013 whereby pension of the applicant has been revised to Rs 5735/- from 01.01.2006. The applicant has sought following reliefs:

- (i) By an appropriate writ order or direction impugned letter dated -02-15 at Annex. A/1 and impugned PPO dated 29.07.2013 at Annex. A/2 be declared illegal and be quashed and set aside as if the same were never issued against the applicant.
- (ii) By an order or direction respondents may be directed to restore the pension of applicant as Rs 6,750/- w.e.f. 01.01.2006 as fixed vide Annex A/5 with all consequential benefits.
- (iii) By an order or direction excess amount recovered from the pension of applicant from the month of February 2015 to till recovery be refunded alongwith interest @ 18% per annum.
- (iv) By an order or direction exemplary cost be imposed on the Respondents for causing undue harassment to the applicant.
- (v) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. The bare minimum facts necessary to adjudicate the present OA are that the applicant retired from the post of Head Trains Clerk w.e.f. from 31.07.1992 after attaining the age of superannuation from the pay scale of Rs 1400-2300/- and was granted pension vide PPO No. 06922082 (Annex. A/3). The case of the applicant is that the pay scale of Rs 1400-2300 from which the applicant retired was revised to Rs 5000-8000 from 01.01.1996 and thereafter, further revised to Pay Band of Rs 9300-34800 + Grade Pay Rs 4200/- w.e.f. 01.01.2006. Accordingly, the pension of the applicant was revised to Rs 2,537/- w.e.f. 01.01.1996 vide PPO dated -10-99 (Annex. A/4) and thereafter to Rs 6,750/- w.e.f. 01.01.2006 vide revised PPO dated 17.04.2010 (Annex. A/5). But,

the respondents all of sudden vide PPO Annex. A/2, never communicated to the applicant, revised the pay scale w.e.f. 01.01.1996 and 01.01.2006 and also revised the pension from Rs 6,750/- to Rs 5,735/- and ordered to recover Rs 1,62,967/- @ Rs 3950/- per month from February, 2015. Aggrieved of the same, the applicant has filed the present OA.

3. The respondents in their reply have averred that the Department of Pension and Pensioners' Welfare, Railway Board issued a circular bearing No. RBE No. 181/2008 (Annex. R/1) and based on the judgment rendered by the Hon'ble Supreme Court on 23.11.2006 in the case of K.S. Krishnaswamy Vs. Union of India, the Railway Board issued another circular RBE No. 24/2010 (Annex. R/2), wherein it was advised that all cases in which either pension/family pension has been revised or the revised PPOs have been issued indicating 5th CPC scale of pay and 6th CPC Pay Band/Grade Pay, otherwise, than in accordance with DOP&PW's instructions, may be reviewed, and revised PPOs issued, at the earliest. The applicant had retired from the pay scale of Rs 1400-2300. The 5th CPC and 6th CPC corresponding pay scale to the scale in which the applicant retired are 4500-700 and Rs 5200-20200 + GP Rs 280/- as per DoP&PW's OM dated 14.10.2008, circulated by Railway Board vide RBE No. 181/2008 dated 18.11.2010. This position was further clarified by Railway Board

vide RBE No. 42/2010 (Annex. R/3) dated 18.03.2010. Thus, the respondents submit that the applicant's pension ought to have been fixed corresponding to the revised pay scale of Rs 4500-7000 from 01.01.1996 and in the Pay Band Rs 5200-20200 + Grade Pay 2800 from 01.01.2006. Accordingly, the pension of the applicant ought to have been fixed at Rs. 5735/-. Therefore, while implementing the aforesaid instructions in its true letter and spirit, the excess payment made to the applicant was required to be recovered which is perfectly legal, justified and in consonance with the instructions issued by the Railway Board and as per law laid down by the Hon'ble Supreme Court. The applicant cannot be permitted to take the advantage of any wrong calculation and he is liable to repay the excess amount received by him as per Annex. A/1 and A/2. The recovery order issued is perfectly legal and justified. Thus, the respondents have prayed to dismiss the OA.

4. Heard Mr S.K. Malik, Ld. counsel for applicant and Mr Salil Trivedi, Ld. counsel for respondents.

5. The main thrust of arguments advance by Ld. counsel for applicant is two fold. He argued that the pay scale of Rs 1400-2300 from which the applicant was retired, was revised to corresponding pay scale of Rs 5000-8000/- in the 5th CPC and thereafter, to Pay Band Rs 9300-34800 + Grade Pay Rs 4200/-.

Therefore, revising the pay scale from 01.01.1996 after lapse of 19 years is extremely unfair. He further submitted that there is no misrepresentation or fraud on the part of the applicant to set his pension revised from time to time. Now all of sudden without any notice the pay scale and pension has been revised w.e.f. 01.01.1996 and recovery has been ordered vide Annex. A/1. Thus, he prayed to quash and set aside the Annex. A/1 letter of recovery and Annex. A/2 revised PPO. In support of his argument he relied upon the judgment of CAT Madras Bench passed in OA No. 310/00542/14 dated 31.08.2015.

