

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

Original Application No.021/00080/2017

Original Application No.021/00081/2017

Original Application No.021/00083/2017

Date of Order:28.09.2018

Between:

A. Ram Mohan Rao, S/o. A. Venkateswara Rao,
Aged about 56 years, Occ: Retd. Catering Inspector,
R/o. H. No. 5-202, F. No. 366, Rd. 9F,
Krishna Nagar Colony, Moula Ali, Secunderabad.

... Applicant in OA No. 80/2017

V. Sivasubramanyam, S/o. late S. Viswanathan,
Aged about 57 years, Occ: Retd. Catering Inspector,
R/o. 18/3221, Mallikarjuna Nagar,
Malkajgiri, Hyderabad – 500 047.

..Applicant in OA No. 81/2017

D. Krishnaswamy, S/o. D. Kasaiah,
Aged about 55 years, Occ: Retd. Catering Inspector,
R/o. 12-13-364, SamitraRamadevi Towers,
Street No.2, Tarnaka, Secunderabad,
Telangana – 500 017.

...Applicant in OA No. 83/2017

And

1. Union of India, represented by
The General Manager,
South Central Railway,
Rail Nilayam, III Floor, Secunderabad – 500071.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, III Floor, Secunderabad-500071.
3. The Financial Advisor & Chief Accounts Officer,
South Central Railway,
Rail Nilayam, III Floor, Secunderabad – 500071.
4. The Senior Divisional Financial Manager,
Secunderabad Division, III Floor,
S.C. Railway, Secunderabad – 500071.

... Respondents in all OAs

Counsel for the Applicants ... Mr. N. Subbarayudu (in all OAs)

Counsel for the Respondents ... Mr. V. Vinod Kumar, SC for Railways

(in all OAs)

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

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

This is a common order being issued in the context of multiple OAs being filed before this Tribunal in regard to recovery from pension from the applicants after they technically resigned from the respondent organization.

2. The applicants are all from South Central Railway who were working in the Catering Department which was abolished and consequently they were absorbed in IRCTC. Applicants were granted pension by the respondents organization and thereafter recovery from their pension was ordered by the respondents for wrong calculation in granting pension. The applicants in all these OAs are challenging such recovery ordered vide impugned Orders No. A/PN/SC/Tech. Regn/DR dated 02.12.2016, No. A/PN/SC/Tech. Regn/DR dated 02.12.2016 and No. A/PN/SC/Tech. Regn/DR/2012-13/VS/DR dated 02.12.2016 issued by the 4th respondent in OA No. 80/2017, 81/2017 and 83/2017 respectively.

3. Brief facts common to all the OAs are that the applicants were working in Catering Department of the respondent organization. Consequent on abolition of the catering department in the South Central Railway, due to catering functions being delegated to IRCTC, the employees were initially placed at the disposal of the IRCTC on deemed deputation enmasse. Thereafter, the applicants rendered technical resignation to the respondent organization and got absorbed in IRCTC on different dates. The respondent organisation accordingly granted them

pension fixing basic and dearness relief thereon. After a lapse of about 10 years, the respondents ordered recovery from the pension towards the alleged excess payment of dearness relief based on a Railway Board letter dt. 11.04.2016.

4. When the applicants approached this Tribunal, an interim order of staying the recovery till the date of filing reply statement was issued in all the OAs.

5. The applicants' contention is that they did not misguide or misrepresent the facts to respondent organization to gain any undue benefit. Moreover, the applicants were not put to notice before ordering the proposed recovery. All the applicants belong to Group C category and are pensioners of the respondent organization. They also assert that they did not commit any fraud and that the recovery after a long period of time would put them to undue hardship as the amount received by them has already been put to use. The applicants also state that it was not their wish to go to IRCTC, but they were forced by the respondents organization to go on deemed deputation with IRCTC and thereafter, having found that returning to the respondent organization would be difficult, they opted for absorption after technically resigning from the respondent organization.

6. The respondents have filed a similar reply in all the OAs.

7. The respondents argue that the OAs are not maintainable since the applicants are challenging the internal communications addressed to the Bank about overpayment. DA/DR have been drawn twice for the applicants namely, by IRCTC and the respondent organization. As per the Railway Board letter No.

F(E)III/99/PN/I/21 dated 05.08.1999, such drawal is irregular. The respondents also contend that this discrepancy was pointed out during audit objection and therefore, recovery was ordered.

