

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00471/2017

**Chandigarh, this the 1ST day of August, 2018
(Reserved on 06.07.2018)**

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

...
Tika Ram s/o Sh. Hemaji Likhari, aged 60 years R/o Banglow No. 3, Mahanubhav Marg, Swaran Maya Nagri, Godhni Railway, Godhni Nagur (Maharashtra) Group A

**....Applicant
(Present: None)**

Versus

1. Union of India, through General Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ambala cantt.
3. Senior Divisional Personnel Officer, Northern Railway, Ambala Cantt.

**.....
(Present: Mr. Yogesh Putney, Advocate)**

Respondents

**ORDER
SANJEEV KAUSHIK, MEMBER (J)**

1. Applicant is aggrieved against the action of the respondents in effecting recovery from him to the tune of Rs.2,74,724/- from his gratuity amount. He has sought issuance of a direction to the respondents to count the period of his apprenticeship from 13.07.1983 to 03.09.1986 towards qualifying service for calculating gratuity and to issue a revised PPO accordingly.
2. The facts, which led to the filing of this O.A., are not in dispute.
3. Applicant, after completion of his training as Traffic Apprentice, initially joined as Section Controller in Delhi Division in the year 1986. He earned various promotions while in service, firstly to the post of Deputy Controller and then to the post of Chief

Controller in Ambala Division. He retired from service, on attaining the age of superannuation, w.e.f. 31.05.2015. On 22.05.2015, i.e. just a week before his retirement, the applicant was served with an order whereby the respondents re-fixed his pay, while withdrawing the benefit of MACP.

4. Aggrieved against the order aforementioned, the applicant approached this Tribunal, by filing O.A. NO. 060/00520/2015, which was dismissed, vide order dated 03.11.2015, upholding the action of the respondents, in rectifying their mistake of granting him the higher grade pay under MACP. It is the case of the applicant that he was entitled to the payment of Rs.9,66,121 towards gratuity, but the respondents have paid him only Rs.6,91,397/-, after deducting a sum of Rs.2,74,724/-, on the ground that they have recovered the amount which they paid to him beyond his entitlement. Against the action of the respondents, the applicant served a legal notice, but the same was not replied to. Hence this O.A.

5. The respondents filed written statement and submitted therein that the relief claimed qua counting of his apprenticeship period as qualifying service towards payment of gratuity has already been accepted, vide order dated 12.01.2018 (Annexure R-1), and a sum of Rs.33,879/- has been sanctioned in favour of the applicant. Thus, qua this relief, the O.A. stands satisfied.

6. With regard to recovery of excess payment, it is submitted that the applicant has erroneously been granted the grade pay of Rs.5400/- under MACP, to which he actually was not entitled to. It is averred that when this error came to notice, the respondents rectified it and re-fixed the pay of the applicant accordingly. That

action of the respondents has already been upheld by this Tribunal, vide its order dated 03.11.205 in O.A. No. 060/00520/2015. Accordingly, they have recovered an amount of Rs.2,74,724/- which was overpaid to the applicant on account of grant of higher grade pay erroneously. It has also been submitted that the indicated recovery has been made in terms of Rule 15 of Railway Services (Pension) Rules 1993 (hereinafter to be referred as Railway Rules, 1993). Thus, it is prayed that the O.A. be dismissed.

7. None appeared on behalf of the applicant. While proceeding under rule 15 of the C.A.T. (Procedure) Rules, 1987, We have heard learned counsel for the respondents, and examined the pleadings.

8. Mr. Yogesh Putney, learned counsel for the respondents, vehemently argued that in terms of Rule 15 of Railway Rules, 1993, the respondents are empowered to make recovery of the overpayment made to a railway employee, to which he is not legally entitled to. He argues that the case law relied upon by the applicant in **State of Punjab Vs. Rafiq Mashih (White Washer)** (2014) 8 SCC 883 is not applicable to the facts of the present case, because in that case the Lordships have not considered the relevant provisions with regard to recovery and, in general, have held that no recovery be made from low-paid Group-C & D employees. He submitted that the respondents have made recovery of the excess amount paid to the applicant, in terms of ratio of law laid down by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal Vs. State of Uttarakhand** reported as (2012) 8 SCC 417.

9. We have given thoughtful consideration to the entire matter. The only question that arises here for our consideration is whether the respondents can effect recovery of the excess amount paid to the applicant, or not?

10. The answer to the above poser lies in Rule 15 of the Railway Rules, 1993. Therefore, the same reads as under for better appreciation.

"Rules, 1993 (hereinafter the "Pension Rules") read as follows:

"15. Recovery and adjustment of Government or railway dues from pensionary benefits-

(1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression "railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the W.P.(C) 4918/2014 Page 7 permissible period after the date of retirement of allottee) if any; (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) xxx xxx xxx

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) xxx

(b) **other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,**

(c) xxx

(ii) Recovery of losses specified sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death,

terminal or service gratuity, which are not subject to the pensions Act, 1871 (23 of 1871). **It is permissible to make recovery of Government dues from the retirement, death terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.**

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

(a) In respect of the dues as mentioned in sub- clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub- clause (b) of clause (i) of this sub-rule-

(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) xxx

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this, the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (I) of this sub- rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer.”

11. Rule 15 of Railway Rules, 1993 is very clear on this subject. It empowers the respondents to effect recovery and make adjustment of government dues such as over payment on account of pay and allowances or other dues like house rent, Post Office or Life Insurance Premia or outstanding advance, from the retirement, death terminal or service gratuity of its employees, even without obtaining his consent. It is not a matter of dispute that the applicant is not entitled to grant of grade pay of Rs.5400/- w.e.f. 01.07.2009, under the MACP Scheme, and it was erroneously granted to him. The action of the respondents in withdrawing that benefit while rectifying their mistake of overpayment has already been upheld by this Tribunal, while dismissing the O.A. filed by the applicant, vide its order dated 03.11.2015. Since at that time, there was no order of recovery, therefore, no finding was recorded by this Court qua that. Since the applicant was not entitled to the grade pay of Rs. 5400/-, which was erroneously granted to him, therefore, the action of respondents in effecting recovery in terms of Rule 15 of Railway Rules, 1993, cannot be held to be illegal.

12. We have minutely gone through the judgment cited in the case of Rafiq Mashih (supra) and find that Lordships have passed that order, in general, that no recovery can be effected from low paid employees like Group C and D, as it will cause hardship to them. But, here in the present case, though the applicant is a Group C employee, but he was drawing grade pay of Rs. 5400 at the time of retirement, so he cannot be said to be a low-paid employee. Therefore, to our mind, the indicated judgment will not render any assistance to the applicant herein.

13. At this juncture, we would like to and place reliance upon the ratio laid down in the case of **High Court of Punjab & Haryana Vs. Jagdev Singh and Others**, 2016 (14) SCC267, where lordship after considering the case of Rafiq Masih (supra) have held that if there was a condition stipulated at the time of granting some extra benefit of a higher post, that in future, if any infirmity is found, the excess amount may be adjusted/recovered, it is liable to be refunded and the same is accepted by the employee, then in that eventuality, the authority exercising that option could not be faulted and the such recovery is permissible. In the present case, Rule 15 of Railway Rules, 1993 is very clear, and it empowers the respondents to recover the amount of over-payment, therefore, no fault can be found in the impugned recovery. Moreover this rule has not been declared illegal or invalid.

14. In view of the discussion above and the judicial pronouncements rendered on the subject, we find no reason to interfere with the order of recovery. The O.A. is accordingly dismissed with no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:

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