

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/021/533/2017

Date of Order : 21.03.2018

Between:

M. Satyanarayana,
S/o. M. Veera Raju,
Aged about 59 years,
H.No. 12-10-335/7/1, Flat No.402,
Kanakadhara Satyakutir, Seethafalmandi,
Secunderabad – 500 061,
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 Sr. Divisional Finance Manager,
South Central Railway,
Vijayawada Division, Vijayawada.
5. The Sr. Divisional Personnel Officer,
South Central Railway,
Vijayawada Division,
Vijayawada.

..... Respondents

Counsel for the Applicant : Mr. N. Subba Rayudu, Advocate
Counsel for the Respondents : Mr. V. Vinod Kumar , SC for Rlys.

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDL. MEMBER
THE HON'BLE MRS. MINNIE MATHEW, ADMN. MEMBER

ORAL ORDER

{ Per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }

The Applicant was initially appointed for the post of Telecom Maintainer Grade-III in Vijayawada Division in South Central Railway and joined as Apprentice Telecom Maintainer Gr.III at Rajahmundry on 1.9.1980. Subsequently, he was promoted as Telecom Maintainer Grade-II on 1.4.1984. Again he was promoted to the post of Telecom Maintainer Grade-I on 1.3.1993 and was further promoted as Senior Technician which is a Group 'C' post on 28.7.2007 in scale Rs.9300-34800/- + 4200 (GP). While working as such, the Applicant applied, got selected and joined the Rail Tel Corporation of India Limited on 4.9.2008 and worked for a period of five years on deputation up to 10.6.2013. Thereafter, he gave Technical Resignation to Railway Service on 11.6.2013 and became permanent employee in RCIL from 12.6.2013.

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.4 issued the impugned Notice to the Bank authorities by letter dated 12.9.2016 advising them to recover an amount of Rs.4,03,350/- towards the Dearness Relief drawn from 12.6.2013 to 31.7.2016 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 an amount of Rs.4,03,350/- towards the over payment of Dearness Relief made to him from 12.6.2013. It is also submitted that the Applicant is getting gross salary of Rs.56, 968/- besides pension of Rs.17,700/- from the Railway Organization.

4. Heard Mr. G. Trinadha Rao representing Mr. N. Subbarayudu, learned counsel appearing for the Applicant and Mr. V. Vinod Kumar, 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 dated 12.9.2016 effecting recovery of an amount of Rs.4,03,350/- from the Applicant is set aside.

8. In the result, the O.A. is allowed without any order as to costs.

(MINNIE MATHEW)
ADMN. MEMBER

(JUSTICE R.KANTHA RAO)
JUDL. MEMBER

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