

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

**Original Application No.021/00584/2017**

**Date of Order: 04.10.2018**

Between:

Ch. Venkat Rao, S/o. Ch. Venkateswarulu,  
Group C Employee, Aged: 56 years,  
Flat No. 401, HIG-115,  
Srinivasa Nilayam, Opp. Rosary High School,  
KPHB-5<sup>th</sup> Phase, Hyderabad, Telangana State.

..Applicant

And

1. Union of India, represented by  
The General Manager,  
South Central Railway,  
Rail Nilayam, 3<sup>rd</sup> Floor, Secunderabad – 500025.
2. The Financial Advisor & Chief Accounts Officer,  
Rail Nilayam, South Central Railway,  
Secunderabad – 500025.
2. The Chief Personnel Officer,  
4<sup>th</sup> Floor, Rail Nilayam,  
South Central Railway, Secunderabad-500025.
4. The Senior Divisional Finance Manager,  
South Central Railway,  
Vijayawada Division, Vijayawada.
5. The Senior Divisional Personnel Officer,  
South Central Railway,  
Vijayawada Division, Vijayawada.

... Respondents

Counsel for the Applicant      ...      Mr. N. Subbarayudu

Counsel for the Respondents      ...      Mr. M. Venkateswarlu, SC for Railways

**CORAM:**

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

***Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)***

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

OA is filed against the impugned Order No. A/PN/BZA/31193, dt.7.9.2016 and No. A/PN/BZA/31193, dt.12.9.2016 issued by the 4<sup>th</sup> respondent.

2. Brief facts of the case that the applicant joined the respondent organization in 1983. He went on deputation to Rail Tel Corporation of India Limited, a PSU of Railways on 02.03.2002 and he was absorbed in the said Corporation in 2008. Consequently, the applicant tendered technical resignation. The respondents have granted pension to the applicant for having exited the organization. While doing so, they have wrongly calculated the dearness relief and paid an excess amount of Rs.7,25,306/ in the process. The respondents on noticing this error have ordered for recovery by directing the concerned bank authorities on 07.09.2016. Hence, this OA.

3. The contention of the applicant is that the mistake was committed by the respondents in drawing excess dearness relief. The applicant is a Group C employee and that sudden recovery after about eight years is putting him into lot of financial hardships as the amount being considerable. The excess amount was also used by him for certain expenses and he does not have the same to return. The applicant states that his case is fully covered by the judgment of the Hon'ble Supreme Court in the State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Others reported in 2015 (4) SCC 334. The applicant also states that he has neither misrepresented nor misguided the respondent organization to grant him excess dearness relief. Ministry of Personnel, Public Grievances and Pensions,

Department of Personnel and Training in OM No. F.18/03/2015-Estt.(Pay-1) dt.2.3.2016 issued instructions to all the departments to implement the directions of the Hon'ble Apex Court in Rafiq Masih case. Accordingly, the respondents have also issued such an order vide Serial Circular No. 75/2016 dt. 19.07.2016.

4. The respondents intimate that the excess dearness relief was calculated by mistake and as per Railway Board instructions vide RBA No. 94/2016, dated 08.12.2016 the amount has to be recovered. The Vigilance Branch of the South Central Railway has also instructed to verify such excess payments and fix responsibility on those concerned for not calculating dearness relief properly and for not endorsing so on the PPO. It was also stated in the said letter that recovery should be made. Hence, the respondents are duty bound to recover the excess amount paid to the applicant as otherwise it tantamounts to undue enrichment.

5. Heard learned counsel of both sides and perused the documents.

6. The details of the case are that the applicant is a Group 'C' employee. He has been granted pension by the respondents. While doing so, they have paid excess dearness relief to the applicant. The respondents despite having a large army of staff who are assigned the functioning of calculating, checking and releasing the terminal benefits, yet allowing excess amount for nearly 8 years is difficult to appreciate. The excess payment was not released on grounds of the applicant misrepresenting or misguiding the respondents. He also did not commit any fraud to release the excess amount. The case is fully covered by the Hon'ble Supreme Court's judgment in Rafiq Masih case wherein it was held 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.”*

This Tribunal has also allowed such claims in OA Nos. 368/2013, 893/2013, 1308/13, 1432/2013, 722/2014, OA No. 176/2018 and OA No. 80/2017 & batch. Hon'ble Ernakulam Bench of this Tribunal has also allowed similar claim in OA No.859/2016. This Tribunal has also granted an interim order staying the recovery till the disposal of the OA.

7. Therefore, since the case is fully covered and the law is well settled in the matter, this OA is allowed. The impugned orders dated 07.09.2016 is quashed. Interim stay is made absolute. Consequently, the respondents are directed to consider release of the recovered amount, if any, from the applicants pursuant to the impugned order, within a period of two months from the date of receipt of this order.

8. No order as to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

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

(Dictated in open court)  
Dated, the 4<sup>th</sup> day of October, 2018

evr