

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.021/00429/2017

Date of Order : 25-04-2018

Between :

M.Murali Krishna S/o M.Koteswara Rao,
Aged: 52 Years,
H.No.24-2/302, Meghana Arcade, Road No.2,
Vimaladevi Nagar, Lane behind Bajarang Kirana Stores,
Malkajgiri, Hyderabad-47,
Telangana State.

....Applicant

AND

1. Union of India rep. by
The General Manager,
South Central Railways,
Rail Nilayam, 3rd Floor,
Secunderabad – 500 025.
2. The Financial Advisor & Chief Accounts Officer,
South Central Railway,
Rail Nilayam, Secunderabad – 500025.
3. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
4th Floor, Secunderabad – 500025.
4. The Divisional Railway Manager,
Secunderabad Division, Sanchalan Bhavan,
Secunderabad.
5. The Sr. Divisional Finance Manager,
South Central Railway,
Secunderabad Division, Sanchalan Bhavan,
Secunderabad.
6. The Sr. Divisional Personnel Officer,
South Central Railway,
Secunderabad Division, Sanchalan Bhavan,
Secunderabad.

...Respondents

Counsel for the Applicant: Mr. N. Subba Rayudu, Advocate

Counsel for the Respondents : Mrs. A.P.Lakshmi, SC for Rlys

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER

THE HON'BLE MRS. MINNIE MATHEW, ADMINISTRATIVE MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

The Applicant was initially appointed for the post of Apprentice Telecom Inspector Grade-III in South Central Railway and joined on 25.02.1991. Subsequently, he was promoted as Telecom Inspector Grade-II. Again he was promoted to the post of Section Engineer Telecom in the scale of Rs.6500-10500 which is a Group 'C' post. While working as such, the Applicant applied, got selected and joined the Rail Tel Corporation of India Limited on 18.03.2002 and worked for a period of five years on deputation up to 18.03.2007. Thereafter, he gave Technical Resignation to Railway Service on 18.03.2007 and became permanent employee in RCIL from 19.03.2007.

2. Consequent on his resignation, the Applicant was granted pension duly fixing basic pay and the dearness relief and continued to be paid pension including the dearness relief admissible from time to time. However, the Respondent No.5 issued the impugned Notice to the Bank authorities by letter dated 04.05.2017 advising them to recover the amount paid so far towards the Dearness Relief drawn from 19.03.2007 to 04.05.2017 and remit back to Railway in the form of DD in favour of FA & CAO/ SC Rlys/ SC stating that the employees who retire and join PSUs are not eligible for drawing the Dearness Relief on basic pension. Aggrieved by the said letter, the Applicant filed the present O.A. seeking a direction to the

Respondents to stop recovery of wrongful/excess payments made to him.

3. It is contended by the Respondents that the judgement of the Hon'ble Supreme Court in **State of Punjab & Others vs Rafiq Masih (White Washer) etc. in Civil Appeal No.11527/2014 dated 18.12.2014** is not applicable to the case of the Applicant since the Applicant had technically resigned from Railways and joined RCIL and, therefore, the Department has decided to recover the dearness relief drawn from 19.03.2007 to till date. It is also submitted that the Applicant is getting salary from Rail Tel Corporation of India besides pension from the Railway Organization.
4. Heard Mr. N. Subbarayudu, learned counsel appearing for the Applicant and Mrs. A.P. Lakshmi, learned Standing Counsel Appearing for the Respondents.
5. We have examined the case of the Applicant in the light of the judgement of the Hon'ble Supreme Court in **Rafiq Masih's** case. 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."

6. We are not in agreement with the contention put forth by the learned Standing Counsel for the Railways that the Applicant's case cannot be brought under any one of the parameters laid down by the Hon'ble Supreme Court. Admittedly he is a Group 'C' employee. 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 Supreme Court in the above case. Further, the DOPT issued official Memo dated 2.3.2016 and the Railways also issued a Circular dated 19.7.2016 directing the authorities to follow the guidelines issued by the Hon'ble Supreme 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.

7. Consequently, the impugned order of Sr. DFM/SC DIVISIONS/S.C.RAILWAY Lr. No. A/PN/SC/MMK/2423, dated 04.05.2017 effecting recovery of excess payment made to the applicant is set aside.

8. In the result, the Original Application is allowed without any order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 25th April, 2018.
Dictated in Open Court.

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