

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00456/2018

Date of CAV : 06-11-2018
Date of Order : 29-11-2018

Between :

M.A. Anwar basha S/o M.A.Khader,
Aged about 62 years, Group 'C' employee,
Occ : Dy. Chief Controller, O/o the Sr.DOM/HYB,
Hyderabad Divn., S.C. Railway, Secunderabad,
R/o H.No.216, Block 1, G.Ks pride,
Balaji nagar, Main Road, Yappral,
Secunderabad-500 087.

....Applicant

AND

1. Union of India rep by
The General Manager,
South Central Railway, Rail Nilayam, III Floor,
Secunderabad-500 071.
2. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad-500 071.
3. The Divisional Financial Manager,
Hyderabad Division, I Floor,
Hyderabad Bhavan, Secunderabad-500 071.
4. The Branch Manager,
Syndicate Bank, S.D.Road,
Secunderabad.

...Respondents

Counsel for the Applicant: Mr.N.Subba Rayudu

Counsel for the Respondents : Mr.V.VinodKumar, SC for Rlys

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985, to direct the respondents and the bank authorities herein to refund the recovery and wrongful / excess payment made to the applicant vide impugned order of DFM/HYB No. A /PN/HYB/7570, dated 21-06-2017 and quash and set aside the same by declaring it as illegal, arbitrary and against the ruling of the Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) Etc., (CA No.11527/2014 arising out of SLP (C) No.11684/2012) and pass such other and further order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicant herein while working as Dy. Chief Controller, Hyderabad Division and proceeded on deputation to CRIS (Centre for Railway Information Systems) on 03-06-2004 and thereafter subsequently got absorbed in CRIS on 03-06-2007. Thereafter the applicant tendered his technical resignation from S.C. Railway. The applicant's retirement benefits were arranged and PPO was issued by the FA & CAO/SCR/SC clearly indicating the amount of pension to be paid to the applicant and also indicating that the applicant is eligible for DA from time to time. After a lapse of over nine years the 3rd Respondent addressed letter to the CRIS seeking for certain clarifications by letter dated 05-12-2016 and asking for a certificate calling for details as per Para (II)(a) of Railway Board letter dated 05-08-1999. Manager, Personnel CRIS/Delhi has certified that

the pay of the applicant was not fixed at the minimum of the grade in CRIS and that the applicant was drawing same pay and scale which he was drawing at the time of absorption in CRIS.

3. Based on the letter of CRIS the 3rd Respondent issued the impugned letter addressed to the bank ordering for recovery of excess amount paid towards admissible dearness relief paid to the applicant to the tune of Rs.6,44,148/-. The applicant made representations on 17-07-2017 to the ADRM/HYB wherein the applicant clearly stated that the overpayment of dearness relief was not due to any misguidance or misrepresentation of the applicant and also brought to the notice of the respondents the observations of the Hon'ble Apex Court in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) Etc., (CA No.11527/2014 arising out of SLP (C) No.11684/2012). The Respondents however started the recovery at the rate Rs.7600/- from the applicant's pension and savings bank account. Hence this OA.

4. Respondents have filed reply statement stating that the applicant was appointed as Traffic Apprentice and during course of time he was promoted as Dy. Chief Controller which was a Group C post and proceeded on deputation to Centre for Railway Information System and got absorbed with effect from 03-06-2007 and his settlement dues were arranged and pension was also authorized vide PPO dated 12-07-2010 with effect from 03-06-2007. In terms of Railway Board's letter dated 05-08-1999 (Serial Circular No.212/1999) and JPO No.01/2018, dated 27.07.2018 re-employed pensioner is eligible for dearness relief under the following circumstances

“Dearness Relief for re-employed civilian pensioners entitled when their pay on re-employment is to be fixed at the minimum of the scale of the post in which they are re-employed”. Further it was confirmed from Centre for Railway Information System that the applicant was holding the post of Dy.CHC which was not included in the group classified as “A” and it was certified that the entire amount of pension sanctioned/being sanctioned by the Central Government (SC Railway) was ignored in which the pay on re-employment ie no part of the pension was taken into account for fixation of pay in the pay scale of the post in which they were absorbed. His pay was not fixed at minimum of the grade in CRIS. He is drawing higher pay and scale which he has not drawn at the time of absorption in CRIS. The applicant’s pay on absorption into CRIS was fixed at a stage above the minimum of pay scale in which he was absorbed, dearness relief on pension is not admissible in terms of Railway Board’s 11.04.2016 and this office has advised the Bank to recover the DR drawn from 03.06.2007 onwards.

5. The applicant has not been covered under any of the situations cited by the Hon’ble Apex Court, here in the instant case the applicant was paid dearness relief for which he is not entitled to. The same was reviewed based on Railway Board’s instructions contained in the letter dated 05.08.1999 and advised for recovery. The applicant was employed for the period from 03.06.2007 in the CRIS duly fixing his pay higher than the minimum of the pay scale thereby he is not entitled to drawing dearness relief on the pension granted for the service rendered in Railways. It is not correct to state that the applicant was at hardship and at pecuniary loss as

the applicant was receiving the salary for the re-employment at Rail Tel during the period. With these submissions, the respondents pray for dismissal of the OA.

6. I have heard Mr.N.Subba Rayudu, learned counsel for the applicant and Mr.V.VinodKumar, learned Standing Counsel for Railways.

7. I have also examined the case of the applicant in the light of the judgement of the Hon'ble Supreme Court in Rafiq Masih's case [2014 (8) SCC 883]. The Hon'ble Supreme Court laid down the guidelines in para 12 of the judgement as follows :

“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 has summarized 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.
- (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.”

8. I am not in agreement with the contention put forth by the learned Standing Counsel for Respondent that the applicant's case cannot be brought under any one of the parameters laid down by the Hon'ble

Supreme Court. Submitting technical resignation and joining the other post will not disentitle the applicant from claiming the benefit under the guidelines issued by the Hon'ble Apex Court in the above case. Further, the DoPT issued official memo dated 2.3.2016 and the Railways also issued a Circular dated 19.07.2016 directing the authorities to following the guidelines issued by the Hon'ble Apex Court in the above case and not to effect any recoveries. The circulars do not contain any exception which is sought for by the Respondents in their reply statement and, therefore, the case of the applicant is squarely covered by the judgement of the Hon'ble Supreme Court in Rafiq Masih's case.

9. Consequently the impugned order effecting recovery of Rs.6,44,148/- from the applicant is set aside. In the result, the OA is allowed without any order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 29th November, 2018.

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