

## **CENTRAL ADMINISTRATIVE TRIBUNAL**

## **BANGALORE BENCH : BANGALORE**

ORIGINAL APPLICATION No. 170/00522/2017

TODAY, THIS THE 28<sup>th</sup> DAY OF SEPTEMBER, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER  
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

H. Giriyappa aged about 59 years  
(S/o Late Sri Hanumaiah)  
Working as Chief Office Superintendent in the  
O/o Dy Chief Engineer/Br/Constitution/BNC  
R/o No. 7/D, IIIrd Main,  
Basaveswara Layout,  
Sanjay Nagar,  
Bangalore – 560 094 ..... Applicant.

(By Advocate Shri C.C. Thomas)

Vs.

1. The General Manager,  
South-Western Railway  
Club Road, Keshwapur  
P.O: Hubli 580 023
2. The Chief Personnel Officer,  
O/o the General Manager, SWRly,  
Gadag Road,  
P.O: Hubli – 580 023
3. Dy. Chief Personnel Officer  
O/o the Chief Administrative Officer,  
Construction, S.W.Railways  
Bangalore Cantonment,  
Br – 560 046
4. Dy. Chief Engineer (BR)  
O/o the Chief Administrative Officer,  
Construction, S.W.Railways  
Bangalore Cantonment,  
Br – 560 046
5. The Chief Administrative Officer,  
Construction, S.W.Railways  
Bangalore Cantonment,  
Br – 560 046
6. The Financial Advisor & Chief Accounts Officer,  
O/o the Chief Administrative Officer,  
Construction, S.W.Railways  
Bangalore Cantonment,  
Br – 560 046

(By Advocate Shri N. Amresh)

**ORDER**

**Hon'ble Shri Dinesh Sharma, Administrative Member**

The case of the applicant is that the respondents have revised and refixed his pay with effect from 2008 on ground that it was wrongly fixed considering his officiating pay at that time as substantive pay. The applicant is now being asked to repay the excess amount in installments of Rs. 14598/- from the monthly salary of May, 2017. According to the applicant, the fixation was not wrong and the recovery of any amount, even if it was wrong, is now barred by the decision of Hon'ble Supreme Court in *State of Punjab and Others etc. vs. Rafik Masih* in Civil Appeal No. 11527/2014 (also known as and hereinafter referred to as the Whitewasher case).

2. The respondents have denied the claim of the applicant. They have alleged that the fixation was done on the basis of the pay of a post which the applicant was holding on an adhoc basis and, therefore, their order correcting this error is valid in law. The respondent Railways are entitled to collect the excess paid amount as much as the employee is entitled to receive if there is short payment. The respondents have also denied the applicability of Whitewasher case on the facts of the present case.

3. After going through the pleadings and hearing counsels of both the parties, we find that there are two issues on which this Tribunal has to take a decision:

- (i) Whether the pay fixation done in the year 2008 was correct; and
- (ii) If it was not correct, whether the recovery of the excess paid is barred by the decision in Whitewasher case.

4. As regards issue No.1, the applicant, in his O.A and later, in his M.A for production of additional documents, has quoted Note-5 under RBE 103/2008, which is reproduced below:

**"Note -5 :** Where a Railway Servant is holding a permanent post and is officiating in a higher post on regular basis and the scale applicable to these two posts is merged into one scale, the pay shall be fixed under sub-rule

with reference to the Officiating Post only and the pay so fixed shall be treated as substantive pay.

The provisions of this note shall apply mutatis mutandis, to Railway Servants holding in an officiating capacity, posts on different existing scales which have been replaced by the revised pay structure."

5. The respondents have countered this argument by quoting clarification dated 14.9.2010 (Annexure RA-2) saying that Note-5 under Rule-7 of RS (RP) Rules, 2008, is not applicable in this case. This is reproduced below:

"3. Clarifications are being sought by the zonal railways regarding fixation of pay of staff working in Construction Organisation on ex-cadre posts on ad-hoc basis in merged grades. The matter has been examined and it is clarified that in the case of staff working in Construction Organization on ex-cadre posts on ad-hoc basis, their pay in the 6<sup>th</sup> CPC pay structure is to be fixed separately for cadre post and ex-cadre post as provided in Rule 7(1) of RSRP, 2008. Note 5 below Rule 7 is not applicable in their case."

