

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.020/00043/2017

Original Application No.020/00047/2017

Date of Order: 01.10.2018

Between:

T.N.V.S. Ranganayakulu, S/o. T. Manikya Rao,
Hindu, aged about 61 years,
Retired Catering Inspector TPTY,
D. No. 403, Krishna Residency,
Chimmanagaripet, Machilipatnam – 521001,
Krishna Dt. (AP).

... Applicant in OA No. 43/2017

Nazeer Khan, S/o. Yousuf Khan,
Muslim, Retired Catering Inspector TPTY,
D. No. 14-76, Padmavathi Nagar,
Tirupati – 517502, Chittoor District (AP).

..Applicant in OA No. 47/2017

And

1. Union of India, represented by
The Chairman, Railway Board &
Ex. Officio Secretary to the Ministry of Railways,
Rail Bhavan, Boat Club, New Delhi – 110 001.
2. South Central Railway rep. by the General Manager,
Rail Nilayam, Secunderabad.
3. The Financial Advisor & Chief Accounts Officer,
South Central Railway, Secunderabad.
4. The Chief Personnel Officer & Ex officio Chairman,
Pension Adalat, South Central Railway,
Rail Nilayam, Secunderabad.
5. The Divisional Railway Manager,
South Central Railway, Guntakal Division,
Guntakal – 515 801, Anantapur District (AP).
6. Senior Divisional Finance Manager,
South Central Railway, Guntakal Division,
Guntakal – 515 801, Anantapur District (AP).
7. Senior Divisional Personnel Officer,
South Central Railway, Guntakal Division,
Guntakal – 515 801, Anantapur District (AP).

... Respondents in both OAs

Counsel for the Applicants	...	Mr. B. Sekhara Reddy (in both OAs)
Counsel for the Respondents	...	Mr. M. Venkateswarlu, SC for Railways (in both OAs)

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

COMMON ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

A common order is being passed in both the OAs since the issue being adjudicated upon by this Tribunal in both the OAs against the same respondents in regard to the recovery from pensionary benefits.

2. The applicants were working in the respondent organization initially in the Catering Department and later, when IRCTC was formed, they were initially sent on deemed deputation and thereafter, got absorbed in IRCTC on 01.07.2007 after technically resigning from the respondent organization on 31.12.2006. Consequent to technical resignation, they were granted pension and while doing so, while calculating dearness relief, certain errors crept in and the applicants were paid excess amount. However, on noticing the error, recovery was ordered from the pensionary benefits by the respondents. Hence, these OAs.

3. While issuing notices in these OAs, this Tribunal passed interim orders staying the recovery till the filing of the reply statement.

4. The applicants contend that they did not intend to get into IRCTC on their own volition. They were per force sent on deemed deputation. Calculation of the pensionary benefits is the responsibility of the respondent organization. Their failure in not doing so should not be the ground to penalise the applicants,

who are pensioners. They are Group C employees. They also state that they have neither misrepresented nor misguided the respondents in making them to pay the pensionary benefits as they have paid till the order of the recovery. The applicants contention is that they are well covered by the judgment of the Hon'ble Supreme Court in the State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Others reported in 2015 (4) SCC 334. They have also stated that the amount they have received has been paid towards income tax and hence, they are under financial strain. In the evening of their life, such sudden recovery would impair their financial planning and put their families to financial hardship.

5. Heard learned counsel of both sides and perused the documents.

6. Learned counsel for the applicants emphasized on the judgment of the Hon'ble Supreme Court and stated that such recovery at the late age of the applicants will put them to undue strain on the financial front. Moreover, it is against law.

7. Learned counsel for the respondents has stated that any excess payment made for which the applicants are not due, tantamounts to undue enrichment. The Railway Board guidelines bearing the No.72/2016 provide for recovery of wrongful / excess payments made to the Governments servants. These instructions have to be abided by and hence, recovery is a must. It is also not true that the applicants are into financial trouble due to the recoveries ordered since they were re-employed in IRCTC and hence, are placed in a comfortable position in regard to the finances. Therefore, the order of recovery is apt and appropriate.

8. This Tribunal has gone through the records and it is evident that the mistake lies with the respondents in drawing excess and paying it to the applicants. Having done so, ordering for recovery at a later stage, despite their assertion at para 13 of the reply statement, is against the Hon'ble Supreme Court's judgment in Rafiq Masih case wherein it was held as under:

“(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.”

9. The applicants have also not given any undertaking stating that any excess payment made to them will be liable to be recovered by the respondents. No such record has been placed before this Tribunal by the respondents. As the case is well covered by the judgment of the Hon'ble Supreme Court in *Rafiq Masih* case and also the orders of this Tribunal in OA Nos. 368/2013, 893/2013, 1308/13, 1432/2013, 722/2014 and OA No. 176/2018 and the order of the Ernakulam bench in OA No.859/2016, this OA has to necessarily be allowed. The impugned orders dated 06.12.2016 of the 6th respondent are quashed and set aside.

10. Hence, the respondents are directed to consider release of the recovered amount, if any, from the applicants pursuant to the impugned orders, within a period of two months from the date of receipt of this order. The respondents are also advised to take note of the observations of this Tribunal in OA No. 80/2017 & batch, dt.28.09.2018 wherein a specific advice has been rendered in order to regulate the cases of this nature for avoiding needless litigation ad frittering away precious resources of the nation.

11. With the above directions, the OAs are allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(Dictated in open court)
Dated, the 1st day of October, 2018

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