

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

O.A.020/539/2017
Date of Order : 20/07/2018

Between :

B. Prabhakara Rao,
S/o. B. Chakrapani,
Aged: 58 Years,
Ex. Assistant Catering Inspector,
Vijayawada Division, Vijayawada,
D.No.5-82/6, Post Office Road,
One Centre, Gollapudi, Vijayawada,
Andhra Pradesh 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
Counsel for the Respondents : Mr. M. Venkateswarlu, SC for Rlys

CORAM :

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

ORAL ORDER

(Per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

The Applicant worked as a Senior Catering Inspector in the Catering department of the Railway Organization. Consequent upon the scrapping off Catering department in S.C. Railway and handing over the same to Indian Railway Catering and Tourism Corporation (IRCTC), the employees were asked to work in IRCTC forcibly on deemed deputation en-mass on a progressing basis from January 2004 to February, 2005. The applicant along with his other counterparts worked in IRCTC on deemed deputation with the same pay as he was drawing in the Railways without any deputation allowance and other consequential benefits that were given to the IRCTC employees. He was absorbed in IRCTC w.e.f. 01.01.2007. Consequent upon absorption in IRCTC, he was granted pension duly fixing basic and the dearness relief thereon and he has been continued to be paid pension including the Dearness Relief admissible from time to time. However, the 4th Respondent issued the impugned Notice dated 15.6.2017 to the Bank advising the Bank authorities to recover the Dearness Relief drawn from 01.01.2007 to till date and remit back to Railways stating that the employees who retired and joined PSUs are not eligible for drawing the dearness relief on basic pension. Aggrieved by the same, the Applicant approached this Tribunal by filing the present O.A.

2. 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 IRCTC and, therefore, the Department has decided to recover the dearness relief drawn from 01.01.2007 to till date. It is also submitted that of besides pension from the Railway Organization, the Applicant is getting salary from IRCTC during the period of overpayment.

3. Heard Mr. N. Subbarayudu, learned counsel appearing for the Applicant and Mr. M. Venkateswarlu, learned Standing Counsel appearing for the Respondents.

4. I 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."

5. I am 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 affect 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.

6. Consequently, the impugned order of Sr. DFM/BZA in Lr. No. A/PN/BZA/36983, dated 15.06.2017 effecting recovery of excess payment made to the applicant is set aside.

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

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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