6. Countering the arguments advanced, Ld. counsel for respondents contended that bare perusal of Annex. R/1, R/2 and R/3 leaves no doubt that the employees who were working in the pay scale of Rs 1400-2300/- were required to be fixed in the revised pay scale as per the recommendation of the 6th CPC in the Grade pay of Rs 2800/- . Accordingly, the pension of the applicant ought to have been Rs 5,735/- as has been revised vide Annex. A/2 PPO dated 29.07.2013 instead of Rs 6750/- Annex. A/5 PPO dated 17.04.2010. Thus, there was apparent error on the face of record while issuing the earlier PPO. The respondents while taking corrective measures, refixed the pension of the applicant. The excess fixation of his pension corresponding to his pay scale

has been rectified and correct pension has been ordered to be released. Therefore, Annex. A/1 and A/2 are perfectly legal.

7. I have considered the rival contentions and perused the record. It is an admitted fact that the applicant retired in the pay scale of Rs 1400-2300/-. As per S.No. 9 of Annexure A-1 of DoP&PW's OM dated 14.10.2008 circulated by Railway Board vide RBE No. 18.11.2008 (Annex. R/1) the corresponding pays scale after implementation of 5th CPC from 01.01.1996 is Rs 4500-125-7000 and thereafter 6th CPC Pay Bands/scales is Rs 5200-20200 + Rs 2800 Grade Pay. However, as per Railway Board's own admission vide RBE No. 24/2010 dated 02.02.2010 (Annex. R/2) some of the Zonal Railways while revising pension/family pension of pre-1996 and pre – 2006 retirees have incorrectly indicated the corresponding 5th CPC pay scales and 6th CPC Pay Band and Grade Pay. The claim of the applicant principally is that corresponding pay scale of Rs 5000-8000/- under 5th CPC and Pay Band-II with Grade Pay Rs 4200/- granted to him under the revision of pension after implementation of 5th & 6th Pay Commission is correct. However, the claim of the applicant does not hold good on bare perusal of RBE No. 42/2010 dated 18.03.2010 (Annex. R/3) wherein, it has been further clarified by the Railway Board that :

“2. It is further clarified that the pay scale of Rs. 5000-8000 in Vth CPC was allotted to the Head Clerks who were in service on or after

01.01.1996. However, as per instructions dated 11.05.2001 of Department of Pension & Pensioners' Welfare (DOP&PW) and adopted by this Ministry vide letter No. F(E)111/99/PN1/20 dated 20.08.2001, pension of all those employees who retired prior to 01.01.1996 has to be stepped up wherever admissible, w.r.t. the minimum pay of the corresponding scale, not the higher replacement scale. The corresponding scale of pre-revised IVth CPC of Rs. 1400-2300 is Rs. 4500-7000 in Vth CPC, not Rs. 5000- 8000, as has also been reiterated in item No. 9 of DOP&PW's O.M. dated 14.10.2008, circulated vide this Ministry's letter of even number dated 18.11.2008. "

I find that the applicant has challenged his revised PPO dated 29.07.2013 (Annex. R/2) but foundation of the revision of his pension is based on RBE Nos. 181/2010 and 24/2010. I do not find any discrepancy so far as execution or implementation of the aforesaid circulars are concerned. Therefore, based on these set of facts, the Annex. A/2 PPO cannot be said to be illegal. The applicant did not challenge any of the statutory order, which are foundation of the issuance of revised PPO. The judgment of CAT Madras Bench cited by Ld. counsel for applicant bears different facts than those in the instant case. The issue involved in the judgment cited by the Ld. counsel for applicant was of grant of 50% of the minimum of the pay in the revised pay band plus grade pay of the post from which the applicant retired. Whereas, in the present matter, the issue involves the grant of correct corresponding pay scale for fixing the pension after implementation of 5th & 6th CPC.

8. During the course of arguments, Ld. counsel for respondents referred to the judgment dated 08.04.2013 passed in OA No. 245/2012 by this Tribunal wherein revision of PPO after granting correct pay scale and recovery thereof was held to be legal and the applicant was directed to deposit the excess payment. However, on pointed query, Ld. counsel for respondents conceded the fact that in light of proposition of law laid down by the Hon'ble Apex Court in Rafiq Masih's case, the recovery of excess amount of pension paid cannot be made.

9. The Hon'ble Supreme Court in the case of State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation / fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18 th December, 2014 ibid has, inter-alia, observed as under:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their

entitlement has summarized 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) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

10. Accordingly, Annex. A/1 is quashed. Recovery made on account of excess pension paid vide order dated February, 2015 is held to be illegal and shall be refunded to the applicant within 02 months. The respondents are directed to pass appropriate orders for correcting the same. However, I find no reason to interfere in Annex. A/2 PPO dated 29.07.2016 regarding fixation of revised pension of the applicant. The OA is thus disposed of with no order as to costs.


[Praveen Mahajan]
Administrative Member

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