

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 304/2011

This the 08th day of April 2016

Hon'ble Mr. Navneet Kumar, Member (J).

Nizam Menhadi aged about 59 years S/o Sri Menhadi Ali Resident of Town Senthal, Mohalla Hakim Tolla, District Bareilly presently posted as ESM-III, under Sr. Section Engineer Signal & Construction N.E. Railway, Aishbag, Lucknow.

....Applicant

By Advocate: Sri Ravindra Sharma.

Versus

1. Union of India, through Secretary, Railway Board, Rail Bhawan, New Delhi and others.
2. Deputy Chief Signal and Tele Communication Engineer (Construction), N.E. Railway, Ashok Marg, Lucknow.
3. Chief Administrative Officer (Construction), N.E. Railway, Gorakhpur.
4. Senior Personnel Officer (Construction), N.E. Railway, Gorakhpur.

....Respondents

By Advocate: Sri B.B. Tripathi for Sri M.K. Singh

ORDER (ORAL)

By Hon'ble Mr. Navneet Kumar, Member (J).

The present Original Application is preferred by applicant under Section 19 of Administrative Tribunal Act challenging the order dated 09.06.2011 and also prayed for issuing a direction to the respondents to release the amount of Rs. 2,83,864/- and Rs. 57,946/-.

2. The applicant joined service under the respondents in the year 1985 and subsequently granted promotions and thereafter respondents issued an order through which the deduction of

Rs. 2,83,864/- was made. The learned counsel for the applicant argued that the applicant is a Group 'D' employee and no recovery can be made from Group 'D' employee as observed by Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih and Others reported in (2015) 4 SCC 334**, in which, the Hon'ble Apex Court has discussed each and every aspect on the point of recovery of the amount paid in excess of their entitlement to the employees and has laid down the following proposition of law which is reproduced below:

“18. 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. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, 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) 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.**
- (iv) 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.”**

3. The learned counsel for the applicant has also alleged that the applicant's case is fully covered by Clause-i as enumerated

above. Since the applicant was Group 'D' employee therefore, proposed recovery can't be made from him.

5. On behalf of the respondents it is argued and indicated through their counter reply that recovery was made to the applicant is justified and there is no irregularities in the same. The respondents counsel relied upon a decision of the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and others** and has indicated that the excess amount so paid to the applicant is liable to be recovered.

6. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the OA are reiterated and counter reply are denied.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant while working in the respondents' organization was promoted in the scale of Rs. 1200-1800. Subsequently Railway Board has issued an order dated 19.08.2010 and in pursuance of the said order the respondents have passed the order dated 09.06.2011 through which certain amount is deducted from the applicant. The applicant submitted his application to the respondents on 25.06.2011 but respondents has not taken any decision and issued an order for recovery of Rs. 2,83,864/- as well as Rs. 57,946/- as such the applicant preferred the present original application.

9. As observed by the Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih (Supra) that no recovery can be made from the employees belongs to Class-III and Class-IV service or Group 'C' and Group 'D' service. The case

of the applicant is fully covered under Clause-i applicable as referred above. The Hon'ble High Court, Lucknow Bench in the case of **Mata Prasad Vs. The Principal Secretary, Finance, Civil Secretariat, Lucknow and others reported in 2015 (33) LCD 2812** has also considered the same issued. Since the applicant is a Group 'D' employee, therefore, the proposed recovery can not be made from him.

10. In view of the law laid down by the Hon'ble Apex Court as well as by Hon'ble High Court, I am of the view that the impugned order dated 09.06.2011 is liable to be quashed. The respondents are directed to release amount of Rs. 2,83,864/- and an amount of Rs. 57,946/- if not already released without any interest within a period of three months from the date the certified copy of this order is produced.
11. Accordingly, the O.A. is allowed. No order as to costs.

VR. Arora
(Navneet Kumar)
Member (J)