8. Heard learned counsel for both sides and perused the documents.

9. Learned counsel for the applicants has argued that the error of calculation of pension lies with the respondent organization. The applicants have not contributed to such an error either by misguiding or misrepresenting the facts to the respondents organization. Ordering for recovery after a long period of time would necessarily cause financial hardship as the amount received has already been consumed for one purpose or the other. Even the recovery ordered was without notice which is too harsh. Learned counsel for the applicants has relied upon the judgment of the Hon'ble Supreme Court in State of Punjab &ors Vs. Rafiq Masih (White Washer) Etc., in Civil Appeal No. 11527/2014 and according to this judgment, no such recovery can be made by the respondent organization.

10. Learned counsel for the respondents vehemently opposed the argument of the learned counsel for the applicants on the basis of Railway Board guidelines vide letter No.F(E)III/99/PN/I/21 dated 05.08.1999, No.2012/AC-II/21/Misc. Matters dated 11.04.2016 action has to be taken. Moreover, there was an audit objection wherein it was pointed out that drawal of dearness relief twice by two organizations separately is not permissible. Therefore, they had to inevitably recover. It is also not true that the pensioners are put to financial hardship since they have been reemployed in IRCTC.

11. As seen from the facts narrated above, recovery has been ordered from pension of the applicants after a period of about 10 years. All the applicants are Group C employees. They have not been put on notice before ordering recovery. Any recovery which is sudden and substantial would undoubtedly impact the financial status of any individual. The respondents have also not produced any undertaking given by the applicants to the effect that any excess payment in disabusing terminal benefits will be recovered. A due process and the law applicable is to be followed. The law applicable is stated in the judgment of the Hon'ble Supreme court in Rafiq Masih (supra) 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.*

12. The applicants are squarely covered by the above observations of the Hon'ble Supreme Court. This Tribunal has also issued similar orders vide OA Nos. 368/2013, 893/2013, 1308/13, 1432/2013 and 722/2014 on 27.07.2015. Recently, in OA No. 176/2018, vide order dt. 14.08.2018, this Tribunal has allowed similar plea by following the judgment of the Hon'ble Supreme Court in Rafiq Masih supra and the order of the Ernakulam bench in OA No.859/2016, dt. 14.03.2017. Therefore, as directed by the Hon'ble Supreme Court in Sub-

Inspector Rooplal vs Lt. Governor, (2000) 1 SCC 644, this Tribunal respectfully abides by the judgments of the Hon'ble Supreme Court and also the Coordinate Bench of Ernakulam.

13. In view of the merits of the case and the judgments cited supra, this Tribunal arrives at the conclusion that the present OAs filed by the applicants succeed. The OAs are accordingly allowed. The impugned orders referred to are quashed. The respondents are therefore directed to consider

- i) refund the amount already recovered, if any, pursuant to the impugned order, within a period of three months from the date of receipt of this order.
- ii) to issue comprehensive guidelines based on the law set by the Honorable Supreme Court in various Judgments and V central pay commission as at para 14 below, to avoid wastage of precious National resources pan India in terms of men ,money and material in needless litigation.
- iii) Not to recover any excess amount already paid based on the aforesaid observations.

Time frame permitted is 2 months in respect of item (i) and 6 months in respect of item (ii) above from the date of receipt of this order. Till the comprehensive guidelines are issued by the 1st respondent, the 2nd respondent may consider following guidelines as stipulated at para 14 to avoid flocking of applicants to this tribunal in view of the legal principles enunciated by the Honorable Supreme Court.

14. Incidentally, cases of identical nature, where the excess payment has been made by the respondents, without any representation or mis-representation of the

employees and where there is no undertaking given for recovery of excess payment, respondents may not initiate any action for recovery. The decision in the case of Rafiq Masih of the Apex Court shall be the guiding factor to decide all such cases to the respondents. Except where the case falls within the category of High Court of Punjab & Haryana vs Jagdev Singh (2016) 14 SCC 267 (where undertaking has been given), all the other cases shall be examined on the basis of the law laid down by the Apex Court in the case of Rafiq Masih (supra). However in respect of Group D employees even if an undertaking is given the issue has to be dealt as per law laid down by Honorable Supreme Court in *Paras Nath Singh v. State of Bihar*, (2009) 6 SCC 314 : (2009) 2 SCC (L&S) 198. Such a procedure would be in tune with the decision of the Apex Court in the case of *Amrit Lal Berry v. CCE*, (1975) 4 SCC 714 where the Apex Court has held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

“126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the

Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

15. The respondents are advised to regulate grievances of similar nature keeping the above three judgments in view and not to drive the employees to this Tribunal for a similar relief with similar plea in regard to the recovery proposed/made from pension granted to them. It is left open to the respondents to fix responsibility on those who have committed the error for allowing excess payment to the applicants by fixing the pension wrongly and thereby causing financial loss to the respondent organisation.

16. No order as to costs.

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

(Dictated in open court)
Dated, the 28th day of September, 2018

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