

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Misc. Application No.040/00160/2018

With

Original Application No. 040/00274/2018

Date of Order: This, the 31ST Day of August, 2018.

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Sri Dipankar Ganguly
Son of Late (Dr.) Harendra Nath Ganguly
Resident of Dharmapara, A.T.Road
Naliapool, P.O: P.S & District: Dibrugarh
Assam, PIN: 786 001.

...Petitioner/Applicant.

By Sr. Advocate: Mr.G.P.Bhowmick with Mr.R.Hazarika, Advocate

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Railways
New Delhi-110 001.
2. The General Manager
N.F.Railway, Maligaon
Guwahati-781 011.
3. The Divisional Railway Manager
N.F.Railway, Tinsukia.
4. The Finance Auditing & Chief
Accounts Officer/Pension
N.F.Railway, Maligaon
Guwahati-781 011.

5. The Chief Medical Superintendent
N.F.Railway, Dibrugarh Town.

... Respondents

By Advocate: Ms.U.Das, SC, Railways

ORDER (ORAL)

MANJULA DAS, MEMBER (J):

By MA.040/00160/2018, the petitioner/applicant prays for condonation of delay in filing of OA.040/0274/2018 for the reasons mentioned in the MA. Mr.R.Hazarika, learned counsel for the petitioner submitted that applicant has filed the MA as an abundant caution. However, as the matter relates to pension, I view of the law laid down by the Hon'ble Supreme Court in the case of **M.R. Gupta vs Union Of India & Ors, 1995 SCC (5) 628**, the delay, if any, stands condoned. Accordingly, MA is allowed.

2. By this OA applicant makes a prayer for a direction to the respondents to refund the amount of Rs.1,59,598/- which was recovered from the pension of the applicant and to grant him Grade Pay of Rs.6600/- instead of Rs.5400/- and to fix his pension accordingly.

3. The facts, in brief, as narrated in the OA are that applicant retired as Chief Pharmacist (Group C) from

N.F.Railway, Dibrugarh on 31.05.2011 on attaining the age of superannuation. The railways have fixed the monthly pension of the applicant at Rs.12,905/- only and while the applicant was enjoying said pension, suddenly he found that an amount of Rs.5374/- has been deducted from his pension. On enquiry, the Bank Manager, State Bank of India, Gabharupather handed over to him a letter dated 30.11.2013 requesting him to recover an amount of Rs.1,59,598/- in installments from his pension for alleged over payment made to him. Accordingly, the Bank has recovered an amount @ Rs.5374/- per month from the pension of the applicant w.e.f. January, 2014. The applicant submitted various representations, i.e., on 10.08.2015 and 31.01.2016 to stop the recovery from his pension and to refund the amount already recovered but to no avail. Situated thus, applicant approached Pension Adalat, N.F.Railway, Tinsukia Division and his claim was rejected on 09.12.2015 as is evident from Annexure A/6.

4. Mr.R.Hazarika, learned counsel for the applicant submitted that aforesaid recovery has been made without issuing any notice, that too, after three years of his retirement. Learned counsel relied on a decision of the Hon'ble Supreme Court in the case **State of Punjab & Ors vs Rafiq Masih (White**

Washer) & Ors in CA No.11527/2014 (arising out of SLP(c)

No.11684/2012) wherein it was held and directed as under:-

"12. 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."

Learned counsel further submitted that following the aforesaid decision, the DoPT has already issued OM under F.No.18/03/2015-Estt. (Part-I) dated 02.03.2016 advising the Ministries/Departments to deal with the issue of wrongful/excess payments made to Government servants in accordance with the above decision of the cited above. The Railway Board vide RBE No.72/2016 dated 22.06.2016 forwarded the said OM of the DoPT clarifying that it will apply mutatis- mutandis to railway employees also. In support the claim of the applicant, the

learned counsel also relied on a decision of the Coordinate Bench of Principal Bench dated 18.03.2015 in **OA.1031/2015 (Smt. Satya Maya Singh vs UOI & Ors)**.

5. I have heard the learned counsel for the applicant and perused the OA and the documents annexed therein including the judgments, as mentioned above and annexed with the OA. Admittedly the representations of the applicant dated 10.08.2015 and 31.01.2016 have not yet been considered by the respondents.

6. In view of the above, applicant is directed to place this OA before the respondents along with the copy of this order within a period of 15 days from the date of receipt of this order. On receipt of the same, the respondents are directed to consider the case of the applicant in the light of the decision of the Hon'ble Supreme Court in the case of **Rafiq Masih (supra)** and the DoPT OM dated 02.03.2016 and RBE No.72/2016 dated 22.06.2016 as well as the order of the CAT, Principal Bench dated 18.03.2015 in **OA.1031/2015 (Smt. Satya Maya Singh vs UOI & Ors)** and pass appropriate orders within a period of four months from the date of receipt of this order.

7. The OA is disposed of accordingly at the admission stage itself. No costs.

8. Ms.U.Das, learned standing counsel appearing for the railways submitted that she has no objection in disposal of the matter in the above lines.

(MANJULA DAS)
JUDICAIL MEMBER

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