The applicant has questioned this by saying that this clarification was not quoted in the show cause notice and that it is applicable only to ex cadre posts. He has also quoted another circular No. RBE No. 85/2011 (Annexure A-14) and its relevant portion is reproduced below :

"As such it has been decided by the Board at the basic pay drawn by an employee on adhoc promotion in the Construction Organisation shall be reckoned as pay in terms of clause (i) of Rule 1303 (F.R.9)(21)(a)(1) of Indian Railway Establishment Code Vol-II/1987 Edition for the purpose of reckoning emoluments in terms Rule 49 of the Railway Service (Pension) Rules, 1993. Consequently, the instructions contained in this office letter of even number dated 19.08.2010 may be treated as withdrawn. Cases decided prior to 19.08.2010 need not be reopened."

6. The respondents in their additional reply have again denied the applicability of these Rules to the applicant since he was working on an adhoc basis against a work charge post operated under the Construction Organization. Since the applicant was in the pay scale of Rs. 5000-8000 (in substantive status) and the said pay scale was merged with pay scale of Rs. 5500-9000, his pay was refixed in substantive post in Pay Band Rs. 9300-34800 plus Grade Pay Rs. 4200/- correctly vide Dy. Chief Personnel Officer letter No. P(CN)535/1/Vol.18/G.C dated 31.03.2017 (Annexure RMA/2). It is clear from the respondents' reply that they have fully applied their mind to the facts of the case and have fixed the pay in accordance with the Rules. Therefore, we

do not find any mistake in the order correcting the pay of the applicant by the impugned orders.

7. Regarding the second issue, about the application of decision in Whitewasher case to the facts of this case, the respondents have not been able to convey any facts to support their argument that his case differs from the judgement of Whitewasher case. The mistake apparently happened more than five years back and the employee belongs to grade 'C'. In these circumstances, the recovery of wrongly paid emoluments is definitely barred by the decision of the Apex Court in Whitewasher case. We, therefore, quash the order relating to recovery of the excess paid amount from the applicant.

8. The O.A is partly allowed. The respondents are directed to refund any amount already recovered and are restrained from further recovery of any amount from the applicant on this account. The order of refixation stays and will have only prospective effect from the date of the order. No orders as to costs.

**(DINESH SHARMA)  
ADMINISTRATIVE MEMBER**

**(DR.K.B.SURESH)  
JUDICIAL MEMBER**

Cvr.

**Annexures filed by the applicant in O.A:**

Annexure-A1: Copy of the letter dated 17.09.2016  
Annexure-A2: Copy of the working sheet refixing the applicant's basic pay  
Annexure-A3: Copy of the show cause notice dated 19.10.2016  
Annexure-A4: Copy of the representation dated 21.10.2016  
Annexure-A5: Copy of the representation dated 27.10.2016  
Annexure-A6: Copy of the representation dated 08.06.2017  
Annexure-A7: Copy of the Railway Board circular dated 22.06.2016  
Annexure-A8: Copy of the letter dated 03.07.2017  
Annexure-A9: Copy of the extract from Railway servants pension Rules – Rule No. 79.  
Annexure-A10: Copy of the order dated 24.08.2016 in O.A. No. 155/2016  
Annexure-A11: Copy of the order dated 17.03.2016 in O.A. No. 884/2015

**Annexures filed by the respondents along with reply:**

Annexure-RA1: Copy of the SWR Memorandum dated 24.09.2012

Annexure-RA2: Copy of the Railway Board circular dated 14.09.2010

Annexure-RA3: Copy of the SWR letter dated 03.07.2017

**Annexures filed along with MA No. 297/2018:**

Annexure-A12: Copy of the RBE No. 103/2008

Annexure-A13: Copy of the RBE No. 124/2010

Annexure-A14: Copy of the RBE No. 85/2011

**Annexures filed by the respondents along with additional reply:**

Annexure-RMA1: Copy of the SWR OO dated 23.03.2018

Annexure-RMA2: Copy of the SWR Memorandum dated 31.03.2017